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STATE OF WASHINGTON

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION TWO

86001-7

IN RE THE PERSONAL RESTRAINT OF

DAN STOCKWELL,

Petitioner.

CAUSE NO. 37230-4-II

SUPPLEMENTAL CITATION TO
AUTHORITY

COMES NOW the Petitioner, Dan Stockwell, by and through his attorney, Neil M. Fox, and supplies the following supplemental authority on the issue of RCW 10.73.090:

1. *State v. Schwab*, 141 Wn. App. 85, 92-93, 167 P.3d 1225 (2007):

"Without deciding the issue of whether actual notice exempts compliance with RCW 10.73.090(1), we hold that the record before us does not contain facts sufficient to hold that Schwab received actual notice sufficient to satisfy the statutory notice provisions. Schwab's attorney, Jean O'Loughlin, declared: "I ... met with Mr. Schwab and informed him that I saw no legal basis for vacating the judgment, and I stressed the importance of him bringing any motions before May 4, 2005 (one year of entry of the judgment entered in his case)." CP at 124. Schwab argues that this declaration is self-serving and does not state the date on which this conversation took place. There is, however, no indication that O'Loughlin perjured herself in the declaration and the conversation probably took place sometime before May 4, 2005.

But it is impossible to discern when O'Loughlin notified Schwab of the statute's time bar. By statute, the trial court is required to notify a defendant *at sentencing* that he must file any collateral attack within a year. RCW 10.73.110. If the court gave this notice, Schwab would have had one year in which to prepare his collateral attack. By contrast, O'Loughlin's declaration does not indicate that Schwab received notice shortly after sentencing; and it is possible that she notified him only a month or a day before expiration of the one-year deadline. Such tardy notice is legally insufficient to bar Schwab's collateral attack."

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DATED this 11 day of October 2010.

Respectfully submitted,



NEIL M. FOX
WSBA NO. 15277
Attorney for Petitioner

FILED
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DIVISION II

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STATE OF WASHINGTON

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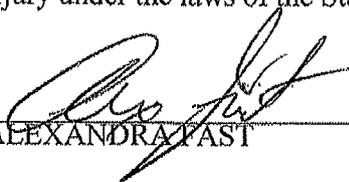
CAUSE NO. 37230-4-II
CERTIFICATION OF MAILING

I, Alexandra Fast, certify and declare, that on the 7th day of October 2010, I deposited a copy of the SUPPLEMENTAL CITATION TO AUTHORITY into the United States Mail with proper first-class postage attached, addressed to:

Kathleen Proctor
Pierce County Prosecuting Attorney's Office
930 Tacoma Ave. South, Room 946
Tacoma WA 98402-2171

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

10/11/2010 Seattle
DATE AND PLACE


ALEXANDRA FAST