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In the
Court of Appeals for the State of Washington
Division Two

In Re the Personal Restraint of:
MARLON OCTAVIUS LUVELL HOUSE,
Petitioner.

**REPLY BRIEF IN SUPPORT OF
PERSONAL RESTRAINT PETITION**

Pierce County Superior Court Nos. 14-1-00938-2 and 14-1-00937-4

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I. ARGUMENTS AND AUTHORITY

A. House's Personal Restraint Petition was Timely Filed and Should be Heard on the Merits.

Pursuant to Petitioner Marlon Octavius Luvell House's pleas of guilty at the superior court level, House was convicted and sentenced for one count of rape of a child in the first degree in Pierce County Superior Court cause number 14-1-00937-4 and one count of rape of a child in the first degree in Pierce County Superior Court cause number 14-1-00938-2. See House's Personal Restraint Petition with Legal Argument and Authorities ("PRP"), Exhibit "A". House appealed his convictions in both cause numbers in a single appeal, docketed as cause number 75641-9-I in the Court of Appeals, Division I. See State's Response to Personal Restraint Petition ("State's Resp."), App. "C".

On May 17, 2017, the appellate court mandate was issued in cause number 14-1-00938-2. *Id.* However, the mandate was not issued with respect to cause number 14-1-00937-4 until May 24, 2017. State's Resp., App'x "D". Relying on the final issuance of the mandate as the triggering date under RCW 10.73.090, House filed his PRP on May 24, 2018. This reliance was reasonable and House's PRP was timely filed because the one-year time bar under RCW 10.73.090 does not begin to run until the final date on which the mandate is issued, which, in this case, was May 24, 2017.

RCW 10.73.090 provides:

[n]o petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

Under the statute, a judgment becomes final on the last of the following dates:

- (a) The date it is filed with the clerk of the trial court;
- (b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or
- (c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal...

RCW 10.73.090. The relevant subsection with respect to this case is “[t]he date that an appellate court *issues* its mandate ...” In this case, the last date on which a mandate was issued was May 24, 2017. House filed his petition on May 24, 2018. House’s petition is therefore timely.

In support of its contrary position, the State relies first on the date designated in the text of the mandate (May 5), and then on the fact that a mandate was filed in cause number 14-1-00938-2 on May 17, 2017. State’s Resp. at 15-17, App. “C”. With respect to the May 5 date, The State’s argument relies on an incorrect application of the term “issue”.

The statute does not define the word “issue.” However, this Court has applied the following definitions to the word:

“to appear or become available through being officially put forth or distributed," "to appear or become available through being brought out for distribution to or sale or circulation among the public," "to go forth by authority," or "to cause to appear or become available by officially putting forth or distributing or granting or proclaiming or promulgating."

Rizzuti v. Basin Travel Serv., 125 Wash. App. 602, 612, 105 P.3d 1012, 1017 (2005) (citing Webster’s Third New International Dictionary 1201 (1993)); see also The Random House College Dictionary 710 (rev’d ed. 1975) (defining “issue” as "the act of sending out or putting forth; promulgation; distribution"); Black’s Law Dictionary 830 (6th ed. 1990) (defining “issue” as "To send forth; to emit; to promulgate; as, an officer issues orders, process issues from a court.").

In this case, the mandate was “officially put forth or distributed,” went forth by authority, and became available by officially putting forth or distributing, in cause number 14-1-00937-4 for the first time on May 24, 2017. See State’s Resp., App’x “D”. On that date, the appellate mandate was e-filed in the Pierce County Superior Court and copied to House’s attorney and the attorney for the State in this matter. *Id.* No mandate was “issued” in cause number 14-1-00937-4 prior to that date.

Based on the foregoing definition of the word “issue,” there is no support for the State’s position that the date designated in the text of the mandate controls. The date designated in the mandate is not the date upon which the mandate is “officially put forth or distributed”. Rather, that date is the date upon which the mandate is filed. In applying RCW 10.73.090, the May 5 date is of no import.

Similarly, with respect to the May 17 date, the State provides no support for the proposition that, where two cause numbers are at issue in a personal restraint petition, the first mandate filed starts the running of the one-year limitation period. This proposition is inconsistent with the plain meaning and clear intent of the statute. Contrary to the State’s representations, the judgment does not become final on the second to last of the events listed in RCW 10.73.090, but rather “on the last of the [specified] dates.” RCW 10.73.090(3). The clear intent of this provision is to eliminate confusion and remove traps for the unwary. Thus, the last possible applicable date controls.

In this case, that date is May 24, 2017. This date was the only date upon which a mandate was issued in cause number 14-1-00937-4. This was the “last” date upon which a mandate was “issue[d]” in the matters that House appealed, and thus serves as the date from which the one-year

time limitation begins to run. Therefore, House's PRP was timely filed and this Court should consider it on the merits.

B. The Arguments Raised in House's PRP Differ Significantly from Those Presented in his Direct Appeal.

The State argues in its Response that House, via his PRP, is merely seeking to relitigate the same issues raised on direct appeal. State's Resp. at 18. However, this argument ignores the fact that the PRP relies primarily on new evidence from outside of the trial record which could not have been relied upon in the direct appeal. This argument also ignores the nature of the arguments asserted in House's direct appeal.

In his direct appeal, House asserted that the trial court erred when denying his request for a special sex offender sentencing alternative (SSOSA) and his request for substitution of counsel. State's Resp. App. C. Neither of these claims are at issue in this PRP. He also asserted a claim of ineffective assistance of counsel on direct appeal. *Id.* However, his claim of ineffective assistance of counsel on direct appeal was based on his counsel's failure to interview the two child victims and failure to ensure the psychosexual evaluation met statutory requirements. *Id.* Neither of these grounds for relief are presented in this PRP.

This Court on appeal held that Attorney Mark Quigley's failure to interview the child victims was justified because the Pierce County prosecutor's office had a policy of discontinuing plea negotiations once

defense counsel interviews child victims. State's Resp., App. C. Thus, the Court reasoned, defense counsel engaged in a legitimate exercise of professional judgment when he decided to forego child victim interviews in order to proceed with plea negotiations. *Id.* Notably, in reaching this holding, the Court observed "[f]urthermore, the record indicates House's counsel performed all other interview House requested." *Id.* at 11. Based on evidence uncovered after the direct appeal, it is now known that the foregoing statement is untrue. The falsity of this statement, along with revelations of defense counsel's personal contempt for clients accused of child sex crimes, forms the basis for House's PRP.

House did not, and could not have, pursued the ineffective assistance claim he now pursues in his PRP. On direct appeal he was confined to the record, which reflected, falsely, that defense counsel conducted a thorough investigation of the case, and did not include revelations that defense counsel despised and did not want to represent clients who, like House, stood accused of child sex offenses. See State v. Stevenson, 16 Wn. App. 341, 345, 555 P.2d 1004 (1976) (matters referred to in the brief but not included in the record cannot be considered on appeal), review denied, 88 Wn.2d 1008 (1977). Because House's claim of ineffective assistance of counsel in his PRP was not raised, and could not have been raised, on direct appeal, the State's argument that he is

relitigating the issues raised in his direct appeal must be rejected. In his PRP, House has raised entirely new issues based on new evidence that was outside of the trial court record. The issue of Attorney Quigley's ineffectiveness for falsely representing to House and the Court that he interviewed all of the witnesses, and the fact that Attorney Quigley was apparently being forced by the public defender's office to represent alleged child sex offenders against his will, have not been litigated prior to this PRP. As such, House is entitled to have his PRP decided on the merits.

The case upon which the State relies provides no support for its position. See State's Resp. at 18 (citing In re Jeffries, 114 Wash. 2d 485, 487, 789 P.2d 731, 734 (1990)). In Jeffries, the majority of the arguments raised in a personal restraint petition were rejected as attempts to relitigate previously litigated issues. The petition at issue in that case was the petitioner's *third* successive personal restraint petition and apparently relied on the same grounds raised in prior petitions. In re Jeffries, 114 Wash. 2d at 487. Thus, the Court in that case applied the abuse of writ standard, under which claims for "similar relief" in successive petitions are not permitted, rather than the standard applicable to initial personal restraint petitions filed after direct appeal. *Id.* at 487-88.

When, as in this case, a petition is brought following a direct appeal, an issue raised therein is only rejected as repetitive when it constitutes “[t]he same ground” as an issue raised on appeal. See In re Taylor, 105 Wash. 2d 683, 687, 717 P.2d 755 (1986). The ineffective assistance claim in this PRP is not the “same ground” as the claim raised in House’s direct appeal, as it relies on a fundamentally different set of facts outside of the trial record and is of a fundamentally different nature.

Also, “[s]hould doubts arise in particular cases as to whether two grounds are different or the same, they should be resolved in favor of the applicant.” Id. at 688. Accordingly, to the extent there is doubt as to whether House’s PRP claim constitutes the “same ground” as that raised on appeal, that doubt is to be resolved in House’s favor.

Even if the Court concludes House’s PRP amounts to an attempt to relitigate issues already addressed on appeal, adjudication on the merits is nonetheless appropriate in this case because “the ends of justice would be served by reexamining the issue.” See In re Pers. Restraint of Gentry, 137 Wn.2d. 378, 388, 972 P.2d 1250, 1256 (1999), as amended (June 30, 1999); see also State v. Vandervlugt, 120 Wn.2d 427, 842 P.2d 950, 953 (1992) (“the mere fact that an issue was raised on appeal does not automatically bar review in a PRP.”) Id. at 432 (quoting In re Taylor, 105 Wash.2d at 688). Because House’s PRP relies on newly discovered

evidence that is not contained within the trial record and which therefore could not have been presented in his direct appeal, the Court should reach the merits even if it finds the issues to be the same as those raised on appeal. It would be manifestly unjust to preclude a petitioner from relying on material evidence outside of the trial record that could not have been introduced on direct appeal simply on the basis that the direct appeal included an ineffective assistance claim grounded in entirely different facts.

C. House Received Ineffective Assistance of Counsel and was Thereby Prejudiced When His Attorney Misrepresented that Witnesses were Interviewed, Expressed Disgust at Being Forced to Represent House, and Forced House to Plead Guilty.

- 1. Attorney Quigley's failure to contact alibi witnesses, his misrepresentation to his client regarding his investigation, and his coercion of his client, constitute deficient performance.**

The State argues Attorney Quigley's performance was reasonable because defense counsel is not required to undertake an independent investigation of a criminal defendant's case. State's Resp. at 23. In other words, the State's position is that it is perfectly acceptable for an appointed attorney, who reviles his client, to decide to forego an investigation, to represent to his client and the court that such an investigation was conducted, to tell the client that, based on the investigation (that did not in fact occur), his chances of an acquittal are nonexistent, and to thereby coerce his client into pleading guilty against

his will. If this position were to be accepted, already weak confidence in the State's system of public defense would be decimated. See

In support of its position, the State cites State v. A.N.J., 168 Wash. 2d 91, 109, 225 P.3d 956, 965 (2010), for the precise opposite proposition for which that case stands. In A.N.J., the Court did not hold, as suggested by the State, that defense counsel need not investigate a client's case. To the contrary, the Court stated "[w]hile no binding opinion of this court has held an investigation is required, a defendant's counsel cannot properly evaluate the merits of a plea offer without evaluating the State's evidence." Id. at 109. The Court then went on to reject the State's contention that defense counsel had no duty to investigate once his client "began to admit" guilt, and declared:

First, [...] the failure to investigate, at least when coupled with other defects, can amount to ineffective assistance of counsel. [citation omitted] Second, and more importantly, the fact that Anderson seemed to believe that his client was going to confess, or even was guilty, was not enough to excuse some investigation.

A.N.J., 168 Wash. 2d at 110. The Court further held "A criminal defense lawyer owes a duty to defend even a guilty client." Id. at 111. The Court concluded with the proposition that:

at the very least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty.

A.N.J., 168 Wash. 2d at 111-12. Rather than supporting the State's position, the Court in A.N.J. expressly condemned defense counsel's failure to undertake a reasonable investigation. Without a reasonable investigation, the defendant was unable to "make a meaningful decision as to whether or not to plead guilty." Likewise, House was unable to make a meaningful decision as to whether or not to plead guilty when his counsel failed to obtain interviews of alibi witnesses and then misrepresented to House that the interviews were conducted and were not helpful to his defense.

The State then attempts to distinguish the facts of this case from those cases where the courts have found a defense investigation to be constitutionally inadequate. State's Resp. at 24 (citing In re Pers. Restraint of Brett, 142 Wn.2d 868, 881, 16 P.3d 601 (2001) (counsel "did almost nothing"); A.N.J., 168 Wn.2d at 110 (not excused from conducting "some investigation"); State v. Jury, 19 Wn. App. 256, 264-65, 576 P.2d 1302 (1978) (counsel "made virtually no factual investigation" combined with other failures); Smith v. Mahoney, 611 F.3d 978, 986 (9th Cir. 2010) ("engaged in almost no investigation of ... the crime ... never ... hired an investigator [and] conceded ... he did not feel a need to go beyond anything [the defendant] told him.")).

Like these instances of ineffective assistance of counsel, Dr. Harrington's investigative report revealed that Attorney Quigley "did almost nothing" and "made virtually no factual investigation." See PRP Ex. "J". Not a single report could be produced revealing the contents of a witness interview, and multiple witnesses who Attorney Quigley represented were contacted have submitted sworn affidavits declaring they were never contacted. See PRP Ex. "H", "J". Although it appears some witnesses were contacted at the outset, Dr. Harrington discovered that the investigator made these contacts without having reviewed any discovery in the case, and failed to follow-up once she actually had some knowledge about the case. See PRP Ex. "J" at 9. The State fails to draw any meaningful distinction between the facts of this case and those cases in which counsel's performance was deemed deficient.

In fact, the quality of Attorney Quigley's representation fell below that condemned in the cases cited by the State – in none of those cases did the attorney go so far as to deceive the court and the client into believing that an investigation was conducted when in fact this was not so. The State commits a further analytical error by asserting that the investigation would have been "probably useless". Again, this line of argument begs the question by presuming House's guilt and that no exculpatory evidence could have been unearthed through due diligence. State's Resp. at 25.

The State argues further that Attorney Quigley’s statement “I wish I had the option of refusing to do child rape cases, what a bunch of wimps” does not demonstrate an improper attitude towards one’s clients because the term “wimp” is a “generous” description of people like House. State’s Resp. at 22. While this may be an acceptable view for a prosecutor to hold, it presents a clear and dangerous conflict for the criminal defense attorney and for our criminal justice system in general.

House is entitled to effective assistance of counsel and a presumption of innocence. Although a defense attorney may form his own opinions about a case during investigation, for a defense attorney to presume guilt on the basis of the fact of charges having been brought, and to proceed on the basis of that presumption, is deeply problematic. This danger has been articulated as follows:

The self-interested motivation to resolve cases quickly, borne out of the persistent underfunding of the defense function, can trick lawyers into believing that they are serving as effective advocates, even when they are not. Believing that most of their clients are guilty, and in many cases wanting them to be so, lawyers can be expected to seek out and interpret evidence consistent with that conclusion. Self-serving biases can help shield lawyers from acknowledging their poor performance. And because the biases that produce ethical blindness occur below the level of consciousness, lawyers will continue to provide substandard representation, unaware that they are doing so.

Eldred, Tigran W., Prescriptions for Ethical Blindness: Improving Advocacy for Indigent Defendants in Criminal Cases, 65 Rutgers L. Rev. 333, 394 (Winter, 2013).

The phenomenon described in this article is precisely what transpired in House's case. Attorney Quigley, acting as appointed counsel with limited resources, presumed House's guilt from the outset in order to justify taking the path of least resistance, i.e. coercing his client to plead guilty rather than preparing a defense and trying the case. His "self-interested motivation" to act against House's wishes was strengthened further by his contempt for those *accused* of child sex offenses and by the fact that he was apparently being forced to take on such cases against his will by the public defender's office. Not only was Attorney Quigley pursuing the path of least resistance, but it appears he wanted his client to be severely punished.

In attempting to justify Attorney Quigley's comments, the State asserts "No RPC, court rule or statute requires counsel to believe in her client's innocence or even like her client at all ..." State's Resp. at 21. However, Attorney Quigley's conduct goes far beyond simply not believing in his client's innocence or liking his client. He resented being forced to represent his client, presumed House's guilt solely on the basis of the fact of charges having been brought, misrepresented to his client

that witnesses were interviewed, and forced his client to plead guilty. This conduct falls far short of the reasonableness standard required by the Sixth Amendment. See Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

2. House was prejudiced by Attorney Quigley’s deficient representation.

The State argues that House fails to show he was prejudiced by Attorney Quigley’s failure to interview witnesses or prepare a defense because House has failed to present “outcome-altering evidence”. Resp. Br. at 26. However, in advancing this argument, the State applies the wrong standard. The State asserts, without reference to any legal authority, that the inquiry “will, in turn, depend on whether the undiscovered evidence would have changed the outcome of a trial.” State’s Resp. at 25. The State fails to appreciate the significance of the fact that there was no trial because House was coerced into pleading guilty by his attorney who refused to advocate on his behalf.

Under these circumstances, the dispositive inquiry with respect to the prejudice element of an ineffective assistance claim is not whether the defendant would have prevailed at trial but for counsel’s deficient performance, but rather whether the defendant would still have pled guilty had he received effective assistance. The record is clear that, had House received effective representation, he would have elected to proceed to

trial. See PRP Ex. “M”. Thus, he was deprived of his rights to effective assistance of counsel under the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution.

The constitutional right to effective assistance of counsel encompasses the plea process. McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L.Ed. 2d 763 (1970); State v. Sandoval, 171 Wn.2d 163, 169, 249 P.3d 1015 (2011). Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. In re Pers. Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004) (citing Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)). Faulty performance of counsel may render the defendant's guilty plea involuntary or unintelligent. Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 88 L.Ed. 2d 203 (1985); Sandoval, 171 Wn.2d at 169.

To establish that the plea was involuntary or unintelligent due to counsel's inadequate representation, the petitioner must show that his attorney's performance was objectively unreasonable and that he was prejudiced by the deficiency. Sandoval, 171 Wn.2d at 169 (citing Strickland, 466 U.S. at 688). The effectiveness of counsel's representation is determined only in the context of each particular client and the surrounding circumstances of the case. See State v. Cameron, 30 Wn. App. 229, 633 P.2d 901 (1981).

These prevailing standards are met, where, as here, substantial evidence exists that the defendant's attorney's performance fell below an objective standard of reasonableness, and that the defendant more likely than not would not have pled guilty but for your attorneys' deficient performance. See State v. Buckman, 190 Wash. 2d 51, 65, 409 P.3d 193, 198 (2018) ("Prejudice at the guilty plea stage means that the defendant would more likely than not have refused to plead guilty and would have insisted on going to trial.")

Although a "strong presumption" of voluntariness arises when a defendant has admitted to reading, understanding, and signing a plea form, State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998), this presumption is rebuttable. See State v. Frederick, 100 Wn.2d 550, 557, 674 P.2d 136 (1983), overruled on other grounds by Thompson v. Department of Licensing, 138 Wn.2d 783, 982 P.2d 601 (1999). In Frederick, the Supreme Court of Washington rejected the argument that a defendant's denial of improper influence or coercion in open court precludes him or her from claiming coercion at some later time. Frederick, 100 Wn.2d at 557. The Court held that "[t]he federal courts have clearly held that such a denial, while highly persuasive, is not conclusive evidence that a plea is voluntary." Frederick, 100 Wn.2d at 557 (citations omitted). Thus, in Frederick, the Court recognized that plea bargaining pressures

may, in particular circumstances, render a plea involuntary, and that coercion by someone other than the State (i.e. defense counsel) may render a guilty plea involuntary. Frederick, 100 Wn.2d at 556.

Additionally, when, as in House’s case, the request to withdraw a plea agreement is made after a final judgment is entered, the petitioner must also show “actual and substantial prejudice.” Buckman, 190 Wash. 2d at 59 (“Under CrR 4.2(f), a court must allow a defendant to withdraw a guilty plea where withdrawal is necessary to correct a manifest injustice. However, if the motion for withdrawal is made after the judgment, it is governed by CrR 7.8(b).”) (citing In re Pers. Restraint of Stockwell, 179 Wn.2d 588, 598-99, 316 P.3d 1007 (2014)). The meaning of “actual and substantial prejudice” is as follows: “the petitioner must show that the outcome of the guilty plea proceedings would more likely than not have been different had the error not occurred.”¹ Buckman, 190 Wash. 2d at 59.

¹ Based on the foregoing, the State’s reliance on In re Pers. Restraint of Davis, 188 Wash. 2d 356, 378, 395 P.3d 998, 1010 (2017), is misplaced. In that case, the defendant was convicted at trial. Id. Thereafter, he claimed his counsel was ineffective for failing to call a pharmacologist or toxicologist to testify on his behalf. The Court rejected this argument because the defendant failed to establish that such testimony could have led to acquittal. In Davis, the relevant inquiry was whether a different result at trial would have ensued had defense counsel presented the expert testimony. In this case, on the other hand, the relevant inquiry is whether a different result of the guilty plea proceedings would have ensued but for counsel’s actions in failing to conduct a complete investigation while at the same time telling House the investigation had been completed and no

Applying these standards to House's case, it is apparent from the record that House's attorney compelled House to plead guilty by failing to prepare the case for trial, failing to interview witnesses he claimed to have interviewed, telling his client that he was guilty along with 97% of those accused of child sex crimes, and actively working against his client due to his personal objection to representing those accused of child sex crimes. By failing to prepare a defense, and by misrepresenting his preparations to his client, while at the same time pressuring House to plead guilty, trial counsel's performance was deficient. House was further prejudiced by this deficient performance because, but for counsel's deficient performance, it is more than likely that House would not have pled guilty. This conclusion is supported both by the foregoing circumstances of the case coupled with House's sworn statement that "[i]f I had known that my lawyer felt so negatively about people who were charged with child sexual offenses and that he did not do the things in my case that he said he did, I would have never taken the plea." PRP Ex. "L". House has thus met his burden of establishing prejudice from counsel's deficient representation.

exculpatory evidence was uncovered. The differing nature of the respective inquiries renders Davis inapplicable here.

3. House provided sufficient evidentiary support for his ineffective assistance of counsel claim.

The State asserts that House's PRP includes inadequate supporting documentation, describing the documents upon which House relies as consisting of mere hearsay. State's Resp. at 20. A review of the 512 page appendix attached thereto establishes otherwise. House does not rely on mere hearsay in his PRP, To the contrary, House's PRP is supported by, among other documents: (1) a letter from the Department of Corrections ("DOC") showing that Attorney Quigley lacked diligence in his representation, resulting in failure to schedule a presentence investigation (Ex. "E"); (2) affidavits from Nicholas Vallot, Myesha House, Scottie Gay, Sundra Gay, swearing no defense investigator contacted them (Ex. "H"); (3) an email exchange between Attorney Quigley and the Department of Assigned Counsel in which Attorney Quigley openly expresses contempt for his client by mere virtue of the fact that he was accused of a child sex crime, and expressed dissatisfaction with being apparently forced to accept such cases (Ex. "I"); (4) an exhaustive investigative report detailing the woefully inadequate defense investigation and subsequent efforts to cover-up this abject failure (Ex. "J"); (5) a sworn affidavit from House detailing the deficiencies and misrepresentations involved in Attorney Quigley's representation and declaring that, but for the deficient performance, House would not have

pled guilty (Ex. “L”); and (6) the case documents from State v. Harris, Pierce County Case 15-1-02431-2, in which Attorney Quigley engaged in similarly deficient representation by coercing his client to plead guilty rather than preparing a defense (Ex. “M”).

Based on these documents, described in detail in House’s opening Brief and appended thereto, House’s argument does not rest on mere hearsay. To the contrary, the documents appended to House’s PRP establish beyond dispute that (1) Attorney Quigley represented to House that his investigator interviewed the witnesses House identified, (2) this representation was untrue, (3) Attorney Quigley pressured House into pleading guilty despite House’s desire to maintain his innocence, and (4) Attorney Quigley expressed his feelings that he strongly dislikes defendants who have been *accused* of child sex crimes, that he presumes them to be guilty with 97% certainty, and that he wishes he did not have to accept representation in such cases. This is sufficient to establish Attorney Quigley’s deficient performance and resulting prejudice, or at the very least sufficient to entitle House to a hearing on the matter.

D. The State Fails to Rebut House’s Alternative Argument that He is Entitled to Resentencing.

In his PRP, House relied in part on the recognition by Division I of the Court of Appeals that the opinion in State v. O’Dell, 183 Wn.2d 680, 693, 358 P.3d 359 (2015), marked a significant change in the law, which

should be applied retroactively for House's benefit. See In re Pers. Restraint of Light-Roth, 200 Wash. App. 149, 152, 401 P.3d 459 (2017). As noted in the State's Response, on August 2, 2018, the Supreme Court reversed the Court of Appeals decision, holding that O'Dell did not constitute a significant change in the law. In re Pers. Restraint of Light-Roth, 191 Wn.2d 328, 422 P.3d 444 (2018).

House was sentenced in July, 2015, and the O'Dell opinion was entered the following month. According to the recent Light-Roth decision rejecting the contention that O'Dell constituted a significant change in the law, it was the law even prior to O'Dell that "a trial court *must* be allowed to consider youth as a mitigating factor when imposing a sentence on a [young] offender." O'Dell, 183 Wn.2d at 696 (emphasis added). It was also the law that a trial court's failure to "meaningfully consider youth as a possible mitigating factor" constitutes reversible error. Id.

The State does not dispute, nor could it, that the trial court did not meaningfully consider House's youth at sentencing. Pursuant to O'Dell, which according to Light-Roth merely applied existing law, House is therefore entitled to have his case remanded to the trial court for resentencing, with instructions to the court to meaningfully consider whether House's culpability was diminished by his youth and to impose a sentence that properly takes this mitigating factor into consideration.

The State's reliance on State v. Murray, 128 Wash. App. 718, 720, 116 P.3d 1072, 1073 (2005), for the proposition that the trial court was precluded from imposing an exceptional sentence is misplaced. Murray stands for the proposition that, *when a DOSA/SSOSA sentence is imposed*, the trial court may not impose a "hybrid" sentence that includes an exceptional sentence. This proposition is inapposite here because the trial court did not impose a SSOSA sentence. Having rejected House's request for a SSOSA, the court was required to meaningfully consider the mitigating factor of House's youth. Its failure to do so constitutes a complete miscarriage of justice. See In re Monschke, 160 Wn. App. 479, 488, 251 P.3d 884, 890 (2010) (citing RAP 16.4(a)-(c)). House is thereby entitled, at a minimum, to resentencing.

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II. CONCLUSION

For the foregoing reasons and for the reasons set forth in House's opening brief, it is respectfully requested that this Court grant the Petition and remand this matter permitting House to withdraw his plea, or in the alternative for resentencing to evaluate whether House's culpability was diminished by his youth and to resentence accordingly.

Respectfully submitted this 3rd day of December, 2018.

LAW OFFICE OF COREY EVAN PARKER

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CERTIFICATE OF SERVICE

I, Corey Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on December 3, 2018, I caused to be served the document to which this is attached to the parties listed below in the manner shown below:

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