

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

79407-3

No. **33262-1**

BY SP
DEPUTY

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

IN RE THE PERSONAL RESTRAINT OF ALEXANDER N. RIOFTA,

ALEXANDER N. RIOFTA, Petitioner

PERSONAL RESTRAINT PETITION

Professor Jacqueline McMurtrie
Attorney for Petitioner
Innocence Project Northwest Clinic
University of Washington School of Law
William H. Gates Hall
Box 353020
Seattle, WA 98195-3020
(206) 543-5780

WSBA # 13587

**PETITIONER MAY FILE THE
PETITION WITHOUT PAYMENT OF
A FILING FEE**

Derek Johnson
COURT CLERK 5/13/05

Derek Johnson
Rule 9 Intern

Seth Woolson
Law Student

PROF. JACQUELINE MCMURTRIE
INNOCENCE PROJECT NW CLINIC
UNIVERSITY OF WASHINGTON SCHOOL OF LAW
WILLIAM H. GATES HALL
BOX 353020
SEATTLE, WA 98195-3020
(206) 543-5780

I. STATUS OF PETITIONER

Petitioner Alexander Nam Riofta is currently serving a sentence at the Stafford Creek Corrections Center in Aberdeen, Washington. The sentence is being served pursuant to a Judgment and Sentence entered in *State v. Riofta*, Cause 00-1-00511-5, in the Pierce County Superior Court on December 14, 2001.

A notice of appeal was timely filed on December 17, 2001. The Court of Appeals, Division II, filed an unpublished opinion on September 2, 2003, affirming Petitioner Riofta's conviction. *State v. Riofta*, Ct. App. Cause No. 28209-7-II. *See App. 1*.¹ The Washington State Supreme Court denied the subsequent Petition for Review on May 04, 2004. A mandate was issued on May 10, 2004. *See App. 2*.

II. GROUNDS FOR RELIEF

A. Statement of Facts.

The relevant facts and evidence that the instant personal restraint petition rely on are set forth in Petitioner Riofta's Brief in Support of Personal Restraint Petition (Brief) and the Appendices in Support of Personal Restraint Petition (App.), filed herewith, pursuant to RAP 16.7(a)(2) and 16.10(a)(1). Petitioner Riofta incorporates by reference the facts and evidence contained within the Brief and Appendix.

¹ "App." stands for the Appendices in Support of Personal Restraint Petition, filed herewith.

B. Inadequacy of Other Remedies.

No remedies are available to Petitioner Riofta to challenge his restraint other than this Personal Restraint Petition or an equivalent habeas corpus petition in superior court, or a motion for post-conviction DNA testing under RCW 10.73.170.²

C. Petitioner's Restraint is Unlawful.

As set forth in Petitioner Riofta's Brief and Appendix, the restraint of Petitioner Riofta is unlawful pursuant to RAP 16.4(c) because:

1. The conviction was obtained and the sentence was imposed in violation of the Constitution of the United States or the Constitution or laws of the State of Washington, and;
2. Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction.

III. STATEMENT OF FINANCES

Petitioner Riofta, as demonstrated by his declaration of finances and trust account statement, is unable to pay the filing fees or fees of counsel. *See* Exhibit 1 (Riofta Decl.), attached. Counsel for Petitioner Riofta is appearing pro bono. Petitioner Riofta respectfully requests that

² Mr. Riofta filed a motion for post-conviction testing under RCW 10.73.170 in Pierce County Superior Court, simultaneous with this Petition.

this Court waive the filing fees and other fees levied by the Court as a result of this petition.

IV. REQUEST FOR RELIEF

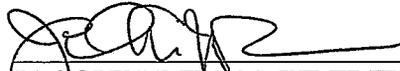
Petitioner Riofta requests that the Court vacate his conviction. In the alternative, he asks that counsel be appointed and an evidentiary hearing ordered to resolve any factual disputes about Petitioner Riofta's unlawful restraint.

V. OATH

I, Jacqueline McMurtrie, after being first duly sworn, on oath, depose and say:

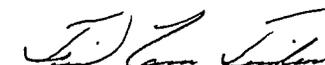
That I am the attorney for Petitioner Alexander Nam Riofta. I have read the petition; know its contents, and I believe the petition is true.

Dated this 22nd day of April, 2005.



JACQUELINE McMURTRIE
WSBA # 13587

Subscribed and sworn to before me this 22 day of April, 2005.

Name: 
NOTARY PUBLIC in and For the State of
Washington, residing at SEATTLE

1 the amount in all accounts is \$ 260.00
2 X own stocks, bonds, or notes. If so, their total value is \$ _____

3 8. List all real estate and other property or things of value which belong to you or in which
4 you have an interest. Tell what each item of property is worth and how much you owe on
5 it. Do not list household furniture and furnishings and clothing which you or your family
6 need.

7	8	9
Items	Value	
10	11	12
13	14	15
16	17	18

9 9. I am ___ am not X married. If I am married, my wife or husband's name and address is
10 _____
11 _____

12 10. All of the persons who need me to support them are listed here.

13	14	15	16
Name and Address	Relationship	Age	
17	18	19	20
21	22	23	24
25	26	27	28

29 11. All the bills I owe are listed here.

30	31	32	33
Name of creditor	Address	Amount	
34	35	36	37
38	39	40	41
42	43	44	45
46	47	48	49
50	51	52	53

54 I DECLARE under the penalty of perjury of the laws of the State of Washington that
55 the foregoing is true and correct.

56 DATED this 28 day of March, ²⁰⁰⁵~~2004~~, at Aberdeen, Washington.

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ALEXANDER RIOFTA

GLHARP

STAFFORD CREEK CORRECTIONS CENTER

OTRIASTB

TRUST ACCOUNT STATEMENT

6.02.1.6

DOC# 0000805644 Name: RIOFTA, ALEXANDER N
LOCATION: S01-318-H5078U

BKG# 118524

Account Balance Today (04/01/2005) Current : 370.40
Hold : 0.00
Total : 370.40

Account Balance as of 03/31/2005 370.40

03/01/2005 03/31/2005

SUB ACCOUNT	START BALANCE	END BALANCE
SPENDABLE BAL	40.02	41.46
SAVINGS BALANCE	276.50	286.50
WORK RELEASE SAVINGS	0.00	0.00
EDUCATION ACCOUNT	0.00	0.00
MEDICAL ACCOUNT	0.00	0.00
POSTAGE ACCOUNT	45.11	42.44
COMM SERV REV FUND ACCOUNT	0.00	0.00

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF	AMT.
CVCS	CVC/07112000	06132001	UNLIMITED	143.25		0.00
COIS	COI/07112000	06132001	UNLIMITED	573.00		0.00
IDTD	ID TAG DEBT	06172003	0.00	3.00		0.00
MEDD	MEDICAL COPAY DEBT	05292002	0.00	5.97		0.00
DEND	DENTAL COPAY DEBT	09172002	0.00	10.92		0.00
COI	COST OF INCARCERATION	06132001	UNLIMITED	0.00		0.00
CVC	CRIME VICTIM COMPENSATION	06132001	UNLIMITED	5.47		0.00
SPHD	STORES PERSONAL HYGIENE DEBT	08202002	0.00	3.70		0.00
TVD	TV CABLE FEE DEBT	02092002	0.00	3.21		0.00
TVD	TV CABLE FEE DEBT	02122005	0.00	0.42		0.00
COSMD	COS - MISDEMEANANT DEBT (001)	06132001	0.00	480.00		0.00
LFO	LEGAL FINANCIAL OBLIGATIONS	20040126	UNLIMITED	105.00		0.00
POSD	POSTAGE DEBT	02112002	0.00	7.71		0.00
TVRTD	TV RENTAL FEE DEBT	03222005	0.00	0.54		0.00
HYGA	PERSONAL HYGIENE DEBT	12072004	0.00	1.36		0.00
DPSD	RESTITUTION DEBT	09252002	0.00	21.49		0.00
MISCD	MISCELLANEOUS DEBT	02012005	0.00	4.81		0.00
644D	CSRF LOAN DEBT	06132001	0.00	0.00		0.00
10DCD	TENTH CIRCUIT COURT DEBT	06132001	0.00	0.00		0.00

GLHARP

STAFFORD CREEK CORRECTIONS CENTER

OTRTASTB

TRUST ACCOUNT STATEMENT

6.02.1.6

DOC# 0000805644 Name: RIOFTA, ALEXANDER N
 LOCATION: S01-318-H5078U

BKG# 118524

TRANSACTION DESCRIPTIONS --			SPENDABLE BAL SUB-ACCOUNT	
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
03/03/2005	CRS SAL ORD #2776345 STR		(22.46)	17.56
03/04/2005	CRS SAL ORD #2778525 STR		(8.38)	9.18
03/04/2005	TV RENTAL FEE-Feb/2005		(1.00)	8.18
03/12/2005	I05 - TV CABLE FEE		(0.50)	7.68
03/15/2005	Class 3 Gratuity-Food Svs-2/05		1.95	9.63
03/15/2005	Deductions-CVC-06132001 D D		(0.10)	9.53
03/15/2005	CRS SAL ORD #2792544STR		(9.07)	0.46
03/22/2005	TV RENTAL FEE DEBT		0.54	1.00
03/22/2005	TV RENTAL FEE-March '05		(1.00)	0.00
03/25/2005	OTHER DEPOSITS-24313-J. Saladana		100.00	100.00
03/25/2005	Deductions-CVCS-06132001 D D		(5.00)	95.00
03/25/2005	Deductions-COIS-06132001 D D		(20.00)	75.00
03/25/2005	Deductions-LFO-20040126 D D		(20.00)	55.00
03/25/2005	Deductions-SAV-01102005 D D		(10.00)	45.00
03/25/2005	Deductions-TVRTD-03222005 D D		(0.54)	44.46
03/29/2005	I05 - MEDICAL COPAY		(3.00)	41.46

TRANSACTION DESCRIPTIONS --			SAVINGS BALANCE SUB-ACCOUNT	
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
03/25/2005	Deductions-SAV-01102005 D D		10.00	286.50

TRANSACTION DESCRIPTIONS -- WORK RELEASE SUB-ACCOUNT SAVINGS

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS -- EDUCATION ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS -- MEDICAL ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS -- POSTAGE ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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03/14/2005	POSTAGE SUBACCOUNT WITHDRAWAL		(2.67)	42.44
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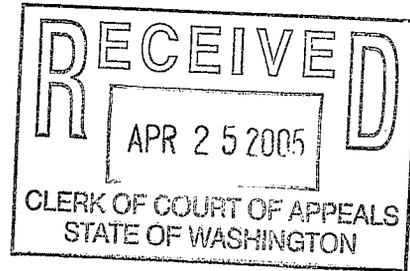
TRANSACTION DESCRIPTIONS -- COMM SERV REV SUB-ACCOUNT FUND ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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 UW School of Law

Clinical Law Program

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Seattle, WA 98145-1110
Phone 206.543.3434 Fax 206.685.2388



April 22, 2005

David C. Ponzoha, Court Clerk
Washington State Court of Appeals
Division Two
950 Broadway, Suite 300
Tacoma, WA 98402-4454

RE: In Re the Personal Restraint Petition of Alexander N. Riofta

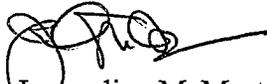
Dear Mr. Ponzoha,

Enclosed please find for filing in the above matter:

1. Original and copy of Petitioner's Personal Restraint Petition (including a request for waiver of the filing fee);
2. Original and copy of Petitioner's Brief in Support of Personal Restraint Petition; and
3. Original and copy of Appendices in Support of Personal Restraint Petition.

Thank you for your attention to this matter.

Sincerely,



Jacqueline McMurtrie, Assistant Professor
Attorney for Petitioner

Encl.