

FILED

MAY 06 2011

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DIVISION III
STATE OF WASHINGTON
By _____

No. 291545

**COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON, Respondent

vs.

JAMES V. ADAMS, Appellant

**APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY
THE HONORABLE NEIL Q. RIELLY**

STATEMENT OF ADDITIONAL GROUNDS

James V. Adams, DOC 881608
Appellant
Coyote Ridge Correctional Center
PO Box 769/ G_B-02
Connell, WA 99326-0769
Facility Ph. # (509) 543-5800

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**COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON**

JAMES VINCENT ADAMS,
Appellant/ Petitioner,

vs.

STATE OF WASHINGTON,
Respondent.

CAUSE No. 291545-III

**STATEMENT OF
ADDITIONAL
GROUNDS FOR REVIEW
Per RAP 10.10**

I, JAMES VINCENT ADAMS, appellant/petitioner, have received and reviewed the Opening Brief prepared by my attorney, Marie Trombley, for the above-entitled cause. Summarized below are the additional issues appellant submits for review that are not addressed in that brief. I understand the court will consider this Statement of Additional Grounds for Review when my appeal is considered on the merits.

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I. SUMMARY OF ARGUMENT

For Ground One, Mr. Adams asserts violations of his and the public's right to an open and public trial where the criminal court summarily closed the courtroom for individual voir dire screening without first performing any mandatory analysis test and procedure. The lack of due process in this case has tainted the guilty-verdict of the jury, the court's subsequent conviction, and all of the sentencing provisions that followed. Such errors in this case are constitutional, substantial, and prejudicial to Mr. Adams and the public and the only remedy available is reversal and remand for a new trial.

In Ground Two, Mr. Adams asserts violations of equal protection by the criminal sentencing court's modification order requiring personal service on Ms. Rowe in a family court of law. Prisoners are entitled to equal protection of the laws associated with service of process in this state. Mr. Adams asserts that he is entitled to pursue service of process action on Ms. Rowe in a way fit by the family court, accordingly.

//

II. ASSIGNMENTS OF ERROR

- A. The trial court erred when closed the individual voir dire proceedings to the public and Mr. Adams without first engaging in the mandatory analysis test before such closure could be commenced.
- B. The trial court erred when it ordered the courtroom closure without first notifying the public and or Mr. Adams their rights to contest the closure, in any way, or to be present in any way or at any time during the private interviews of the prospective jurors in the judge's chambers.
- C. The trial court erred when it denied the public and Mr. Adams an opportunity to waive the fundamental and constitutional right to be present during the in-chambers proceedings before courtroom closure.
- D. The trial court erred structurally and procedurally when it closed the individual voir dire interviews on the public and Mr. Adams without first conducting the obligatory courtroom closure assessment.
- E. The trial court manifested a constitutional error when it failed to engage in the necessary procedures to

warrant courtroom closure on all members of the public forum.

F. The criminal court erred, as a direct result of an unconstitutional trial from public trial violations, when it entered the invalid guilty-verdict of the jury on Mr. Adams, which consequently and unlawfully convicted the appellant, and from the conviction resulted in an invalid sentencing judgment and all subsequently ordered provisions therein.

G. The sentencing court erred when it modified Mr. Adams' Judgment and Sentence and ordered him to effectuate personal service of process on Ms. Rowe as a condition of his conviction and as a prerequisite movement before he could move in the family court for contact with his biological daughter.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err when it closed the individual voir dire proceedings to the public and Mr. Adams without first engaging in the mandatory analysis test before such closure could be commenced?

2. Did the trial court err when it ordered the courtroom closure without first notifying the public and Mr. Adams their rights to contest the closure, in any way, or to be present in any way or at any time during the private interviews of the prospective jurors in the judge's chambers?
3. Did the trial court err when it denied the public and Mr. Adams an opportunity to waive the fundamental and constitutional right to be present during the in-chambers proceedings before courtroom closure?
4. Did the trial court err structurally and procedurally when it closed the individual voir dire interviews on the public and Mr. Adams without first conducting the obligatory courtroom closure assessment?
5. Did the trial court manifest a constitutional error when it failed to engage in the necessary procedures to warrant and limit courtroom closure on all members of the public forum?
6. Did the trial court err, as a direct result of failing to perform the mandatory analysis proceedings for the public and Mr. Adams, when it entered the guilty-

verdict of the jury on Mr. Adams, which consequently convicted the appellant of one of the state's highest and notorious crime, which later resulted in all of the prescribed sentencing judgment and provisions found herein?

7. Did the sentencing court err when it modified Mr. Adams' Judgment and Sentence and ordered him to effectuate personal service of process on Ms. Rowe as a condition of his conviction and as a prerequisite movement before he could move in the family court for contact with his biological daughter?

IV. STATEMENT OF FACTS

Since the first day of trial, Mr. Adams has pleaded his innocence of the charges of Homicide by Abuse and, in the state's alternative, Second Degree Murder of his infant son. Once the court commenced its closure on the public to screen the prospective jurors, not one person from the public, according to the records, was present for the in-chambers interviews. Mr. Adams waived his personal presence during these proceedings in lieu of his defense counsel's presence during the screenings.

The criminal court conducted the closure on the public and Mr. Adams by performing the following proceeding:

“I, typically, like to do the jury—the individual voir dire based on the questionnaires in my chambers. And the reason I like to do that in there is that the jurors feel more comfortable and relaxed there because these are personal issues to discuss. And I find that they’re more willing to speak openly in there about some of these personal issues. And so, I like to do it in that manner.” (See, VRP, March 14, 2005, A.M. Session, 5; Spokane County Superior Court No. 04-1-01724-7.)

The court, without further findings or analysis, closed the courtroom on the public and Mr. Adams. Appellant was later found guilty of the highest offense by way of a jury’s guilty-verdict on March 18, 2005, under Spokane County Superior Court No. 04-1-01724-7. (CP 1). He was later sentenced the highest possible term in his case, 320 months of total confinement with a mandatory minimum of 36 months of community custody thereafter. With good-time, Mr. Adams is currently set for release in the year 2028.

Appellant counsel has provided a detailed procedural history of Mr. Adams’ CRR 7.8 hearings for the court. See Appellate counsel’s Opening Brief 3-6. Transcripts of the CrR 7.8 proceedings were also provided to Mr. Adams. Within those reports

lie the details of the modification proceedings, pleadings, and rulings. On January 28, 2010, the state orally notified the court the following:

“The—I don’t know if Ms. Rowe knows about it (the 7.8 hearing). I don’t—we’ve sent notice to the last known address, we’ve sent—made phone calls to the last known phone calls—phone number. And I can’t say that’s the case (she was informed of the 7.8 hearing). I can’t advise the court what her situation is, nor the surviving daughter’s situation is.” (RP 13) (parenthesis added).

Here, the state informed the court that it could not, with all of its available resources and capabilities, over the course of nearly four months prior to each CrR 7.8 hearings, locate, contact, and or receive a verified response from Ms. Rowe. Indeed, Ms. Rowe never answered the state’s attempts of notices and was not present in any way at either court session. The sentencing court, however, proceeded without further delay in consideration of Ms. Rowe’s absence or lack or response.

In the second CrR 7.8 hearing the state requested, and the court so ordered, that appellant perform personal service of process on Ms. Rowe. The court ordered such requirement after

specifying and stating how such service action on Mr. Adams is to his "disadvantage". (RP 8-9 (5/6/2010)). This ruling was entered after Mr. Adams had informed the court that he had not contacted or heard from Ms. Rowe in nearly seven years. Additionally, Mr. Adams has not had contact with any persons related to or associated with Ms. Rowe during that period. Mr. Adams has always lacked the resources, finances, knowledge, and means to personally serve Ms. Rowe with a domestic action as required by the trial court. Appellant comes now *in forma pauperis* in this case and has appeared indigent in all of his direct appeals and *pro se* in all of his collateral, post-conviction relief filings thereafter. There is no projected change in Mr. Adams' financial or liberty status in the near future to further warrant the court's service order. The trial court judge, the honorable Neil Q. Reilly, ordered such provisions knowing that his retirement was imminent. Recently, judge Reilly has retired from the bench.

The court should further note that Mr. Adams has previously appeared in the family court numerous times over the last six years in regards to the custody, placement, and support issues involving his minor child.¹ Those domestic proceedings, however, were

¹ See, Spokane County Superior Court Cause No. 06-3-00874-8

initiated by Ms. Rowe through her hired counsel. When Mr. Adams attempted to initiate parenting actions in the family court, under the same cause, the court commissioner denied his filings on the provisions of his criminal judgment and sentence order restricting all forms of contact with Ms. Rowe. Mr. Adams subsequently filed a CrR 7.8 motion to modify the criminal court's no contact order and now appeals his Judgment and sentence, including the newly modified and unmodified provisions therein.

V. ARGUMENT

ADDITIONAL GROUND No. 1

- A. The Trial Court Erred When Closed The Individual Voir Dire Proceedings To The Public And Mr. Adams Without First Engaging In The Mandatory Analysis Test Before Such Closure Could Be Constitutionally Commenced.

The Sixth Amendment of the United States Constitution directs, in relevant part, that “[i]n all criminal prosecutions, the accused shall enjoy the right to a... public trial...” In re of Oliver, 333 U.S. 257, 270, 68 S. Ct. 499, 92 L. Ed. 2d 682 (1948). “The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may

keep his triers keenly alive to a sense of their responsibility and to the importance of their functions....” *Id.* “In addition to ensuring that judge and prosecutor carry out their duties responsibly, a public trial encourages witnesses to come forward and discourages perjury.” *Waller v. Georgia*, 467 U.S. 39, 46, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984). “Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the [judicial] system.” *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984) (brackets added). “The public trial right extends beyond the taking of a witness’s testimony at trial. It extends to pretrial proceedings.” *State v. Easterling*, 157 Wn.2d 167, 174, 137 P.3d 825 (2006) (quoting *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 11-12, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986)).

The “right to be present at every stage of trial derives from the confrontation clause of the Sixth Amendment [of the U.S. Const.] and the due process clause of the Fifth and Fourteenth Amendments [of the U.S. Const.]” *United States v. Cagon*, 470 U.S. 522, 562, 105 S. Ct. 1482, 84 L. Ed. 2d 486 (1985) (brackets added). Our State Constitution holds, in relevant part, “[j]ustice in all cases shall be administered openly....” Wash. State Const., Article I

§ 10 & 22. “This court has strictly watched over the accused's and the public's right to open public criminal proceedings. As we plainly stated in *Bone-Club*, ‘[a]lthough the public trial right may not be absolute, protection of this basic constitutional right clearly calls for a trial court *to resist a closure motion except under the most unusual circumstances.*” *State v. Bone-Club*, 128 Wn.2d 254, 259, 906 P.2d 325 (1995).² (quoting *Easterling* at 174-75 (emphasis original)).

“We rely heavily upon our prior decisions relating to article I, section 22 of our state constitution, which require trial courts to strictly adhere to the well-established guidelines for closing a courtroom, and upon public policy as made manifest by the federal and state constitutions which favors keeping criminal judicial proceedings open to the public unless there is a compelling interest warranting closure.” *State v. Brightman*, 155 Wn.2d 506, 516, 122

² “The requirements are: 1. The proponent of closure . . . must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a 'serious and imminent threat' to that right. 2. Anyone present when the closure motion is made must be given an opportunity to object to the closure. 3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests. 4. The court must weigh the competing interests of the proponent of closure and the public. 5. The order must be no broader in its application or duration than necessary to serve its purpose.” *Bone-Club*, 128 Wn.2d at 258-59 (alteration in original) (quoting *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wn.2d 205, 210-11, 848 P.2d 1258 (1993)); *Orange*, 152 Wn.2d at 806-07.

P.3d 150 (2005); *In re of Orange*, 152 Wn.2d 795, 800, 100 P.3d 291 (2004); *Bone-Club*, at 261. “Public trial rights extend into the process of jury selection, which is itself a matter of importance, not simply to the adversaries but to the criminal justice system.” *Press-Enter*, 464 U.S. at 505. Here, the trial court violated Article I, § 10 & 22 of the Washington State Constitution when and in the unlawful manner it closed its doors to the public.

“[I]n order to support full courtroom closure during jury selection, a trial court must engage in the *Bone-Club* analysis; failure to do so results in a violation of the defendant’s public trial rights.” *Id.*; See *Orange* 152 Wn.2d at 809. Even if good cause is apparent, “[t]he existence of a compelling interest would not necessarily permit closure: the trial court must then perform the remaining four steps to weigh thoroughly the competing interests.” *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wn.2d 205, 212, 848 P.2d 1258 (1993) (quoting *Bone-Club*, 128 Wn.2d 261).

“The guaranty of a public trial under our constitution has never been subject to a *de minimus* exception.” *State v. Duckett*, 141 Wn. App. 797, 809, 173 P.3d 948 (Div. III 2007). “The denial of the constitutional right to a public trial is one of the limited classes of fundamental rights not subject to harmless error analysis.”

Easterling at 181 (citing *Neder v. United States*, 527 U.S. 1, 8, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)). “The remedy for a violation of Article 1 § 22 is remand for a new trial.” *State v. Rivera*, 108 Wn. App. 645, 652, 32 P.3d 292 (Div. I 2001), *review denied*, 146 Wn.2d 1006, 45 P.3d 551 (2002).

“Whether a defendant’s right to a public trial has been violated is a question of law, subject to *de novo* review on direct appeal.” *Brightman* at 514; See *Bone-Club*, at 256. “It is well settled that a criminal defendant’s right to a public trial is an issue of constitutional magnitude that may be raised for the first time on appeal.” See, *Easterling*, 157 Wn.2d at 173 n.2.³ “Absent consideration of alternatives to closure, the trial court could not constitutionally close the voir dire.” *Presley v. Georgia*, 558 U.S. ___, 130 S. Ct. 721, 724, 175 L. Ed. 2d 675 (2010) (quoting *Press-Enter*, 464 U.S. at 511; See also, *State v. Leyerle*, 158 Wn. App. 474, 242 P.3d 921, 925 (Div. II 2010). “*Presley*, applying the federal constitution, resolves *any* question about what a trial court must do before excluding the public from the trial proceedings, including voir

³ (Holding that this issue involves a ‘manifest error affecting a constitutional right’ under RAP 2.5(a)) (See, section E of this brief for manifest const. error.) See also, *Orange*, 152 Wn.2d 800; *Bone-Club*, 128 Wn.2d 257.

dire.” *Id.* (quoting *State v. Paumier*, 155 Wn. App. 673, 685, 230 P.3d 212 (Div. II), *review granted*, 169 Wn.2d 1017 (2010)) (emphasis added).

B. The Trial Court Erred When It Ordered The Courtroom Closure Without First Notifying The Public Or Mr. Adams Their Constitutional Rights To Contest The Closure Of The Individual Voir Dire Questioning.

The First and Fourteenth Amendments of the U.S. Constitution provide protection of the public’s right of access to criminal trial proceedings. See, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S. Ct. 2814, 65 L. Ed. 2d 973, 977 (1980); *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 35-36, 640 P.2d 716 (1982). “The public has a right to be present whether or not any party has asserted the right, thus the trial courts are required to consider alternatives to closure even when the parties do not offer such alternatives.” *Leyerle*, 242 P.3d at 296 (quoting *Presley v. Georgia*, 130 S. Ct. at 724-25). “The public right extends beyond the accused and can be invoked under the first Amendment.” *Press-Enter*, 464 U.S. at 510 (quoting *Presley*, 175 L. Ed. 2d at 679). “[T]he voir dire of prospective jurors must be open to the public under the First Amendment.” *Id.* In this case, the trial

violated Mr. Adams' and the public's First and Fourteenth Amendment rights by summarily closing its doors to the public without first conducting the mandatory analysis test as prescribed in *Bone-Club*. "[C]onducting interviews of prospective jurors in the jury room is equivalent to courtroom closure." *State v. Frawley*, 140 Wn. App. 713, 720, 167 P.3d 593 (Div. III 2007); *Duckett*, 141 Wn. App. at 809. Here, the juror interviews were held in the judge's chambers, a private setting very similar to that of a jury room for practical application to the facts of this case. See, *State v. Strode*, 167 Wn.2d 222, 217 P.3d 310 (2009) (Where the trial court conducted jury selections in the judge's chambers in unexceptional circumstances without first conducting the required Bone-Club analysis.)

The trial court erred when it did not identify a compelling interest or interests warranting the public's exclusion from the pretrial proceedings. The lower court further erred when it did not perform the remainder of the required analysis test that would have provided specific findings showing that it has fairly weighed and considered the competing interests of Mr. Adams and the public before closing its doors to all but the prospective jurors and judicial officers. Indeed, no member of the public was present during any

part of the individual voir dire proceedings, according to the court records.⁴ “Lacking a trial court record showing any consideration of the defendant’s public trial right, we cannot determine whether closure was warranted.” *Bone-Club*, 128 Wn.2d at 261. The state supreme court ruled that the trial court must weigh the competing constitutional interests and enter appropriate findings and conclusions that should be as specific as possible. See, *Ishikawa*, 92 Wn.2d at 38; *Orange*, 152 Wn.2d at 807.

This court is further left without specific findings of the trial court showing how it had weighed the competing interests of Mr. Adams as the proponent of closure against the public’s interest in maintaining unhindered access to the judicial proceedings. See, *In re of Orange*, 152 Wn.2d at 800. “In the absence of a written finding on a particular issue, an appellate court may look to the oral opinion to determine the basis for the trial court’s resolution of the issue.” *In re the Marriage of Griffin*, 114 Wn.2d 772, 777, 791 P.2d 519 (1990) (see also page 7 of this brief for the court’s oral ruling.)

“The defendant is at the very least entitled to have his

⁴ Transcripts of these proceedings were never transcribed, even after Mr. Adams specifically requested those records through his appellate counsel, Donald Miller, during direct appeal with this court, under Cause No. 24031-2-III. Mr. Miller reasoned that any voir dire issues would have been considered “harmless error”. A copy of this letter is available upon request.

friends, relatives *and* counsel present, no matter with what offense he may be charged.” *Oliver*, 333 U.S. at 272 (emphasis mine). There was no member of Mr. Adams’ friends or family present during the private jury questioning. “Trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials.” *Presley*, 175 L. Ed. 2d at 681. There is nothing in the record shows that the trial court could not have accommodated the public’s attendance in any fashion at Mr. Adams’ trial.

C. The Trial Court Erred When It Denied The Public And Mr. Adams An Opportunity To Waive The Fundamental And Constitutional Right To Be Present During The In-Chambers Interviews Before Closing The Courtroom Doors On The Public.

“A waiver is an ‘intentional relinquishment or abandonment of a *known* right or privilege.’” *State v. Sweet*, 90 Wn.2d 282, 286, 581 P.2d 579 (1978) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 2d 1461 (1938) (emphasis added). “[T]here exists no presumption in favor of waiver of constitutional rights.” *Id.* See also, *State v. Emmett*, 77 Wn.2d 520, 463 P.2d 609 (1970) (no presumption exists of a waiver of constitutional Miranda rights). “The finding of a knowing and voluntary waiver of the right to be present at trial is basically a question of fact.” *Brewer v.*

Raines, 670 F.2d 117, 120 (9th Cir. 1982). Here, it is a fact that there was no waiver made by any member of the public or a finding showing how Mr. Adams' personal attendance waiver effectuated the public's waiver as well. There can be no presumption in this case that the public, individually or as a collective, waived the constitutional right to be present for the private jury screenings.

“The failure to assert this [public trial] right at trial does not effect a waiver, nor free the court from its independent obligation to consider public trial rights before closing all or a portion of the proceedings.” *Duckett*, 173 P.3d at 952; *Brightman*, 155 Wn.2d at 514-15. (Brackets added.) “The opportunity to object has no ‘practical meaning’ unless the trial court has informed the potential objector of the nature of the asserted interests.” *Duckett* at 952. Furthermore, a “summary closure... deprives a defendant a meaningful opportunity to object.” *Id.* (omissions mine.) Mr. Adams was not aware and the court did not inform the public in any way, that certain members of the public could be present during the voir dire proceedings. Therefore, Mr. Adams was not fully or effectively given a meaningful opportunity to object to the closure and waive the entire scope of his protected rights interests therein. “When the absent procedures would have provided protection against arbitrary

and inaccurate adjudication, this court has not hesitated to find the proceedings violative of due process.” *Honda Motor Co. v. Oberg*, 512 U.S. 415, 114 S. Ct. 2331, 129 L. Ed. 2d 336, 349 (1994).

D. The Trial Court Erred Structurally And Procedurally When It Closed The Individual Voir Dire Interviews On The Public And Mr. Adams Without First Conducting The Obligatory Courtroom Closure Assessment.

The process of courtroom closure, the lack thereof, or the denial of a public trial right has been interpreted as a “structural error”. *State v. Rivera*, 108 Wn. App. at 642; *Arizona v. Fulminante*, 499 U.S. 279, 113 L. Ed. 2d 302, 111 S. Ct. 1246 (1991). The five-part analysis includes both substantive and procedural requirements. *Orange*, 152 Wn.2d at 807; *Duckett*, 173 P.3d 952. “Once the plain language of the trial court’s ruling imposes a closure, the burden is on the State to overcome the strong presumption that the courtroom was closed.” *Brightman*, 155 Wn.2d at 516.

In addition to that authority, the court may rule on new constitutional issues retroactively to final cases if such matters require observance of the procedures implicit in the concept of ordered liberty. See, *State v. Evans*, 154 Wn.2d 438, 444, 114 P.3d

627, *cert. denied*, 126 S. Ct. 560 (2005) (quoting *In re of St. Pierre*, 118 Wn.2d 321, 326, 823 P.2d 492 (1992) (citing *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987); *Teague v. Lane*, 489 U.S. 288, 311, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989) (referring to post-conviction collateral reviews.) (O'Connor, J., opinion)).

“...[T]he right of review are fundamental to, and implicit in, any meaningful modern concept of ordered liberty.” *State v. A.N.J.*, 168 Wn.2d 91, 96, n.2, 225 P.3d 956 (2010) (omissions mine).⁵ “Under a federal constitutional analysis, for a fundamental right to exist, it must be ‘objectively, “deeply rooted in this Nation’s history and tradition”. . . and “implicit in the concept of ordered liberty,” such that “neither liberty nor justice would exist if they were sacrificed.”’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L. Ed. 2d 772 (1997) (quoting *Moore v. City of E. Cleveland*, 431 U.S. 494, 503, 97 S. Ct.

⁵ As the fundamental principles of professional conduct put it: The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible. Lawyers, as guardians of the law, play a vital role in the preservation of society. *RPC, Fundamental Principles of Professional Conduct*.

1932, 52 L. Ed. 2d 531 (1977) (plurality opinion); *Palko v. Connecticut*, 302 U.S. 319, 325, 58 S. Ct. 149, 82 L. Ed. 288 (1937)) (quoting *Anderson v. King County*, 158 Wn.2d 1, 25, 138 P.3d 963 (2006)).

“A new procedural rule will be applied retroactively if it is ‘implicit in the concept of ordered liberty,’ implicating the fundamental fairness of the trial.” *St. Pierre*, 118 Wn.2d at 326 (citing *Mackey v. United States*, 401 U.S. 667, 692-93, 91 S. Ct. 1160, 28 L. Ed. 2d 404 (1971) (Harlan, J., concurring)). While not tackling a new procedural rule per se, the State Supreme Court re-reviewed identical public trial procedures and laws applicable to this case. In *State v. Strode*, the trial court conducted jury selection in the judge’s chambers in unexceptional circumstances without first performing the required *Bone-Club* analysis. The court reversed and remanded *Strode* for a new trial as a result of the exact public trial violations asserted herein by Mr. Adams.

“We have held that the ends of justice would be served if there had been an intervening change in law ‘or some other justification for having failed to raise a crucial point or argument in the prior application.’” *Evans* at 455 (quoting *Sanders*, 373 U.S. at 16. *Strode* was published October 8, 2009; fifteen months after Mr.

Adams' direct review mandate was entered.

Mr. Adams filed a CrR 7.8 motion to modify his judgment and sentence through asserted community custody errors of his sentence on November 28, 2008. All public trial cases were put on stay pending the outcome of *Strode* and *Momah*⁶ by the state supreme court. The court should note, however, that during the direct review timeline, Mr. Adams specifically requested the voir dire transcripts from his appellate counsel for review of possible errors therein because appellant was not present during these proceedings. Mr. Adams' appellate counsel refused to have the voir dire transcripts transcribed and produced. See attached Appendix A, *written correspondence to appellate counsel*. Appellate counsel informed Mr. Adams that any issues of the voir dire would be deemed "harmless error". *Id.* With his attorney's legal advice, and without the knowledge of the ruling *Strode*, Mr. Adams filed his CrR 7.8 with the Superior court where it was converted into a Personal Restraint Petition (PRP) and transferred to this court for review. Mr. Adams contested this transfer and conversion, however this court retained review and subsequently dismissed his first petition as frivolous on December 31, 2008. See, *In re of Adams*, 27667-8-III;

⁶ 167 Wn.2d 140, 217 P.3d 321 (2009)

review denied, State Supreme Court Cause No. 82596-3 (3/25/2009). Mr. Adams filed his second PRP in regards to his public trial issues on September 14, 2009, No. 28465-4-III. That petition was dismissed as “successive and untimely” on November 16, 2009; *review denied*, State Supreme court Cause No. 83952-2 (6/7/2010).⁷

E. The Trial Court Manifested Constitutional Error When It Failed To Engage In The Necessary Procedures Warranting Courtroom Closure To The Public Forum.

“There could be no explanation for barring the accused from raising a constitutional right that unmistakably for his or her benefit.” *Presley*, 175 L. Ed. 2d at 680. The Sixth Amendment guarantee of a public trial is unquestionably for the benefit of Mr. Adams. See, *Waller v. Georgia*, 467 U.S. at 46; *State v. Momah*, 167 Wn.2d at 148 (stating the same).

Under the manifest of constitutional error claim, the State Supreme Court has stated that the appellate court should “satisfy itself that the error is truly of constitutional magnitude—that is ment by ‘manifest.’” *State v. Scott*, 110 Wn.2d 682, 687, 757 P.2d 492

⁷ Mr. Adams has previously provided to the state appellate courts, under the above-mentioned causes, the applicable voir dire transcripts and attorney correspondence in support of his argument.

(1988). “‘Manifest’ means unmistakable, evident or indisputable, as direct from obscure, hidden or concealed. ‘Affecting’ means having an impact or impinging on, in short, to make a difference.” *State v. Lynn*, 67 Wn. App 339, 835 P.2d 251, 254 (Div. I 1992). The Lyn court further stated:

“In reviewing RAP 2.5 and *Scott*, we conclude that the proper approach in analyzing alleged constitutional error raised for the first time on appeal involves four steps. First, the reviewing court must make a cursory determination as to whether the alleged error in fact suggests a constitutional issue. Second, the court must determine whether the alleged error is manifest. Essential to this determination is a plausible showing by the defendant that the asserted error had practical and identifiable consequences in the trial of the case. Third, if the court finds the alleged error to be manifest, then the court must address the merits of the constitutional issue. Finally, if the court determines that an error of constitutional import was committed, then, and only then, the court undertakes a harmless error analysis.” *Id.*

“A judicious application of the ‘manifest standard permits a reasonable method of balancing these competing values.” *Id.*, at 254.

While some court rules, specifically General Rule (GR) 31(j), and other considerations of privacy can and should influence the judge’s decision to exclude the public from certain phases of the

trial be public. *Frawley*, 167 P.3d at 596. Also, the court cannot sustain an interpretation of a court rule which contravenes the state constitution. *State v. Pelkey*, 109 Wn.2d 484, 490, 745 P.2d 854 (1987); See *Duckett*, 173 P.3d at 952 (keeping with the general principle that a court rule will not be construed to circumvent or supersede a constitutional mandate).

“A Petitioner fairly and fully presents a claim to the state court for purposes of satisfying the exhaustion requirement if he presents the claim (1) to the proper forum, (2) through the proper vehicle, and (3) by providing the proper and factual legal basis for the claim.” *Insyxiengmay v. Morgan*, 403 F.3d 657, 668 (9th Cir. 2005) (internal citations omitted) (In regards to exhaustion requirements for federal habeas reviews). Mr. Adams asserts that he has fairly and fully presented his claims in the manner substantially similar to the requirements cited above, as well as meeting the state’s court rules under RAP 2.2(a)(1), (13), and RAP 2.5(a), (c)(1). First, this court is of the proper forum to review trial court proceedings and violations made therein. Second, the raised claims herein are brought by a Statement of Additional Grounds brief which is the proper vehicle to submit constitutional errors of the trial court of record. Third, Mr. Adams has previously provided

both factual and proper legal basis' by the trial court's official transcripts and supporting legal documents related to the defense of his direct appeal. Mr. Adams is not otherwise prohibited by statute or court rule barring his appeal or review from the final judgment and amended judgments of the trial court's rulings.

F. The Criminal Court Erred When It Entered The Invalid Guilty-Verdict of The Jury On Mr. Adams Which Consequently and Unlawfully Convicted The Appellant, and From Such Conviction Resulted Invalid Sentencing Judgments and All Other Amendments Made Therein.

"A facially invalid conviction is one that evidences infirmities of a constitutional magnitude without further elaboration." *State v. Ammons*, 105 Wn.2d 175, 187-88, 713 P.2d 719, *cert. denied*, 479 U.S. 930, 107 S. Ct. 398, 93 L. Ed. 2d 351 (1986); *State v. Aronhalt*, 99 Wn.App. 302, 994 P.2d 248, 253 (Div. III 2000). Mr. Adams asserts that his public trial violations render his judgment and sentence invalid on its face. "The invalidity of the Petitioner's judgment* and sentence* is clearly shown by related documents, i.e., charging documents... and the judgment* and sentence* [itself]." *In re of Hinton*, 152 Wn.2d 853, 858, 100 P.3d 801 (2004); See, *In re of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002)

(asterisks mine, brackets added, internal omissions mine).

“In a criminal case, it is the sentence that constitutes the judgment against the accused.” *Flynt v. Ohio*, 451 U.S. 619, 620, 101 S. Ct. 1958, 68 L. Ed. 2d 489 (1981) (per curiam). “[A] criminal judgment necessarily includes the sentence imposed upon the defendant.” *Teague v. Lane*, 489 U.S. at 314 n.2; (citing, *In re of Skylstad*, 160 Wn.2d 944, 950, 162 P.3d 413 (2007) (brackets mine). “[T]he power to decide includes the power to decide wrong, and an erroneous decision is as binding as one that *is* correct until set aside or corrected in a manner provided by law.” *Dike v. Dike*, 75 Wn.2d 1, 8, 448 P.2d 490 (1968) (quoting *Freeman on Judgments*, 5th Ed., section 357, page 744) (emphasis added).

The State Supreme Court has long recognized the fundamental need to protect petitioners against constitutional errors that actually prejudice them *against* the finality of judgments. See, *In re of Hews*, 99 Wn.2d 80, 86, 660 P.2d 263 (1983). Here, Mr. Adams’ right to a public trial was violated and that right has been deemed substantial. The violation of this right deprived the appellant of the basic benefit of that right. These errors require automatic reversal because of the difficulty of evaluating the impact of the error on the outcome of the case. The structural defects in

this case defy harmless error analysis. The prosecution must prove beyond a reasonable doubt that the error did not contribute to the verdict. The state has not made that showing in this case. The strength of evidence is a relevant factor in this court's analysis, however, the conviction is still reviewable and reversible even if "reversal would not shorten [the defendant's] prospective jail time." *United States v. Kincaid*, 898 F.2d 110, 112 (9th cir. 1990) (brackets original); (citing *United States v. Debright*, 730 F.2d 1255, 1258 (9th Cir. 1984)).

The right to a public trial is inherently found in the Bill of Rights. State and Federal constitutions require trial courts to be conducted openly. The constitutional errors made in Mr. Adams' trial court proceedings violate his and the public's right to a public trial. Mr. Adams' case is a manifest of injustice and he has made a reasonable showing of actual and substantial prejudice by the court's lack of due process to support that fact. Such proceedings are connected to and invalidate the jury's guilty-verdict, the trial court's affirming conviction, the sentence, sentencing provisions, and subsequent judgment modifications. Furthermore, Mr. Adams' direct appeal decision has been published. This case is a part of

the established body of Washington case law.⁸ It is irrefutable to say that the trial court's tainted rulings may be applied to other defendants across the state, repeatedly, which is a direct contradiction of the common law interests of justice. Mr. Adams' case presents the inevitable probability that when his appellate opinion is applied to future cases innocent defendants may suffer irreparable criminal judicial actions.

ADDITIONAL GROUND No. 2

- G. The Sentencing Court Erred When It Modified Mr. Adams' Judgment And Sentence By Ordering Him To Effectuate Personal Service Of Process On Ms. Rowe As An Added Condition Of His Conviction And As A Prerequisite Action Before He Would Be Allowed To Proceed In The Family Court For A Parenting Plan Modification Action.

The Fourteenth Amendment provides in relevant part that "no state shall deny any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend XIV, § 1. "Equal protection analysis is substantially identical under the Fifth and Fourteenth Amendments [of the U.S. Const.]." *Abarand Constructors Inc. v. Pena*, 515 U.S. 200, 227, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995) (brackets added); See also, *State v. J.D.*, 86

⁸ See, *State v. Adams*, 138 Wn. App. 36, 155 P.3d 989, review denied, 161 Wn.2d 1006, 169 P.3d 33 (2007).

Wn. App. 501, 937 P.2d 630, 634 (Div. I 1997). “Prisoners possess a right of access not only to pursue appeals from criminal convictions, but also to assert civil rights actions.” *Madrid v. Gomez*, 190 F.3d 990, 995 (9th Cir. 1998) (citing *Wolff v. McDonnell*, 418 U.S. 539, 578-79, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); see also, *State v. Hurt*, 107 Wn. App. 816, 27 P.3d 1276, 1281 (Div. III 2001).

The legislature enacted statutory procedures for family and dependency courts to safeguard a parent’s rights to his child. See Rev. Code of Wash. (RCW) 26.09.010 (civil practice of domestic proceedings). Washington courts have thusly applied civil rules to all superior court family law matters. See, *In re the Marriage of Pennamen*, 135 Wn. App. 790, 798, 146 P.3d 466 (Div. I 2006) (regarding a dissolution action). The state supreme court has further ruled that the lower courts must base crime-related prohibition decisions on the correct standard and correctly apply that standard to the facts, which in turn must be supported by the record. See, *In re the Personal Restraint of Rainey*, 168 Wn.2d 367, 229 P.3d 686 (2010).

Here, the sentencing court could not have made a proper conclusion of as a matter of law where the court lacked any real

evidence concerning Ms. Rowe's status or whereabouts. The lower court was not fully advised of Ms. Rowe's situation and therefore could not have rendered a decision based on the correct legal standard and correctly apply that standard to the facts as such facts were never presented.

Conversely, the record shows an abundance of factual evidence, provided by the state, that Ms. Rowe could not be contacted concerning the 7.8 hearings in this case. The state was unable to provide Ms. Rowe's location or her status.

In Mr. Adams' case, his circumstances as an incarcerated indigent litigant, moving and appearing *pro se*, without legal education is substantial evidence in favor of alternative service of process; a service the family court provides for a standard fee of \$30.00. These facts, coupled with the state's lack of factual evidence concerning Ms. Rowe provided by the court record indicating Ms. Rowe's absence during the proceedings, it is reasonable to conclude that the court capriciously deprived Mr. Adams due process to pursue his parental rights in a family court.

"Before the state may destroy the 'weakened familial bonds, it must provide the parents with fundamentally fair procedures.'" *Santosky v. Kramer*, 455 U.S. 745, 754, 102 S. Ct. 1388, 71 L.

Ed. 2d 599 (1982) (quoting *In re the Matter of H.J.P.*, 114 Wn.2d 522, 527, 789 P.2d 96 (1990). “Determining what process was due petitioners, the Court balanced the ‘three distinct factors’ set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976): (1) the private interest affected by the proceeding, (2) the risk of error created by the State’s chosen procedure and (3) the countervailing governmental interest supporting use of the challenged procedure.” (parenthesis added). *Id.* Such findings must be made by the clear and convincing evidence standard. *Id.*

Mr. Adams’ private interests in seeking contact with his daughter is considered a substantial liberty interest. The extent to which a sentencing condition affects this constitutional right is a legal question subject to strict scrutiny. See, *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). Mr. Adams’ fundamental rights limit the sentencing court’s ability to impose sentencing conditions “that interfere with fundamental rights” where such conditions must be “sensitively imposed” so that they are “reasonably necessary to accomplish the essential needs of the State and public order.” *Warren*, 165 Wn.2d at 32.” (quoting *Rainey*, 168 Wn.2d at 377).

“The Sentencing Reform Act of 1981, RCW 9.94A.505(8), authorizes the trial court to impose ‘crime-related prohibitions’ as a

condition of a sentence. *Warren*, at 32.

“It may very well be that you will be able to establish contact with your daughter in some safe manner that will work for everybody.” (quoting Judge Rielly, VRP P. 9 5/6/2010). This is the most important consideration concerning Ms. Rowe’s interests, his child’s, and Mr. Adams’ interests in effort to contact his child. The facts presented by appellate counsel and the appellant herein support the premise that requiring Mr. Adams to perform personal service is judicially sound. The State presented no current, substantial, or other binding laws or facts in regards to Ms. Rowe to support its interests in having her personally served with domestic pleadings. Ms. Rowe herself did not respond to the state at any time and was further absent at both modification hearings. It is fair to conclude that a reasonable person with any real interest in these proceedings would have likely responded to the state’s efforts at contact or would have been present in some manner to at least one of these hearings. By established law and relevant fact, Mr. Adams has satisfied the requirements necessary for proceeding with alternative service of process on Ms. Rowe in a Family court of law.

Additionally, Mr. Adams’ public trial violations proceeded in a manner quite similar to the CrR 7.8 hearings. The court held in

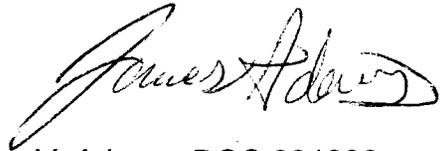
both of the proceedings an unlawful and unfounded standard against Mr. Adams that neglected constitutional considerations, dismissing interests and entitlements afforded to the appellant. Mr. Adams asserts that the merits of this case provide a showing of prejudicial proceedings that manifested substantial constitutional errors.

V. CONCLUSION

Based on the foregoing facts and precedent authorities, Mr. Adams respectfully requests that this court reverse and remand this case for a new trial to remedy the public trial violations, vacate the condition that he must personally serve Ms. Rowe, and issue an injunctive order allowing Mr. Adams to proceed in the family court for determination of service of his domestic petitions.

DATED this 3rd Day of May, 2011.

Respectfully submitted,



Appellate counsel:
Marie Trombley, WSBA 41410
PO Box 28459
Spokane, WA 99228

James V. Adams, DOC 881608
Coyote Ridge Corr. Center
P.O. Box 769
G-Unit, B-Pod; 02
Connell, WA 99326-0769

Appendix A

Letter correspondence of Appellate Counsel
January 5, 2006

DONALD G. MILLER
ATTORNEY AT LAW
422 W. RIVERSIDE, SUITE 51B
SPOKANE, WA 99201-0302

COPY

DONALD G. MILLER*

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FAX (509) 624-1229
EMAIL:DMILLER@ICEHOUSE.NET

January 5, 2006

James V. Adams, DOC #881608
Unit D101
Monroe Correctional Complex
P.O. Box 777,
Monroe, WA 98272

Dear Mr. Adams:

In response to your letter dated 12-31-05, I will send you a copy of your transcript (what was transcribed) within the next week. The *voir dire* was not transcribed. The pre-trial hearing (3.5 hearing) was transcribed and due to a mix-up with the court reporter, the whole trial was not transcribed. After reviewing the 3.5 hearing, and talking to trial counsel, I decided that requiring the rest of the trial to be transcribed was not necessary. The sentencing hearing was transcribed.

The dominating issue in your case was the confessions. Once they were found admissible, not much else mattered. The key to your appeal is getting the confessions excluded and getting you a new trial without them. If any other problems came up during the trial, more than likely they would be found to be harmless error because of the overwhelming evidence (your confession) against you. Because your Order of Indigency authorized the transcript of the trial, including *voir dire*, you can probably request to have those portions transcribed now. It will, however, delay the outcome of your appeal, and I doubt it will change the outcome.

If you have any questions, I accept collect calls on Wednesdays from my appellate clients. I will be out of the office on Wednesday, January 11, 2006.

Sincerely,



Don Miller

APPENDIX

A

Appendix B

Letter correspondence of the Spokane County Family Court
November 24, 2010



SPOKANE COUNTY COURT HOUSE

SPOKANE COUNTY

THOMAS R. FALLQUIST

County Clerk

Clerk of the Superior Court

DATE: November 24, 2010
TO: James Adams
FROM: CC, Deputy Clerk
RE: **Modification on case 06-3-00874-8**

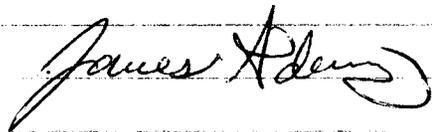
- The above case is **not on file** with this office. You may wish to contact the attorney of record or your own counsel. We are returning your pleadings herewith.
- The Superior Court case number you submitted on your pleadings is incorrect. Please ascertain the correct case number and place on all documents for filing. We are returning your pleadings herewith.
- We are returning your request for information. The cost of searching records is \$30.00 per hour (RCW 36.18.016(11)). If you would like us to proceed with a search, please forward a check in the appropriate amount, payable to the SPOKANE COUNTY CLERK. Upon receipt of the monies we will be happy to search our records and return a written reply to you. Also, please enclose a stamped, self-addressed envelope with your request.
- Filing fee in the amount of \$56.00 was not received pursuant to RCW 36.18.020 and RCW 36.18.016. **** Please be advised, your order / decree / judgment is not on file and is not of record in the Office of the Spokane County Clerk of the Superior Court. In order to file and make them of record, you must pay the filing fee and re-submit the originals for filing.**
- This office is not authorized nor qualified to give legal advice (RCW 2.32.090). We recommend you contact your own counsel or seek the services of an agency that can best advise you in your area of concern.
- As per Spokane County Superior Court Local Rule 54(e) the Spokane County Clerk's office may present routine ex parte matters received in the mail. The cost for this service is \$30.00 per case (as per RCW 36.18.020). LR54 further states that the presentation fee must accompany the original pleadings.

DECLARATION

I, James V. Adams, do hereby declare and say that the foregoing is true and correct to the best of my knowledge under the penalty of perjury under the laws of the State of Washington.

DATED This 3rd day of May, 2011

Signed:



James Adams

881608

Appellant

Coyote Ridge C.C.

PO Box 769/G-B-02

Connell, WA 991326