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STATE OF WASHINGTON  
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No. 86001-7

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE THE RESTRAINT OF:

DANIEL J. STOCKWELL,

Petitioner.

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ANSWER OF PETITIONER TO WACDL AMICUS BRIEF

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Judgment in Pierce County Superior Court No. 86-1-00878-2  
The Hon. Robert H. Peterson, Presiding

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**A. IDENTITY OF ANSWERING PARTY**

Dan Stockwell, the Petitioner, by and through his attorney, Neil M. Fox, answers the Amicus Brief of the Washington Association of Criminal Defense Lawyers (“WACDL”).

**B. ANSWER TO AMICUS BRIEF**

Mr. Stockwell agrees with the arguments raised by WACDL and adopts them.

WACDL stresses the importance of *stare decisis*, and argues that the State has not attempted to make out an argument that prior decisions of this Court should be overruled. *WACDL Amicus Brief* at 7-9 (citing cases).<sup>1</sup> Interestingly, the State in its supplemental brief has also made a similar *stare decisis* argument. *Supplemental Brief of Respondent* at 18. Both WACDL and the State cite the same principles -- that the doctrine of *stare decisis* requires a clear showing that past precedent is incorrect and harmful before it is abandoned.

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<sup>1</sup> Mr. Stockwell specifically agrees with the principles of *stare decisis* described by WACDL. To depart from past precedent, this Court requires “a clear showing that an established rule is incorrect and harmful before it is abandoned.” *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970)). Mr. Stockwell agrees with WACDL that the State has not met its burden.

WACDL's argument, however, correctly identifies the precedent that the State wishes this Court to abandon -- *i.e.*, *In re Bradley*, 165 Wn.2d 934, 205 P.3d 123 (2009); *State v. Weyrich*, 163 Wn.2d 554, 182 P.3d 965 (2008); *State v. Mendoza*, 157 Wn.2d 582, 141 P.3d 49 (2006); *In re Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004) -- while the State incorrectly argues that applying these cases would somehow overrule cases that have required a showing of prejudice in a collateral attack context. See *Supplemental Brief of Respondent* at 17-18, citing *In re Hews*, 99 Wn.2d 80, 86-87, 660 P.2d 263 (1983).

WACDL's argument is correct because nothing about Mr. Stockwell's argument would require the Court to abandon the principle that a petitioner in a PRP case had to make a showing of actual or substantial prejudice. Mr. Stockwell is not asking that the Court overrule or change any past precedent.

Rather, WACDL properly argues that this Court's past precedent has found actual or substantial prejudice where a person is given incorrect information about the maximum sentence simply by the fact that incorrect information is given. There is prejudice because this Court's past precedent has been clear that prejudice is presumed in such cases, and this

presumption of prejudice has been applied in the past in both the direct appeal context (*e.g.*, *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001)) and the collateral attack circumstances in *Isadore*, *Bradley*, and *Weyrich*.<sup>2</sup>

Accordingly, Mr. Stockwell agrees with WACDL that it is the State that has failed to shoulder the burden of convincing the Court to abandon past precedent. The State makes no attempt to show any harm has resulted from this Court's consistent and unambiguous rulings that, if misinformation about the penalty is given during a plea, prejudice is presumed even in a collateral attack context.

Accordingly, Mr. Stockwell urges the Court to accept WACDL's arguments and to grant his PRP.

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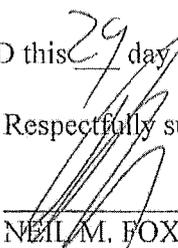
<sup>2</sup> As noted in prior briefing, *Weyrich* involved the direct appeal of the denial of a motion to withdraw a guilty plea. A motion to withdraw a guilty plea is in fact defined by statute as a type of collateral attack. RCW 10.73.090(2) ("Collateral attack' includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.').

**C. CONCLUSION**

For the reasons set out above, and in all prior briefing, Mr. Stockwell asks the Court to grant relief and vacate the conviction.

DATED this 29 day of January 2013.

Respectfully submitted,

  
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Attorney for Petitioner

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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT OF  
DAN STOCKWELL,  
Petitioner.

No. 86001-7

CERTIFICATE OF SERVICE

I, Alex Fast, certify and declare, that on the 29th day of January 2013, I deposited a copy of the "ANSWER OF PETITIONER TO WACDL AMICUS BRIEF" into the United States Mail with proper first-class postage attached, addressed to:

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I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

1/29/2013 - SEATTLE, WA  
DATE AND PLACE

Alex Fast  
ALEX FAST

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**To:** Neil Fox  
**Cc:** 'Kit Proctor'; 'Jeffrey Ellis'; 'Suzanne Elliott'  
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Rec'd 1-29-13

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**From:** Neil Fox [<mailto:nf@neilfoxlaw.com>]  
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Please accept for filing the attached ANSWER OF PETITIONER TO WACDL AMICUS BRIEF in In re the Restraint of Dan Stockwell,  
86001-7. A certificate of service is attached to the Answer.

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