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No. 86001-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE RESTRAINT OF:

DANIEL J. STOCKWELL,

Petitioner.

REPLY BRIEF OF PETITIONER

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

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ORIGINAL

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A. ISSUES IN REPLY

1. Does the Court of Appeals' decision conflict with prior decisions of this Court?
2. Has Mr. Stockwell raised a constitutional issue?
3. Should this Court accept review under RAP 13.4(b)(1), (3) & (4)?

B. ARGUMENT IN REPLY

1. ***This Court Has Already Determined that the Failure to Inform a Defendant of a Direct Consequence of a Guilty Plea is Presumptively Prejudicial in both the Direct Appeal and Collateral Attack Contexts***

The State's Response to the Motion for Discretionary Review and Supplemental Brief ("State's Response") fails to discuss in depth this Court's past cases wherein the Court held "[t]hose types of constitutional errors which can never be considered harmless on direct appeal will also be presumed prejudicial for purposes of personal restraint petitions." *State v. Kitchen*, 110 Wn.2d 403, 413, 756 P.2d 105 (1988).

In *Kitchen*, the Court held that the failure to give a *Petrich*¹ instruction was not harmless beyond a reasonable doubt in two of three

¹ *State v. Petrich*, 101 Wn.2d 566, 683 P.2d 173 (1984).

consolidated cases which were direct appeals. 110 Wn.2d at 411-12.

However, the third consolidated case, *In re Childress*, was a PRP. The

Court held:

The issue in a personal restraint petition is whether the petitioner's right to a fair trial was actually and substantially prejudiced by constitutional error. *In re Sauve*, 103 Wn.2d 322, 325, 692 P.2d 818 (1985); *In re Haverty*, 101 Wn.2d 498, 504, 681 P.2d 835 (1984); *In re Hews*, 99 Wn.2d 80, 87, 660 P.2d 263 (1983); *In re Hagler*, 97 Wn.2d 818, 825, 650, P.2d 1103 (1982). The actual prejudice standard of review for collateral attack places the burden upon the petitioner, as opposed to the harmless error standard on direct appeal, because "[c]ollateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs the society the right to punish admitted offenders." *Hagler*, at 824.

Those types of constitutional errors which can never be considered harmless on direct appeal will also be presumed prejudicial for purposes of personal restraint petitions. See In re Boone, 103 Wn.2d 224, 233, 691 P.2d 964 (1984); *In re Gunter*, 102 Wn.2d 769, 774, 689 P.2d 1074 (1984); *In re Richardson*, 100 Wn.2d 669, 679, 675 P.2d 209 (1983). In all other personal restraint petitions, however, constitutional error is not presumed to have denied a convicted defendant the right to a fair trial, subject to rebuttal by proof that more likely than not the defendant's right to a fair trial was actually and substantially prejudiced. *In re Haverty*, 101 Wn.2d at 505-06; *In re Reismiller*, 101 Wn.2d 291, 297, 678 P.2d 323 (1984).

110 Wn.2d at 412-13 (emphasis added). The Court then held that the jury unanimity error was not "harmful per se. Hence, we cannot say as a matter

of law that this error actually prejudiced Mr. Childress. We therefore must determine whether Mr. Childress meets his burden in demonstrating actual prejudice.” 110 Wn.2d at 413. Under the facts of Mr. Childress’ case, the Court held he did not meet his burden of showing the error actually prejudiced his right to a fair trial. 110 Wn.2d at 414.

The three cases cited in *Kitchen (Gunter, Richardson and Boone)* illustrate when the presumption of prejudice in the direct appeal process carries over to the PRP context. *In re Gunter*, 102 Wn.2d 769, 689 P.2d 1074 (1984), involved a collateral attack on a deadly weapon enhancement where the trial court failed to instruct the jury that reasonable doubt was the standard for the enhancement. Previously, in a direct appeal, the Court had found that the failure to instruct on the burden of proof was “per se reversible error.” *State v. Cox*, 94 Wn.2d 170, 174, 615 P.2d 465 (1980). In *Gunter*, the Court held: “Thus, in the instant case, the trial court’s failure to require proof beyond a reasonable doubt on the firearm allegation was per se prejudicial and defendant has met his burden on collateral review.” *Gunter*, 102 Wn.2d at 774.

In re Richardson, 100 Wn.2d 669, 675 P.2d 209 (1983), involved a collateral attack on a conviction where there was a possible conflict of

interest -- a lawyer represented both the defendant and a witness. The Court held, even in the PRP context, that, if in fact there was an actual conflict of interest, there was “a conclusive presumption of prejudice, proof of the error automatically provides proof of the prejudice.” 100 Wn.2d at 679. Significantly, the Court cited a case involving a collateral attack on a guilty plea for this proposition. *Id. citing In re Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983) (proof of constitutional invalidity of guilty plea constitutes proof of actual prejudice).

The third case cited in *Kitchen -- In re Boone*, 103 Wn.2d 224, 691 P.2d 964 (1984) -- is admittedly more problematic and internally inconsistent. Mr. Boone was a probationer, whose suspended sentence was revoked. He later discovered that the trial judge had reviewed a secret report, and filed a PRP. In a plurality decision,² the Court recognized the due process violations that arose when a judge considers secret evidence. 103 Wn.2d at 232. To the State’s argument that Mr. Boone could not prove prejudice, the Court cited *Richardson* and noted that those errors that were presumed prejudicial in a direct appeal context would be

² Justice Dore wrote the opinion, in which three justices (Williams, Utter and Pearson) concurred. Justices Brachtenbach, Dolliver, Dimmick concurred in the result only (but did not draft a concurring opinion). Justice Andersen did not participate in the disposition of the case. The published decision does not mention the name or status of the ninth justice.

presumed prejudicial on collateral review. 103 Wn.2d at 233. Then, citing to cases where the United States Supreme Court held that errors related to confrontation and cross-examination could never be harmless, the Court suggested that the errors in *Boone* were not subject to the actual prejudice standard. Yet, the Court went on to hold that the petitioner had in fact made a prima facie case of prejudice. The Court remanded for a hearing to determine if the trial judge had actually considered the secret report and to determine if it had any effect. 103 Wn.2d at 234-36.

This Court subsequently disaffirmed the language about presumption of prejudice in *Boone*, calling it dicta. *In re St. Pierre*, 118 Wn.2d 321, 328, 823 P.2d 492 (1992). In *St. Pierre*, the Court addressed an error in a charging document, wherein a defendant charged with aggravated murder was convicted of felony murder as a “lesser included” offense. While his direct appeal was technically pending, the Court issued a decision finding that, because felony murder was not a lesser included offense of aggravated murder, it was reversible error to give a felony murder instruction. *State v. Irizarry*, 111 Wn.2d 591, 763 P.2d 432 (1988). While the Court found the holding of *Irizarry* to be retroactive to Mr. St. Pierre, the Court distanced itself from the dicta of *Boone*:

Therefore, we decline to adopt any rule which would categorically equate per se prejudice on collateral review with per se prejudice on direct review. *Although some errors which result in per se prejudice on direct review will also be per se prejudicial on collateral attack*, the interests of finality of litigation demand that a higher standard be satisfied in a collateral proceeding. We do not find errors in the charging document to be per se prejudicial under the higher standard for collateral review.

St. Pierre, 118 Wn.2d at 329 (emphasis added). Centering on the function of charging documents to provide “notice,” the Court held “that even a technically defective charging document may provide some degree of notice. Therefore, we conclude a defective charging document does not establish per se prejudice on collateral review.” *Id.*

At first glance, *St. Pierre* would seem to provide support for the Court of Appeals’ decision in Mr. Stockwell’s case. Yet, significantly, the Court in *St. Pierre* continued to cite *In re Richardson, supra*, with approval, never disavowing the holding of that case: “The petitioner’s burden to establish actual and substantial prejudice may be waived where the error gives rise to a conclusive presumption of prejudice. *In re Richardson*, 100 Wn.2d 669, 679, 675 P.2d 209 (1983).” *St. Pierre*, 118 Wn.2d at 328.

Moreover, the Court in *St. Pierre* made it clear that “some errors which result in per se prejudice on direct review will also be per se prejudicial on collateral attack,” 118 Wn.2d at 329, while holding that errors in charging documents just did not fit into this category. This Court has continued not only to cite to *Richardson* as good authority, *State v. McDonald*, 143 Wn.2d 506, 513, 22 P.3d 791 (2001),³ but also to rely on the principle announced in *Richardson*, without citing to the case. See *In re Borrero*, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007).⁴ Thus, the Court of Appeals’ decision in Mr. Stockwell’s case continues to conflict with this Court’s prior decisions -- this Court continues to presume

³ *McDonald* involved a direct appeal where there was a conflict between the defendant and stand-by counsel. Citing to *Richardson*, the Court stated: “In a slightly different setting, we held the failure of the trial court to inquire into a possible conflict of interest between the defendant and defense counsel is reversible error and prejudice is presumed.” 143 Wn.2d at 513.

⁴ In *Borrero*, the Court stated:

Because Borrero alleges constitutional error, he bears the burden of establishing actual prejudice by a preponderance of the evidence. *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004). However, this burden is waived if the particular error gives rise to a conclusive presumption of prejudice. [*In re*] *Orange*, 152 Wn.2d [795] at 804 [100 P.3d 291 (2004)]. If, as Borrero contends, he was unconstitutionally punished for two offenses in violation of double jeopardy principles, prejudice is established.

161 Wn.2d at 532 (emphasis added).

prejudice in some collateral attack cases if prejudice is presumed for that type of error on direct appeal.

In Mr. Stockwell's case, the error at issue -- an incorrect statement of the maximum sentence -- goes directly to the constitutional invalidity of the guilty plea, the type of error that the Court in *Richardson* cited as one that is presumed prejudicial in collateral attack context. 100 Wn.2d at 679, citing *Hews*, 99 Wn.2d at 88.

The justification for this conclusion is apparent when one examines the substantive issues at stake and why some are considered prejudicial per se and some are not. In *St. Pierre*, for instance, the error involved conviction of an offense that was not a "lesser included" offense of the charged crime. In the direct appeal case that Mr. St. Pierre was seeking to apply to his collateral attack petition -- *Irizarry* -- there was no discussion of per se reversible error, prejudice or harmlessness. The issue simply did not arise in *Irizarry*, and the Court in *St. Pierre* therefore looked at the issue of "notice" to see whether there was prejudice in the PRP context. The concept of "notice" requires reference to objective facts -- the content of the information, the jury instructions, the facts of the case

and the like. The inquiry does not turn on subjective facts inside the defendant's mind.

A very different set of considerations lay behind the Court's decisions in the direct appeal cases involving misinformation about the legal maximum. In *State v. Weyrich*, 163 Wn.2d 554, 182 P.3d 965 (2008), the State asked the Court specifically to adopt a "materiality" test in a situation that is identical to Mr. Stockwell's case -- where the defendant was misinformed that the maximum was lower than it actually was. Citing earlier precedent, from both a direct appeal case and a collateral attack case, the Court rejected the State's arguments: "The State's argument that the error did not actually affect Weyrich's decision to plead guilty requires the sort of subjective hindsight inquiry into Weyrich's decision of which *Mendoza* [⁵]and *Isadore* [⁶]disapprove." 163 Wn.2d at 557.

In *Mendoza*, the Court declined to adopt a subjective test where the defendant is told of incorrect direct consequences of a guilty plea, citing to and relying on *Isadore*:

⁵ *State v. Mendoza*, 157 Wn.2d 582, 141 P.3d 49 (2006).

⁶ *In re Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004).

In determining whether the plea is constitutionally valid, we decline to engage in a subjective inquiry into the defendant's risk calculation and the reasons underlying his or her decision to accept the plea bargain. Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea.

157 Wn.2d at 590-91.

The Court's reliance in *Mendoza* and *Weyrich* on collateral attack authority for this proposition (*Isadore*) was not a mistake or the result of confusion. In the context of guilty pleas, this Court has made it clear that misinformation about the maximum sentence is per se prejudicial. The same practical problems that exist when making a subjective inquiry into a defendant's risk calculation exist in direct appeals exist when addressing the same claim in a PRP.

To be sure, as the State points out (*State's Response* at 6-7), the *Isadore* Court, in one part of the opinion, stressed that Mr. Isadore did not have a previous opportunity for judicial review. 151 Wn.2d at 299-300. The Court's conclusion here is puzzling because clearly Mr. Isadore had the opportunity to file a direct appeal of the trial court's ruling adding the

one-year term of community placement to his sentence, and the opinion gives no clue as to why he failed to file an appeal.⁷

More importantly, the *Isadore* Court went on to hold that “even if Isadore were required to meet the standard personal restraint petition requirements, he has done so in this petition.” 151 Wn.2d at 300. While the State now argues that in *Isadore* there was prejudice because the term of community placement was added onto Mr. Isadore’s sentence, *State’s Response* at 6-7,⁸ that analysis was not the one adopted by the Court. Rather, the Court, citing to direct appeal precedent, finding the failure to inform a defendant of the consequences of a plea to be prejudicial per se, the Court recounted: “We have previously held that in order for a guilty plea to be deemed voluntary in the constitutional sense, a defendant must be informed of all direct consequences of his plea.” 151 Wn.2d at 300.

Applying this precedent to Mr. Isadore’s case, the Court held:

⁷ Additionally, while the time for filing an appeal of the original conviction may have passed, Mr. Isadore could still have filed a late appeal and moved to extend the time for filing it. See *State v. Kells*, 134 Wn.2d 309, 949 P.2d 818 (1998).

⁸ Notably, Mr. Isadore himself apparently did not claim that the imposition of the community placement term on top of his incarceration was material or that he would not have pled guilty if he had known of this requirement. 151 Wn.2d at 297 (quoting Court of Appeals’ finding that Mr. Isadore “neither argues nor demonstrates that the defective information about community placement materially affected his decision to plead guilty.”).

We decline to adopt an analysis that requires the appellate court to inquire into the materiality of mandatory community placement in the defendant's subjective decision to plead guilty. This hindsight task is one that appellate courts should not undertake. A reviewing court cannot determine with certainty how a defendant arrived at his personal decision to plead guilty, nor discern what weight a defendant gave to each factor relating to the decision. If the test is limited to an assertion of materiality by the defendant, it is of no consequence as any defendant could make that after-the-fact claim.

Rather, we adhere to the analytical framework applied in *Ross*⁹ and *Walsh*¹⁰. In this case, it is undisputed that when the trial court asked about community placement, the prosecutor responded that community placement did not apply. It is undisputed that community placement was not indicated on the plea form. Defendant Isadore was not informed of this direct consequence of his plea. Therefore, under *Ross* and *Walsh*, Isadore's plea was not intelligent or voluntary and Isadore is entitled to a remedy. Isadore's plea is invalid and his restraint unlawful.

Isadore, 151 Wn.2d at 302. The Court clearly considered the practical issues at stake, and decided to adopt the same per se rule in collateral attack cases as it had adopted in direct appeal cases.

This is the portion of *Isadore* which was then adopted in *Weyrich* and *Mendoza*, and is the portion of *Isadore* with which the Court of Appeals' decision in Mr. Stockwell's case directly conflicts. *See also In*

⁹ *State v. Ross*, 129 Wn.2d 279, 916 P.2d 405 (1996).

¹⁰ *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001).

re Coats, 173 Wn.2d 123, 141, 267 P.3d 324 (2011) (citing *Isadore* in the following fashion: “noting, in a timely challenge, that a defendant not informed of the direct consequences of a plea must be allowed to withdraw it.”).

The State also argues that *In re Bradley*, 165 Wn.2d 934, 205 P.3d 123 (2009), does not conflict with the Court of Appeals’ decision in Mr. Stockwell’s case. *State’s Response* at 7-8. The State argues “But the *Bradley* decision was examined recently by this court in *In re Restraint of Coats*, 173 Wn.2d 123,267 P.3d 324 (2011). This court noted that because the parties in *Bradley* conceded some legal issues, the court accepted the concession and did not examine whether it was in accord with its own case law. *See Coats*, 173 Wn.2d at 137-38.” *State’s Response* at 7.

In fact, the concession at issue had nothing to do with the presumption of prejudice where a defendant is given wrong information about the direct consequences of a plea. Rather, the concession had to do with whether Mr. Bradley’s claims were time-barred under RCW 10.73.090. *Bradley*, 165 Wn.2d at 938-39. As the Court later explained, “We accepted that apparent concession and we turned to the issues

actually presented by the parties: whether Bradley's plea was involuntary when he was misinformed of the maximum sentence on one of the lesser charges (but not of the total he faced) and what the appropriate remedy would be." *Coats*, 173 Wn.2d at 137-38.

When the Court in *Bradley* did address the issues actually presented by the parties, the Court, citing to *Isadore* (a PRP case) and to *Mendoza* (a direct appeal case), presumed prejudice based upon misinformation about a direct consequence of conviction. 165 Wn.2d at 939-41. The Court rejected the State's argument that Mr. Bradley suffered no actual prejudice because he was serving out a longer concurrent sentence for a delivery charge.¹¹

The State argues that the Court of Appeals in Mr. Stockwell's case noted that *Bradley* did not discuss "PRP standards or the defendant's burden of showing actual prejudice." *State's Response* at 7 quoting *In re Stockwell*, 161 Wn. App. 329, 336, 254 P.3d 899 (2011). This is not entirely correct. The *Bradley* Court's reliance on the holding of *Isadore* was sufficient. The Court in *Bradley* did not have to re-invent the wheel,

¹¹ The State had argued that "the length of Bradley's sentence for simple possession was not a direct consequence of his plea because it had no practical effect on his sentence; he would have served the same sentence either way." 165 Wn.2d at 940.

and this Court's citation to settled precedent does not mean it did not consider the PRP standards.¹²

Finally, if there is any confusion in this Court's precedent, review should be granted under RAP 13.4(b)(4) as a case involving issues of substantial public interest. The Court of Appeals below believed that this Court did not mean what it said in *Isadore* and *Bradley*. If this is the case, this Court should accept review and clarify its prior rulings.

2. *Mr. Stockwell is Under Restraint and Raises a Valid Constitutional Issue*

The State also argues that Mr. Stockwell "fails to present a constitutional issue." *State's Response* at 8. The State argues that Mr. Stockwell finished serving his sentence years ago, that he was discharged, that he is in no danger of obtaining any additional time, and that the State could not change the maximum. *State's Response* at 8-10. The State argues: "The most that petitioner can show is that his guilty plea did not conform to the Legislature's sentencing scheme." *State's Response* at 8.

¹² A review of the briefing in *Bradley* reveals that the State cited the standard for relief for a PRP. See *Supplemental Brief of Respondent, In re Personal Restraint Petition of Anthony Lamont Bradley*, at 4,11-12, Supreme Court No. 81045-1, (www.courts.wa.gov/content/Briefs/A08/810451%20supp%20br%20of%20respondent.pdf). The Court was therefore aware of the PRP standards when issuing its decision.

This is the same argument made and rejected in *In re Bradley*, *supra*. In *Bradley*, the defendant was serving a longer concurrent sentence; the only error was that the petitioner was misadvised of the standard range for the charge that resulted in the shorter sentence; and, thus, Mr. Bradley's "guilty plea did not conform to the Legislature's sentencing scheme." It is a bit late in the day for the State to argue that misinformation about a direct consequence of a conviction is not constitutional error that causes a guilty plea to be involuntary in violation the right to due process under U.S. Const. amend. 14 and Wash. Const. art. 1, § 3.

The fact that Mr. Stockwell is not currently on supervision or that he is not in danger of having an increased sentence is irrelevant for purposes of whether relief should be granted under RAP 16.4. The Personal Restraint Petition remedy is fairly broad and provides for relief even with if a person is not "in custody." RAP 16.4(b) includes within the definition of "restraint" someone who "is under some other disability resulting from a judgment or sentence in a criminal case."

In *In re Powell*, 92 Wn.2d 882, 602 P.2d 711 (1979), this Court construed this language to afford a remedy to a woman whose probation

was revoked, but who was serving her time concurrently with another valid prison commitment:

It is our opinion that release from confinement is no longer the sole function of the writ of habeas corpus. [citations omitted] *We note that an unlawful conviction can serve as a restraint on liberty due to collateral consequences affecting one adjudged to be a habitual criminal.* [citations omitted] An unlawful conviction also serves as a restraint on liberty due to its effect on the parole process and potential effect on future minimum sentences and actual time served. It further creates difficulties for a former prisoner attempting to reestablish himself or herself with society upon release from prison. Habeas corpus relief can "serve to relieve the stigma and burden of an invalid sentence regardless of its position in relation to other sentences." [citation omitted] This view of habeas corpus seems consistent with RAP 16.4(b) . . . Therefore, we deem it appropriate to consider petitioner's claim that her restraint arising from the drug conviction is unlawful even though she must serve a lawful concurrent sentence.

92 Wn.2d at 887-88 (emphasis added). *See also In re Davis*, 142 Wn.2d 165, 170 n. 2, 12 P.3d 603 (2000) (noting that a PRP was not moot because a conviction could still result in an increased sentence under a recidivist statute for a future offense).

In Mr. Stockwell's case, as the State has pointed out below, the conviction in this case is being used under a recidivist statute to give Mr. Stockwell a life sentence in another case. *See State v. Stockwell*, 159 Wn.2d 394, 150 P.3d 82 (2007); *In re Stockwell*, 160 Wn. App. 172, 248

P.3d 576 (2011), *pet. pending* No. 85669-9. It is the State of Washington that has reached back into history to use the conviction in this case. Under RAP 16.4, because Mr. Stockwell clearly has suffered at least continued stigma and a disability (a life sentence in another case) as a result of the conviction in this case, Mr. Stockwell has the right to seek relief.¹³

The fact that the conviction was from the 1980s is of little significance because Mr. Stockwell's PRP was not untimely under RCW 10.73. The State does not dispute the Court of Appeals' holding in this regard, *In re Stockwell*, 161 Wn. App. at 333-34, and the issue of a possible time-bar is therefore not before the Court.

Mr. Stockwell has raised a constitutional issue. He did not receive accurate information about the direct consequences of a guilty plea. His plea therefore was not voluntary, intelligent and knowing and violated due process under U.S. Const. amend. 14 and Wash. Const. art. 1, § 3. Under this Court's past case law, in both the direct appeal and collateral

¹³ The State's reliance on federal cases under 28 U.S.C. § 2255 is misplaced. *State's Response* at 10-11. The federal post-conviction system is very different than Washington's, and a federal requirement that a defendant raise challenges to guilty pleas in a direct appeal has been rejected in Washington. *See In re Hews*, 99 Wn.2d at 87 ("We hereby hold the failure to raise a constitutional issue for the first time on appeal is no longer a reason for automatic rejection of a Personal Restraint Petition. Therefore, the State's contention that Hews has waived the right to challenge his guilty plea is without merit." *See also In re Bradley, supra* (defendant raised challenge to guilty plea in PRP, and had not appealed).

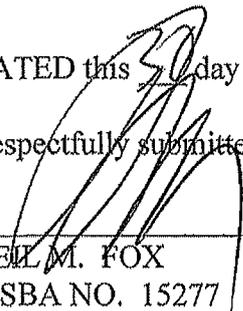
attack contexts, the constitutional error is presumed prejudicial. Mr. Stockwell is under restraint under RAP 16.4, and his petition is not time-barred. This Court should grant relief.

C. CONCLUSION

For the foregoing reasons, and for the reasons set out in prior briefing, this Court should accept review under RAP 13.4(b)(1), (3) & (4). The Court should grant relief under the state and federal constitutions, and vacate the conviction in this case, and allow Mr. Stockwell to withdraw his guilty plea.

DATED this 30 day of April 2012.

Respectfully submitted,



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STATUTORY APPENDIX

Relevant Statutory Provisions and Rules

RAP 13.4(b) provides:

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 16.4(b) provides:

(b) Restraint. A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

U.S. Const. amend. 14, § 1 provides in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Const. art. 1, § 3 provides:

No person shall be deprived of life, liberty, or property, without due process of law.

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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT OF
DAN STOCKWELL,
Petitioner.

Supreme Court No. 86001-7

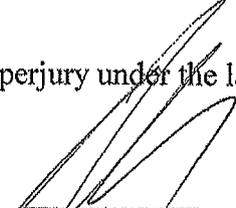
CERTIFICATION OF SERVICE

I, Neil Fox, certify and declare, that on the 30th day of April 2012, I deposited a copy of the REPLY BRIEF OF PETITIONER into the United States Mail with proper first-class postage attached, addressed to:

Kathleen Proctor
Pierce County Prosecutor's Office
930 Tacoma Ave. South #946
Tacoma WA 98402

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

4/30/12 Seattle
DATE AND PLACE


NEIL FOX

OFFICE RECEPTIONIST, CLERK

To: Neil Fox
Cc: 'Kit Proctor'
Subject: RE: In re Stockwell, 86001-7, Reply Brief of Petitioner

Rec'd 4/30/2012

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Neil Fox [<mailto:nf@neilfoxlaw.com>]
Sent: Monday, April 30, 2012 3:24 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'Kit Proctor'
Subject: RE: In re Stockwell, 86001-7, Reply Brief of Petitioner

Please find attached and accept for filing the Reply Brief of Petitioner in In re Stockwell, No. 86001-7. A certificate of service by mailing is attached to the motion.

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