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7 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
8 DIVISION II

9 IN RE PERSONAL RESTRAINT PETITION No.: 49767-1-II
10 OF:

11 ROBERT E. JAMES,

**SECOND SUPPLEMENTAL RESPONSE
TO PERSONAL
RESTRAINT PETITION**

12
13 **1. SUPPLEMENTAL GROUNDS FOR RELIEF AND ARGUMENT.**

14 The State hereby supplements its original and supplemental responses to this personal
15 restraint petition. As this is a supplemental filing, the State will not re-state the authority for relief
16 already provided. For all unaddressed issues, the State will rely on its prior briefing.

17
18 **A. Ineffective Assistance of Counsel—Meaningful Opportunity to Consider Plea Bargain**

19 Unlike the defendant in *State v. Drath*, the Petitioner makes no claim that he was misadvised
20 of the potential consequences of conviction after trial. Instead, the Petitioner's main complaint with
21 the DNA examination is that he claims it affected his decision of whether or not to take a plea
22 bargain. He frames this in the context of ineffective assistance of counsel so that he may raise it in
23 this petition.

24
25 As noted in the Order Dismissing Petition, the Petitioner relies on a declaration from his sister
26 for this proposition. This declaration is inadmissible hearsay and cannot be relied upon as the basis
27

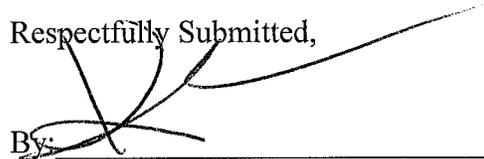
1 for a prima facie case of actual prejudice or a fundamental defect resulting in a complete miscarriage
2 of justice. ER 801, 802; *In re Personal Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

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4 As presented in the State's supplemental response, the evidence, as presented by trial counsel,
5 was consistent with his asserted defense of actual innocence. Trial counsel could have perhaps been
6 more precise in the terms used, but it was not so deficient as to meet the burden the Petitioner has in
7 this matter.

8 The State respectfully requests that the conviction be affirmed.

9 DATED this 28th day of March, 2019.

11 Respectfully Submitted,

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13 By: 

14 KATHERINE L. SVOBODA
15 Prosecuting Attorney
16 for Grays Harbor County
17 WSBA #34097

GRAYS HARBOR CO PROS OFC

March 25, 2019 - 9:28 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49767-1
Appellate Court Case Title: Personal Restraint Petition of: Robert Edward James
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The following documents have been uploaded:

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