

P.N.
AAC

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Sep 12, 2012, 12:09 pm
BY RONALD R. CARPENTER
CLERK

E

NO. 86825-5

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

RECEIVED BY E-MAIL

bjh

STATE OF WASHINGTON,

Respondent,

vs.

GARY MEREDITH,

Petitioner.

PETITIONER'S SECOND
STATEMENT OF
SUPPLEMENTAL
AUTHORITIES

Pursuant to RAP 10.8, appellant Meredith cites the following supplemental authorities:

1. ***State v. Robinson*, 171 Wn.2d 292, 303, 253 P.3d 84 (2011):**

This court follows the rule set forth in *In re Personal Restraint of St. Pierre*, 118 Wn.2d 321, 823 P.3d 492 (1992): "A 'new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final.' " *Id.* at 326, 823 P.2d 492 (quoting *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987)).

2. ***In re Restraint of St. Pierre*, 118 Wn.2d 321, 326, 823 P.2d 492 (1992), citing *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987):**

A new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a clear break from the past.

3. ***In re Restraint of St. Pierre*, 118 Wn.2d 321, 324, 823 P.2d 492 (1992):**

Retroactivity analysis has been marked by erratic development since the United States Supreme Court announced the doctrine in 1965. *Linkletter v. Walker*, 381 U.S. 618, 629, 85 S.Ct. 1731, 1737, 14 L.Ed.2d 601 (1965); Comment, *Griffith v. Kentucky: Partial Adoption of Justice Harlan's retroactivity Standard*, 10 Crim.Just.J. 153 (1987). Nevertheless, we have attempted from the outset to stay in step with the federal retroactivity analysis. *In re Sauve*, 103 Wn.2d 322, 326-28, 692 P.2d 818 (1985).

4. ***Ayala v. Wong*, ___ F.3d ___ 2012 WL 3711689 (9th Cir., 7/29/12) at *2:**

ORIGINAL

4. *Ayala v. Wong*, ___ F.3d ___ 2012 WL 3711689 (9th Cir., 7/29/12) at *2:

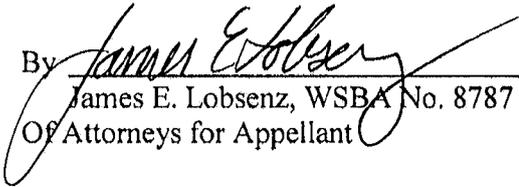
The defense made its first *Batson* motion after the prosecutor challenged two black jurors. The trial court found that the defense has not yet established a prima facie case of racial discrimination, but nevertheless determined that it would require the prosecution to state its reasons for challenging the jurors in question. At the prosecutor's insistence, and despite the defense objections, the court refused to let the defendant or his counsel be present at the hearing in which the prosecution set forth these reasons and the court determined whether they were legitimate.

5. *Ayala*, 2012 WL 3711689, at *9:

As the California Supreme Court recognized, Ayala has a due process right to a record sufficient to allow him a fair and full appeal of his conviction. [Citation omitted]. If a state provides for a direct appeal as of right from a criminal conviction, it must also provide "certain minimum safeguards necessary to make that appeal 'adequate and effective.'" *Evitts v. Lucey*, 469 U.S. 387, 392 (1985) (quoting *Griffin v. Illinois*, 351 U.S. 12, 20 (1956)); see also *Coe v. Thurman*, 922 F.2d 528, 530 (9th Cir. 1990) ("where a state guarantees the right to a direct appeal, as California does, the state is required to make that appeal satisfy the Due Process Clause.").

DATED this 12th day of September, 2012.

CARNEY BADLEY SPELLMAN, P.S.

By 
James E. Lobsenz, WSBA No. 8787
Of Attorneys for Appellant

NO. 86825-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

GARY MEREDITH,

Appellant.

CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury, under the laws of the State of Washington, hereby declares as follows:

1. I am a citizen of the United States and over the age of 18 years and am not a party to the within cause.

2. I am employed by the law firm of Carney Badley Spellman, P.S. My business and mailing address is 701 Fifth Avenue, Suite 3600, Seattle WA 98104.

3. On September 12, 2012, I caused to be served via E-MAIL and US MAIL, a true and correct copy of the following document on:

Brian Wasankari
Pierce County Prosecuting Attorney's Office
930 Tacoma Avenue South Room 946
Tacoma WA 98402-2171
E-MAIL: bwasank@co.pierce.wa.us

Entitled exactly:

**PETITIONER'S SECOND STATEMENT
OF SUPPLEMENTAL AUTHORITIES**


DEBORAH A. GROTH

OFFICE RECEPTIONIST, CLERK

To: Groth, Debbie
Cc: bwasank@co.pierce.wa.us; Lobsenz, Jim
Subject: RE: State v. Meredith 86825-5

Rec'd 9/12/12

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: Groth, Debbie [<mailto:Groth@carneylaw.com>]
Sent: Wednesday, September 12, 2012 12:07 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: bwasank@co.pierce.wa.us; Lobsenz, Jim
Subject: State v. Meredith 86825-5

Please find attached for filing Petitioner's Second Statement of Supplemental Authorities filed by James E. Lobsenz
WSBA #8787 206-622-8020 lobsenz@carneylaw.com