

FILED
SUPREME COURT
STATE OF WASHINGTON

DIVISION II, NO. 2019-5396-3-II 10:01

L: REP. CLERK
SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

NO. 82194-1

STATE OF WASHINGTON,

RESPONDENT,

VS,

JAMES W. GRANTHAM,

PETITIONER.

AMENDED MOTION FOR DISCRETIONARY REVIEW

A. IDENTITY OF PETITIONER.

COMES NOW the petitioner JAMES W. GRANTHAM, proceeding pro se, respectfully asking that this court accept review of the decision designated in Part-B of this motion.

B. COURT OF APPEALS DECISION.

The petitioner seeks review of the unpublished order dismissing petition in the Court of Appeals, Division Two, 37396-3-II, which was filed on August 29, 2008. A copy of that opinion is attached hereto in the appendix, labeled Appendix 'A,' pages 1-5. A motion for reconsideration was filed on September 18, 2008. The motion for reconsideration has been transferred along with the entire file in this matter to this court.

C. ISSUES PRESENTED FOR REVIEW.

I. PETITIONER DID NOT RECEIVE ADEQUATE ADVANCED WRITTEN NOTICE OF THE CHARGES AGAINST HIM WHEN THE INFRACTION REPORT DID NOT STATE ANY CLEAR, SPECIFIC OR PRECISE, TIMES, DATES OR PLACES, IN WHICH THE ALLEGED MISCONDUCT OCCURRED. THIS ALSO DENIED THE PETITIONER OF HIS RIGHT TO PRESENT A MEANINGFUL DEFENSE. IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

II. PETITIONER WAS DENIED THE RIGHT TO PRESENT DOCUMENTARY EVIDENCE DURING THE HEARING WHEN HIS REQUEST FOR THE COPY OF PHONE RECORDS WAS DENIED. THIS ALSO DENIED PETITIONER FROM ACCESS TO EVIDENCE. IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

III. THE GUILTY FINDINGS BY THE HEARING OFFICER WERE THE RESULT OF AN ARBITRARY AND CAPRICIOUS HEARING. IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

IV. PETITIONER WAS SUBJECTED TO A WRONGFUL DISCIPLINARY ACTION WHEN ALLEGATIONS STATED IN THE INFRACTION REPORT WERE NOT ONLY UNSUPPORTED BUT WERE ALSO FALSE. IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

D. STATEMENT OF THE CASE.

On November 8, 2007, petitioner, who at the time was confined at the Mcniel Island Corrections Center, was placed in administrative segregation as a result of allegations that he was conspiring to bring drugs and tobacco into the facility.

On December 7, 2007, petitioner received a hearing notice along with the serious infraction report. Upon reading the infraction report petitioner refused to sign the notice believing the infraction report was unsubstantiated and false.

On December 12, 2007, a hearing was conducted by Lt. Allen. Petitioner plead not guilty to WAC Rule # 603 - possession, introduction, use or transfer of any narcotic, mind altering substance, and WAC Rule # 606 - possession, intro, transfer of tobacco, tobacco products and paraphernalia.

Petitioner was subsequently found guilty of both of the WAC Rule violations and was given a sanction of 25 days of segregation; 90 days loss of good conduct time; 7 days loss of yard; and a referral to the unit team for custody review.

The basis for the guilty findings was an overheard phone call conversation between petitioner and his brother allegedly talking about transactions and introducing contraband. Petitioner filed an timely appeal to the superintendent who upheld the guilty findings and sanctions on December 20, 2007.

On February 5, 2008, petitioner filed a personal restraint petition raising numerous issues regarding due process violations during the disciplinary proceedings. On April 18, 2008, assistant attorney general, Peter, W. Berney, WSBA # 15719, filed a response to the PRP. On August 29, 2008, an order of dismissal was filed in the Court of Appeals, Division Two. On September 18, 2008, petitioner filed a motion to reconsider the order of dismissal, in the Court of Appeals, Division Two.

On October 3, 2008, petitioner received a letter from the Washington State Supreme Court Clerk, Susan L. Carlson, informing the petitioner that the entire file under COA No. 37396-3-II, has been forwarded to this court. The letter also stated that the motion to reconsider was also forwarded to this court and would be considered as an motion for discretionary review. This amended motion for discretionary review now follows.

I. PETITIONER DID NOT RECEIVE ADEQUATE ADVANCED WRITTEN NOTICE OF THE CHARGES AGAINST HIM WHEN THE INFRACTION REPORT DID NOT STATE ANY CLEAR, SPECIFIC OR PRECISE, TIMES, DATES OR PLACES, IN WHICH THE ALLEGED MISCONDUCT OCCURRED. THIS ALSO DENIED THE PETITIONER OF HIS RIGHT TO PRESENT A MEANINGFUL DEFENSE. IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

In prison disciplinary proceedings minimum due process protections are required. Those protections include; (1) advance written notice of the charged violations; (2) the opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals; and (3) a written statement of the evidence relied on and the reasons for the disciplinary action. Wolff v. McDonnell, 418, U.S. 539, 563-66 (1974) (emphasis added).

The purpose of the notice requirement is to inform the inmate of the charges and to enable him to marshal the facts and prepare a defense. Wolff, 418 U.S. at 564, 94 S.Ct. at 2978. Inmates facing disciplinary charges must have an opportunity to marshal facts and prepare a defense. Young v. Kann, 926 F.2d 1396 (3rd Cir. 1991).

Not only is notice required but notice must be specific enough to allow the inmate to understand the proposed action. If several prior acts constitute the charges, these all should be specifically identified. Bono v. Saxbe, 450

F.Supp. 934, 944 (1978). In Bono, an inmate was placed in confinement for previous assaultive conduct in numerous incidents however no specifics as to dates, times and places were provided to the inmate regarding the prior assaultive incidents wherefore, the court held that proper notice of the claimed acts was not sufficient.

Failure to state specific acts, dates, and times in the advanced written notice prevents the inmate from preparing an adequate defense to the charges. Spellmon-Bey v. Lynaugh, 778 F.Supp. 338, 342 (E.D. Tex. 1991). In Spellmon-Bey, the offense with which Spellmon-Bey was charged is specified, however, no specific acts are charged and no times nor places given. Spellmon-Bey was simply notified that he was being accused of being part of an extortion ring that threatened inmates on H-Line. The time and dates stated on the written notice were those of Spellmon-Bey's confinement. The court held that this information was of little use in preparing an adequate defense to the charges. id. at 342.

WAC 137-28-270 (1) (a), states in pertinent part: "The infraction must include: (c) The time and place of the incident." On DOC's initial infraction report Form A, it states: "State a concise description of the details of the rule

violation, covering all elements and answering the questions of When? Where? Who? What? Why? and How?; Describe any injuries, property damage, use of force, etc., attach all related reports."

In the present case, an infraction report was written on 12/1/2007. The description of the incident states:

"During the course of a HQ Special Investigation Unit (SIU) investigation of staff misconduct at MICC, information was received and evidence recovered that the staff member under investigation was introducing contraband into MICC. This staff member turned over one plastic bag of contraband to the SIU unit that contained two (2) large Top tobacco tins, five (5) cans of Grizzly chew tobacco, one (1) large bag of Gambler tobacco and one (1) jar of folgers coffee. Inside the folgers jar was a package wrapped in plastic and duct tape that contained a green leafy substance that later tested positive for marijuana. The staff member who surrendered the package did not know the name of the person dropping off the package in Tacoma, but did have the phone number which was 253-905-0525. This number verified by phone records belongs to the brother of offender James Grantham DOC # 703436. This type of drop off to this staff member had occurred on more than one occasion since June 2007. I, knowing offender Grantham's voice overheard offender Grantham tell his brother to buy the coffee and make sure he had it ready for Sunday, then asked his brother if he had gotten the other stuff. Offender Grantham and his brother talked about meeting people to complete deals in Tacoma. Offender Grantham's brother has been alerted on at least one time at MICC by the narcotic K-9."

Please see "Form A" of the infraction report which is part of the file that was forwarded to the court in this matter.

On Form A, it states, "Unk" (unknown) as the time the offense(s) occurred,

"community/Tacoma," as the place of incident, and "Oct. 2007," as the date the offense(s) occurred. This information lacks any specifics or particulars in regards to When? Where? Who? What? Why? and How? It appears that the reporting staff, Steven Baxter, was either misinformed or was drawing at straws and making bald assertions. Either way the piece-meal description of events in the infraction report on Form A fails to provide sufficient notice so that petitioner could have marshaled the facts and prepared a defense. For instance, who was the alleged staff member and what date and time did the staff member turn over the contraband to the SIU? More importantly what was the date and time that petitioner was allegedly overheard by Steven Baxter, talking on the phone to his brother about coffee and deals with people in Tacoma? Without being informed of the particulars and specifics it is impossible to mount any type of meaningful defense towards the allegations. At most the infraction report divulges that at some unknown time in the community/Tacoma, some day in October 2007, the allegations described in the narrative occurred. In what chronological order did the numerous allegations occur is open to any type of conjecture. Other than basically pleading not

guilty, petitioner had no way of presenting a meaningful defense.

II. PETITIONER WAS DENIED THE RIGHT TO PRESENT DOCUMENTARY EVIDENCE DURING THE HEARING WHEN HIS REQUEST FOR THE COPY OF PHONE RECORDS WAS DENIED. THIS ALSO DENIED PETITIONER FROM ACCESS TO EVIDENCE IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

One of the due process protections required in prison disciplinary proceeding is the opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals.

Wolff, 418 U.S. at 563-66.

In the present case, the basis for the guilty findings was an alleged overheard phone call in which petitioner supposedly talked about transactions and introducing contraband. Please see "Form D" disciplinary hearing minutes and findings which is part of the file that was forwarded to the court in this matter.

Had petitioner been given a copy of this alleged phone conversation whether audio or transcribed, he could have raised a defense as to the interpretation of what was said, or the identity of who was talking in the conversation and whether or not he was an party in the phone call. This would have been essential documentary evidence that could have been presented at the hearing.

In Scarpa v. Ponte, 638 F.Supp. 1019 (D Mass (1986), Scarpa contended that he was prevent from presenting essential documentary evidence on his behalf when the disciplinary board refused or neglected to give him a copy of a letter that was the sole basis of the charges against him. The court held that a copy of that letter would have been essential to the preparation and presentation of Scarpa's defense because he would be able to view its contents and defend his interpretation of the meaning of the letter and rebut the charges against him. Id. at 1023.

In the present case, as stated supra, the sole basis for the guilty findings was the investigating officer's statement in the infraction report that he had overheard a telephone conversation between petitioner and his brother talking about transactions and introducing contraband. Petitioner should have been provided a copy of the phone records and or recordings whether audio copy or transcribed. Petitioner could have also challenged the date and time the alleged phone call was made.

In addition, by failing to provide the petitioner with a copy of the phone record, he was denied access to evidence. Access to evidence should be provided before or at the hearing when

not unduly hazardous to institutional safety and correctional goals. Chavis v. Rowe, 643 F.2d 1287 (7th Cir. 1981).

III. THE GUILTY FINDINGS BY THE HEARING OFFICER WERE THE RESULT OF AN ARBITRARY AND CAPRICIOUS HEARING. IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Prison disciplinary proceedings are reviewed against an arbitrary and capricious standard. In re Reismiller, 101 Wn.2d 291, 678 P.2d 323 (1984); In re Burton, 80 Wn.App. 573, 578, 910 P.2d 1295 (1996). The arbitrariness of a given decision is a question of substantive due process. Finnery v. Mabry, 484 F.Supp. 756 (E.D. Ark. 1978).

When a prison disciplinary hearing is subjective and not objective the inmates due process rights are violated. Young, 926 F.2d 1396 (3rd Cir. 1991). A prison disciplinary hearing is arbitrary and capricious if no evidence supports the action taken. In re Burton, 80 Wn.App. at 585.

In the present case, there was no evidence presented to support the basis of the guilty findings, which states:

"Based on the infraction report SIU investigation stating he identified the offender's voice making transaction with his brother on the telephone to introduce contraband."

Please see "Form D" of the infraction report which is part of the file that was forwarded to

this court in this matter. As argued supra, these phone records or telephonic recordings were never produced during the proceedings. The allegation in the infraction report is not supported by any evidence.

The Washington State Supreme Court has held that due process protects prisoner's from arbitrary impositions of discipline based on nothing other than an allegation in a formal citation. In re Hunter, 43 Wn.App. 174, 715 P.2d 1146 (1986).

In the present case the hearing was arbitrary and capricious to say the least.

IV. PETITIONER WAS SUBJECTED TO A WRONGFUL DISCIPLINARY ACTION WHEN ALLEGATIONS STATED IN THE INFRACTION REPORT WERE NOT ONLY UNSUPPORTED BUT WERE ALSO FALSE. IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

"The touchstone of due process is protection of the individual against arbitrary action of government...Since prisoners...can only lose good time credits if they are guilty of serious misconduct, the determination of whether such behavior has occurred becomes critical, and the minimum requirements of procedural due process appropriate for the circumstances must be observed." Wolff v. McDonnell, 418 U.S. 539, 41 L.Ed.2d 935, 94 S.Ct. 2963. (1974).

Due process of law is intended to secure citizens against any arbitrary deprivation by

the government of rights relating to life, liberty, or property. Dent v. West Virginia, 129 U.S. 114, 32 L.Ed. 623, 9 S.Ct. 231 (1889).

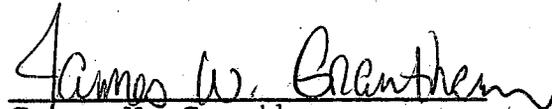
In the present case, the guilty findings were based on an alleged overheard phone call in which the petitioner was supposedly having a conversation with his brother about making transactions and introducing contraband. Although it is unclear as to when the overheard conversation took place other than somewhere and sometime in October 2007, according to "Form A" of the infraction report, the number that was supposedly dialed was "253-905-0525." However, upon filing for a public disclosure request of the phone records that shows the numbers that petitioner had called during the month of October, 2007, the number 253-905-0525, was never called. According to the infraction report this number belongs to the brother of the petitioner and is the number that was called when the overheard conversation about transactions and introduction of contraband took place. Without the record of the phone call existing how can the allegations be substantiated. Please see copy of phone records for October, 2007, attached hereto as Appendix 'B'.

F. CONCLUSION.

This court should accept review for the reasons indicated in Part-E and dismiss the infractions and guilty findings and expunge it from the petitioner's record.

DATED THIS 5th day of October, 2008.

Respectfully Submitted:


James W. Grantham
James W. Grantham

APPENDIX - 'A'

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the
Personal Restraint Petition of

JAMES W. GRANTHAM,

Petitioner.

No. 37396-3-II

ORDER DISMISSING PETITION

James W. Grantham has filed a personal restraint petition challenging disciplinary infractions he received for possessing or introducing a controlled substance and possessing or introducing tobacco products in violation of WAC 137-25-030(603) and WAC 137-25-030(606). Grantham was sanctioned with the loss of 7 days of yard privileges and 90 days of good conduct time as well as 25 days in disciplinary segregation with credit for time served. Grantham contends that he did not receive the minimal due process to which he was entitled during the disciplinary proceedings and that there was insufficient evidence to support the infractions.

In challenging a prison disciplinary action, a petitioner must show that he is "presently restrained due to constitutional error and that the error worked to his actual and substantial prejudice." *In re Burton*, 80 Wn. App. 573, 585 (1996) (citing *In re Reismiller*, 101 Wn.2d 291, 293 (1984)). We review prison disciplinary proceedings to determine whether the disciplinary action was so arbitrary and capricious as to deny the petitioner a fundamentally fair proceeding. *Reismiller*, 101 Wn.2d at 294. In doing so,

we look to whether the petitioner received the due process protections afforded him under *Wolff v. McDonnell*, 418 U.S. 539, 563-66 (1974). *Burton*, 80 Wn. App. at 585. These protections include: (1) advance written notice of the charged violations; (2) the opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals; and (3) a written statement of the evidence relied on and the reasons for the disciplinary action. *Burton*, 80 Wn. App. at 585. In addition, the disciplinary finding must be supported by some evidence in the record. *Superintendent v. Hill*, 472 U.S. 445, 455 (1985). A prison disciplinary hearing is arbitrary and capricious only if no evidence supports the action taken. *Burton*, 80 Wn. App. at 588.

Grantham was infractioned after Steven Baxter, an investigator with the Department of Corrections Special Investigations Unit, questioned a corrections officer suspected of introducing contraband into McNeil Island Corrections Center. The corrections officer admitted to Baxter that the allegations were true and gave him the phone number of the person who was giving her the contraband. She did not know the person's name but described him to Baxter.

The corrections officer also turned over a bag of contraband that she was going to bring into the prison. The bag contained several tobacco products and a jar of instant coffee. The jar contained a plastic bag wrapped with duct tape, and the plastic bag contained marijuana.

Baxter entered the phone number from the corrections officer into the prison computer records and found that Grantham had called it. The number belonged to Grantham's brother Richard. The corrections officer's description of the person who

brought her the contraband matched the description from Richard's application to visit his brother in prison.

Baxter listened to the tape of the Granthams' phone conversation and concluded that they were using code words for introducing contraband. Grantham instructed his brother to buy the coffee and make sure it was ready for a Sunday drop off. They also talked about getting the "other" and making sure it was wrapped correctly. After listening to the tape, Baxter interviewed Grantham. When he denied any involvement in the plan, Baxter listened to the tape again to verify that the voice on the tape matched Grantham's.

Grantham now contends that his due process rights were violated because the resulting infraction report did not contain the time and place of the alleged phone conversation or the names of the witnesses, victims and other persons involved, as required by WAC 137-28-270(1)(c) and (d). In his written response to the infraction report, however, Grantham stated that he never mentioned drugs or tobacco in any phone conversation that was overheard, and he also asserted that the corrections officer had already pointed out that she was involved with an inmate other than Grantham.

It is unclear, given the fact that the corrections officer disclosed his brother's phone number and described a person who resembled his brother, and given the single conversation traced to that number, what additional defense Grantham could have mounted had he been informed of the time and place of the conversation. Furthermore, his response to the infraction report indicated that he knew the persons involved, and he did not request any witness statements before his hearing. Thus, even if the infraction

report did not fully satisfy the requirements of WAC 137-28-270, Grantham does not show that he was actually or substantially prejudiced by that deficiency.

Grantham also contends that he was entitled to either listen to the phone conversation himself or be informed of its contents. As support, he cites WAC 137-28-290(2)(f) and WAC 137-28-300(3). The first rule provides that an inmate must have access to non-confidential reports used by a hearing officer but adds that confidential records and reports may be withheld, with the inmate receiving only a summary of the confidential information. WAC 137-28-290(2)(f). The second rule provides that a hearing officer may consider relevant evidence presented outside the hearing, so long as the inmate is informed of that evidence and allowed to rebut it. WAC 137-28-300(3). Baxter concluded that the tape of the phone conversation was confidential and summarized its contents in the infraction report. Grantham does not show that the hearing officer considered any other relevant evidence during his disciplinary hearing. Rather, the hearing officer relied on Baxter's statement that he overheard Grantham conversing with his brother about introducing contraband. It is unclear whether Baxter testified in person at the hearing, but if not, his written statement was sufficient. *See In re Hunter*, 43 Wn. App. 174, 176 (1986) (written statement insufficient where it provided only general allegations and no evidence implicating specific inmates). Grantham does not establish that he was entitled to hear the taped phone conversation during his disciplinary hearing.

Grantham was given notice of the charged infractions, an opportunity to present witness statements, and a written statement of the evidence relied on and the reasons for the disciplinary action. There was also some evidence to support the infractions, and

contrary to Grantham's assertions, that evidence connected him to the violations charged.

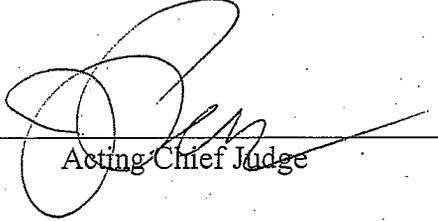
See In re Anderson, 112 Wn.2d 546, 549 (1989) (there must be some reasonable connection between the evidence and inmate to support prison disciplinary actions).

Grantham was therefore afforded the minimal due process to which he was entitled.

Grantham does not succeed in showing that he is entitled to relief. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 29th day of August, 2008.


Acting Chief Judge

cc: James W. Grantham
Department Of Corrections
Peter W. Berney

APPENDIX - 'B'

Run Date : 12/26/2007

Inmate Telephone System

Run Time: 14:55:30

Inmate Call Records

From: 10/01/2007 - 00:00:00

Thru: 10/31/2007 - 23:59:00



Inmate Name	Inmate ID	Start Date/Time	Duration	Number Called	Jail Facility	Completion Code
GRANTHAM, JAMES W	703436	10/24/2007 8:43:07 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/22/2007 7:12:17 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/21/2007 10:01:21 PM	0	2534415818	MICC	Carrier Blocked Called
GRANTHAM, JAMES W	703436	10/15/2007 10:04:00 PM	0	2067220401	MICC	Ring no answer or busy
GRANTHAM, JAMES W	703436	10/15/2007 10:02:23 PM	0	2067220401	MICC	Ring no answer or busy
GRANTHAM, JAMES W	703436	10/15/2007 9:35:39 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/15/2007 9:35:04 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/15/2007 9:34:32 PM	0	2535355337	MICC	Ring no answer or busy
GRANTHAM, JAMES W	703436	10/15/2007 9:33:47 PM	0	2535355337	MICC	Ring no answer or busy
GRANTHAM, JAMES W	703436	10/15/2007 6:20:47 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/15/2007 4:48:10 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/15/2007 2:26:28 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/14/2007 10:37:41 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/14/2007 10:37:10 PM	0	2535355337	MICC	Ring no answer or busy
GRANTHAM, JAMES W	703436	10/14/2007 10:26:58 PM	0	2535355337	MICC	Ring no answer or busy
GRANTHAM, JAMES W	703436	10/14/2007 10:24:27 PM	0	2535355337	MICC	Ring no answer or busy
GRANTHAM, JAMES W	703436	10/14/2007 10:23:29 PM	0	2534415818	MICC	Carrier Blocked Called
GRANTHAM, JAMES W	703436	10/14/2007 10:23:17 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/14/2007 10:22:44 PM	0	2538394048	MICC	Call not accepted
GRANTHAM, JAMES W	703436	10/9/2007 9:53:00 PM	0	2538394048	MICC	Trunk type was busy
GRANTHAM, JAMES W	703436	10/4/2007 9:43:21 PM	19	2535355337	MICC	Completed Call
GRANTHAM, JAMES W	703436	10/4/2007 9:32:47 PM	0	2538394048	MICC	Call not accepted

Total Calls : 22

CERTIFICATE OF MAILING

I, JAMES GRANTHAM, pursuant to 28 USC Section 1746 and under the penalty of perjury do hereby certify that on the date noted below, I sent the attached documents:

MOTION TO AMEND AND AMENDED MOTION FOR DISCRETIONARY REVIEW, COA NO. 37396-3-II, S.CT. NO. 82194-1.

To:

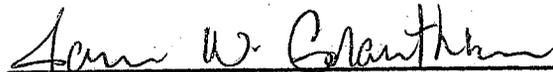
THE SUPREME COURT, STATE OF WASHINGTON
SUSAN L. CARLSON, DEPUTY CLERK
TEMPLE OF JUSTICE
PO BOX 40929
OLYMPIA, WA 98504-0929

PETER J. BERNEY, WSBA #15719
ASSISTANT ATTORNEY GENERAL
CRIMINAL JUSTICE DIVISION
PO BOX 40116
OLYMPIA, WA 98504-0116

By processing as *LEGAL MAIL with first class postage affixed thereto, at the Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, Wa. 98326-9723.

Dated this 5th day of October, 2008.

Respectfully Submitted:


James Grantham

*Houston v. Lack, 487 U.S. 266, 101 L.Ed.2d 245, 108 S.Ct. 2379 (1988).