

No. 88770-5  
(consolidated with No. 89992-4)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re Personal Restraint Petition of  
  
MUHAMMADOU JAGANA,  
  
Petitioner.

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Aug 15, 2014, 11:42 am  
BY RONALD R. CARPENTER  
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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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A. ISSUES PRESENTED FOR REVIEW

1. Whether this petition is time-barred where the claim is based on a new rule of criminal procedure that does not apply retroactively to Jagana's case under this Court's long-standing retroactivity analysis?

2. Whether this Court should abandon the workable retroactivity analysis it has employed for 22 years, in favor of a standardless test that would lack any predictability and significantly undermine the finality of all criminal convictions?

3. Whether, even if the new rule set forth in Padilla v. Kentucky, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), were to be applied to Jagana's case through a completely new retroactivity analysis, Jagana has failed to make a threshold showing of ineffective assistance of counsel where he relies solely on his own self-serving, uncorroborated affidavit, containing assertions that are contradicted by the plea statement and email correspondence from his attorney?

B. STATEMENT OF THE CASE

In August of 2005, Jagana was charged by information with the crime of possession of cocaine. Appendix C.<sup>1</sup> Jagana had no known criminal history, thus his standard range was calculated to be 0 to 6 months. Appendix C. In exchange for a plea of guilty, the State agreed to recommend two months of work release and one month of community service. Appendix C. In the Statement of Defendant on Plea of Guilty, which was translated for Jagana and which he signed and represented that he understood, he was advised: "If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." Appendix C, at 7.

Email exchanges between the prosecuting attorney and Jagana's attorney prior to the plea reveal that the immigration consequences of the plea were a central consideration for the parties. Appendix D. The exchanges reveal that Jagana's attorney

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<sup>1</sup> Appendices A-D referenced herein are attached to the State's Response to Personal Restraint Petition filed June 20, 2011. Appendix E is attached hereto, and was previously attached to the State's Motion for Reconsideration, filed in the Court of Appeals on August 29, 2012.

consulted with immigration advisors before advising Jagana to plead guilty to the charge of possession of cocaine: "I consulted with my immigration advisors about the proposal to offer solicitation to deliver." Appendix D. In one email, Jagana's attorney states, "I appreciate you trying to help Mr. Jagana out with the immigration situation." Appendix D. The emails reflect that the State was willing to allow Jagana to plead guilty to an alternative charge of solicitation that would have resulted in a higher standard range, but that the State was unwilling to reduce the charges further. Appendix D. Jagana chose to plead guilty to the charge with the lowest standard range. Appendix C. Jagana had two other public defenders assigned to his case prior to his plea. Appendix E.

Jagana was sentenced to three months of electronic home detention on June 7, 2006. Appendix A. The judgment and sentence was filed with the clerk of the trial court on June 9, 2006. Appendix A. Jagana did not appeal.

In November 2010, Jagana filed this collateral attack in the superior court, alleging that he received ineffective assistance of counsel because defense counsel "did not advise me of any of the immigration consequences of the conviction on my immigration status." Affidavit of Defendant (submitted with motion to vacate

judgment), at 1. The motion to vacate the judgment and sentence was transferred to the Court of Appeals for consideration as a personal restraint petition. Jagana presented no evidence from any of his three defense attorneys as to whether or not immigration consequences were discussed with him at any point.

C. ARGUMENT

1. UNDER CURRENT LAW, JAGANA'S PETITION IS TIME-BARRED BECAUSE PADILLA v. KENTUCKY DOES NOT APPLY RETROACTIVELY TO HIS CASE.

Jagana filed this untimely collateral attack, arguing that Padilla is a "significant change in the law" pursuant to RCW 10.73.100(6). The State agrees that Padilla is a significant change in the law. However, it is not a significant change that applies retroactively to cases that became final before March 31, 2010. Jagana's collateral attack is therefore time-barred pursuant to RCW 10.73.090.

No petition collaterally attacking a judgment and sentence may be filed more than one year after the judgment becomes final, if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. RCW 10.73.090(1);

see In re Pers. Restraint of Runyan, 121 Wn.2d 432, 444, 449, 853 P.2d 424 (1993). A judgment becomes final on the date that it is filed with the clerk of the trial court if no appeal is taken, or the date that the appellate court issues its mandate if the conviction is appealed, whichever is later. RCW 10.73.090(3). The judgment in this case became final on June 9, 2006.

RCW 10.73.100(6) provides an exception to the one-year time limit if there has been a "significant change in the law" that is material to the conviction or sentence being challenged. RCW 10.73.100 reads, in relevant part:

The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

A significant change in the law can only be material to a conviction or sentence if the change in the law is retroactive to the petitioner's case. See State v. Abrams, 163 Wn.2d 277, 291, 178 P.3d 1021

(2008); In re Pers. Restraint of Bonds, 165 Wn.2d 135, 140 n.2, 196 P.3d 672 (2008). In Chaidez v. United States, \_\_\_ U.S. \_\_\_, 133 S. Ct. 1103 (2013), the United States Supreme Court applied the retroactivity analysis of Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989), and held that Padilla v. Kentucky is a new rule of criminal procedure that does not apply retroactively to cases that were final before March 31, 2010. Thus, under the Teague retroactivity analysis employed by the United States Supreme Court, Padilla cannot be the basis for relief in this case.<sup>2</sup>

Washington courts have adopted and adhered to the retroactivity standard set forth in Teague and applied in Chaidez. See In re Pers. Restraint of Haghighi, 178 Wn.2d 435, 309 P.3d 459 (2013); State v. Evans, 154 Wn.2d 438, 447, 114 P.3d 627

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<sup>2</sup> The State agrees that Padilla is a significant change in the law as it relates to Jagana's claim. Jagana contends he was given *no information* about immigration consequences. Prior to Padilla, in State v. Holley, 75 Wn. App. 191, 196-97, 876 P.2d 973 (1994), the Washington Court of Appeals held that a criminal defendant had no constitutional right to be informed of immigration consequences by defense counsel. Subsequently, this Court held in In re Pers. Restraint of Yim, 139 Wn.2d 581, 588, 989 P.2d 512 (1999), that a defendant need not be advised of the possibility of deportation.

In contrast, if Jagana were contending that he was *affirmatively misadvised* about immigration consequences, his claim would not be based on a significant change in the law, because prior to Padilla, Washington courts held that counsel provided ineffective assistance by affirmatively misadvising the defendant of a collateral consequence. State v. Stowe, 71 Wn. App. 182, 858 P.2d 267 (1993). A claim that Jagana was affirmatively misadvised of immigration consequences, if timely made, would have been successful under Washington law prior to Padilla, pursuant to the holding of State v. Stowe.

(2005); In re Pers. Restraint of Markel, 154 Wn.2d 262, 273, 111 P.3d 249 (2005); In re Pers. Restraint of St. Pierre, 118 Wn.2d 321, 324-27, 823 P.2d 492 (1992) (noting that "we have attempted from the outset to stay in step with the federal retroactivity analysis."). In Haghighi, this Court stated, "this court has consistently and repeatedly followed and applied the federal retroactivity analysis as established in Teague." 178 Wn.2d at 441. Pursuant to Chaidez, Padilla does not meet the standard for retroactivity set forth in Teague and utilized by Washington courts. Because Padilla does not apply retroactively, Jagana's petition does not fall within the exception to the time bar set forth in RCW 10.73.100(6). His untimely petition must be dismissed.

2. THIS COURT SHOULD CONTINUE TO ADHERE TO THE TEAGUE STANDARD FOR DETERMINING THE RETROACTIVITY OF A NEW RULE OF CRIMINAL PROCEDURE TO CASES ON COLLATERAL REVIEW.

A workable, predictable and stringent retroactivity standard is necessary for the proper functioning of the criminal justice system. The Teague standard has been utilized by Washington courts for the past 22 years, and has proven to be workable. Jagana argues that this Court should depart from the Teague

standard and apply Padilla retroactively to his case if this Court simply determines that "sufficient reasons exist to require retroactive application." A retroactivity test that simply posits whether the court believes that "sufficient reasons exist" would be essentially standardless, and its application would be completely unpredictable. If this were the standard for the application of new rules of criminal procedure on convictions that have long been final, the finality of criminal convictions in Washington would be drastically undermined.

In adopting the Teague standard, the United States Supreme Court explained the importance of the finality of convictions in the criminal justice system:

Application of constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect. . . . "[I]f a criminal judgment is ever to be final, the notion of legality must at some point include the assignment of final competence to determine legality." Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 *Harv.L.Rev.* 441, 450-451 (1963) (emphasis omitted). See also Mackey, 401 U.S., at 691, 91 S.Ct., at 1179 (Harlan, J., concurring in judgments in part and dissenting in part) ("No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every

day thereafter his continued incarceration shall be subject to fresh litigation”).

Teague v. Lane, 489 U.S. at 309. Because Teague is fundamentally based on principles of finality, it is used by the federal courts to determine whether new rules of criminal procedure apply to federal convictions as well as state convictions. See United States v. Cruz, 423 F.3d 1119, 1120 (9<sup>th</sup> Cir. 2005) (applying Teague to collateral attack of federal conviction and noting that “every other circuit” was in accord).

In Danforth v. Minnesota, 552 U.S. 264, 128 S. Ct. 1029, 169 L. Ed. 2d 859 (2008), the United States Supreme Court held that state courts may choose a different retroactivity standard for deciding whether new rules of criminal procedure are retroactive in state cases. Nonetheless, like Washington, other states have chosen to adhere to the Teague standard. In fact, on remand in Danforth, the Minnesota Supreme Court formally adopted the Teague standard, concluding that “Teague may not be a perfect rule, but we believe it is preferable to the alternatives.” Danforth v. State, 761 N.W.2d 493, 499 (2009). See also Rhoades v. State, 149 Idaho 130, 136, 233 P.3d 61 (2010) (adopting the Teague standard); People v. Davis, 388 Ill.App.3d 869, 904 N.E.2d 149,

157-58 (2009) (adhering to the Teague standard); Ex Parte Lave, 257 S.W.3d 235 (Tex.Crim.App. 2008) (adopting the Teague standard); Siers v. Weber, 2014 WL 3671030 (S.D. July 23, 2014) (abandoning Linkletter standard and adopting Teague standard, and stating, "By applying the Teague test for retroactivity, this Court can better address concerns for finality, consistency, and uniformity—all by way of a simpler, more straightforward test. Moving forward, we therefore adopt the Teague rule.").

Indeed, even in Commonwealth v. Sylvain, 466 Mass. 422, 995 N.E.2d 760 (2013), relied upon by Jagana, the Massachusetts Supreme Court did not *abandon* the Teague standard. Indeed, the court stated that "we consider the retroactivity framework established in Teague to be sound in principle." Id. at 433. However, the court concluded that under Massachusetts law the rule announced in Padilla was not a *new* rule of criminal procedure.

Ironically, were this Court to adopt the reasoning of Sylvain, it would be of no avail to Jagana. He must concede that Padilla is a "significant change in the law" in order to take advantage of the exception to the time bar set forth in RCW 10.73.100(6). A decision is not a significant change in the law for purposes of RCW 10.73.100(6) unless it effectively overturns a prior appellate

decision that was originally determinative of a material issue.

In re Pers. Restraint of Domingo, 155 Wn.2d 356, 366, 119 P.3d 816 (2005). By contrast, under the Teague analysis, a rule is new if it was not dictated by precedent. Evans, 154 Wn.2d at 444. Thus, any significant change in the law for purposes of RCW 10.73.100(6) would necessarily also be a new rule for purposes of the Teague analysis.

Like Minnesota, the Nevada Supreme Court has adopted “the general framework of Teague.” Colwell v. State, 118 Nev. 807, 819, 59 P.3d 463 (2002). However, Nevada defines “new” rule more restrictively than Teague. Under Nevada law, a rule is new “when the decision announcing it overrules precedent.” Id. at 820. This test is similarly of no avail to Jagana. To the extent that Padilla imposed a constitutional duty on defense counsel to inform non-citizen defendants regarding immigration consequences in all cases, it overruled In re Pers. Restraint of Yim, 139 Wn.2d 581, 588, 989 P.2d 512 (1999),<sup>3</sup> in which this Court held that the

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<sup>3</sup> See also State v. Jamison, 105 Wn. App. 572, 591-92, 20 P.3d 1010, review denied, 144 Wn.2d 1018 (2001) (relying on Yim to hold that knowledge of deportation consequences not constitutionally required); State v. Martinez-Lazo, 100 Wn. App. 869, 877, 999 P.2d 1275, review denied, 142 Wn.2d 1003 (2000) (relying on Yim to hold that counsel was not ineffective for failing to advise of deportation consequences).

petitioner “need not have been advised of the possibility of deportation” for his plea to be valid.

The previous Linkletter<sup>4</sup> standard, which Jagana has, to date, not proposed, is not an appealing alternative, which is why this Court rejected it 22 years ago. As this Court recognized in St. Pierre, the Linkletter standard “led to a series of inconsistent results,” which led Justice Harlan to propose the new standard that would become the Teague standard. 118 Wn.2d at 321. Under the old Linkletter retroactivity standard, a new constitutional rule was not applied retroactively, even to cases on direct review, if the new rule was a “clear break” that explicitly overruled a past controlling precedent. Griffith v. Kentucky, 479 U.S. 314, 325, 93 S. Ct. 708, 93 L. Ed. 2d 649 (1987). Because Padilla was a “clear break,” overruling Yim, as explained above, Padilla would not be applied retroactively to Jagana’s claim under the previously rejected Linkletter standard either. Moreover, under the Linkletter standard, new constitutional rules were generally not given retroactive application if they did not relate to the integrity or reliability of the fact-finding process at trial. In re Matter of Suave, 103 Wn.2d 322, 328, 692 P.2d 818 (1985) (applying a new rule rendering the

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<sup>4</sup> Linkletter v. Walker, 381 U.S. 618, 85 S. Ct. 1731, 14 L. Ed. 2d 601 (1965).

defendant's warrantless arrest unconstitutional prospectively only). Padilla's new rule does not affect the integrity or the reliability of the fact-finding process at trial and would not apply retroactively under a Linkletter-like standard.

Before abandoning the Teague standard for a new retroactivity standard, this Court should carefully consider the consequences of doing so. If this Court were to adopt a new retroactivity standard, would that not open the door for every criminal defendant who can claim that there has been a material significant change in criminal procedure since his or her conviction to relitigate its application to their case, even if this Court had previously held that the new rule did not apply retroactively?<sup>5</sup>

In sum, there is no reason to depart from the Teague standard and many sound reasons to adhere to it. Moreover, the doctrine of stare decisis recognized by this Court requires a clear showing that an established rule is incorrect and harmful before it is abandoned. In re Rights to Waters of Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970). See also State v. Barber, 170

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<sup>5</sup> As the Minnesota Supreme Court cautioned, "Were we to return to the balancing test, we would likely face the harms described by Justice Harlan, as the balancing test could have the effect of reopening numerous criminal cases as defendant seek postconviction relief under the retroactive application of various 'new' rules." Danforth v. State, 761 N.W.2d at 499.

Wn.2d 854, 863, 248 P.3d 494 (2011). The Teague standard used by this Court for decades is not incorrect and harmful.

In regard to Jagana's claim, Padilla constitutes both a significant change in the law and a new rule of criminal procedure and does not apply retroactively to cases that were final before 2010.

3. EVEN IF PADILLA WERE APPLIED RETROACTIVELY TO JAGANA'S CASE, HE HAS FAILED TO MAKE A THRESHOLD SHOWING OF EITHER DEFICIENT PERFORMANCE OR PREJUDICE AND IS NOT ENTITLED TO A REFERENCE HEARING.

The petitioner has the burden of establishing ineffective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In order to be entitled to a reference hearing on a claim of ineffective assistance of counsel, Jagana must first demonstrate that he has competent, admissible evidence to establish facts that would entitle him to relief. In re Pers. Restraint of Lord, 123 Wn.2d 296, 303, 868 P.2d 835 (1994); In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.3d 1086 (1992). This standard ensures that the time and expense of a reference hearing is not expended until the petitioner has shown that his claim

has a basis in provable fact. Rice, 118 Wn.2d at 886. As this Court has stated, “the purpose of a reference hearing is to resolve genuine factual disputes, not to determine whether the petitioner actually has evidence to support his allegations.” Id. Jagana has failed to make this threshold showing.

In Padilla, the Supreme Court held that in order to provide effective assistance of counsel, defense counsel must advise a noncitizen client regarding the risk of deportation. Padilla, 130 S. Ct. at 1482. Recognizing that immigration law is complex, the Court acknowledged that in most situations the deportation consequences are uncertain. Id. at 1483. The Court held that, “When the law is not succinct and straightforward (as it is in many of the scenarios posited by Justice Alito), a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences.” Id. When the “deportation consequence is truly clear,” the duty is to give correct advice. Id. Thus, deficient performance can be established by showing that 1) the deportation consequences are truly clear and counsel gave the defendant incorrect advice, or 2) the deportation

consequences are uncertain and counsel failed to advise the client that the conviction could carry a risk of adverse immigration consequences. Id. See also State v. Sandoval, 171 Wn.2d 163, 172, 249 P.3d 1015 (2011).

This Court should hold, as Division III of the Court of Appeals has held, that a petitioner's self-serving affidavit, standing alone, does not establish a threshold showing of ineffective assistance of counsel that entitles a petitioner to a reference hearing. In State v. Cervantes, 169 Wn. App. 428, 434, 282 P.3d 98 (2012), Division III held that the defendant's "bald, self-serving statement [that counsel did not inform him of immigration consequences] without corroboration is insufficient to show deficient performance."

Jagana has provided the reviewing courts with very little information about the immigration consequences of his 2006 guilty plea to possession of cocaine, other than a brief cite to 8 U.S.C. § 1182. See Petitioner's Reply to State's Response, filed July 21, 2011. Without a showing of "truly clear" consequences, the only duty on defense counsel was to advise Jagana that there could be adverse immigration consequences, and this was accomplished in

paragraph 6(s) of the plea statement. Jagana acknowledged in that document that “my lawyer has explained to me, and we have fully discussed, all of the above paragraphs.” Appendix C, at 10.<sup>6</sup>

Jagana’s attorney likewise acknowledged in that document that “I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statements.” Appendix C, at 10. See State v. Ramos, \_\_\_ Wn. App. \_\_\_, 326 P.3d 826 (2014) (reasoning that “No case requires that the warning of immigration consequences come directly from the thoughts of the attorney rather than the attorney reading the warning to the client.”).

Moreover, the email exchanges between defense counsel and the prosecuting attorney prior to the plea show that counsel had consulted with immigration advisors regarding the consequences of the plea. Because RPC 1.6 prohibits counsel from revealing information relating to representation without Jagana’s consent or an order of the court, information from counsel as to what discussions

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<sup>6</sup> This is not a case like State v. Sandoval, *supra*, 171 Wn.2d at 174, where affirmative misinformation by counsel nullified the general warning in the plea statement.

took place is solely within Jagana's control. In light of the plea statement and those emails, however, Jagana's assertion that counsel did not advise him of any immigration consequences is simply not credible on its face, and falls far short of showing that his claim of deficient performance is based on provable fact.

In addition, and significantly, Jagana has not alleged that he would not have entered the plea agreement if he had been properly advised of the immigration consequences. See Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985) (to establish prejudice, defendant must show a reasonable probability that but for counsel's errors he would not have pleaded guilty). For this reason, the information submitted by Jagana falls short of showing that the performance or prejudice prongs of ineffective assistance of counsel can be established with provable fact. Thus, even if Padilla did apply retroactively to Jagana under a new standard, he would not be entitled to a reference hearing.

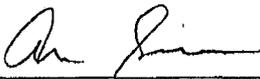
D. CONCLUSION

Jagana's petition was properly dismissed as untimely.

DATED this 15th day of August, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
ANN SUMMERS, WSBA #21509  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Hogan, Michael

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From: Morris, Daron  
Sent: Monday, May 22, 2006 4:11 PM  
To: Hogan, Michael  
Subject: RE: Jagana 6-7-06

Yes.

-----Original Message-----  
From: Hogan, Michael  
To: Morris, Daron  
Sent: 5/19/06 10:35 AM  
Subject: RE: Jagana 6-7-06

I think I wrote up the solicitation. If you're sure he wants the possession, I'll tear up the solicitation and redraft the possession. Is this what he wants?

-----Original Message-----  
From: Morris, Daron  
Sent: Friday, May 19, 2006 10:24 AM  
To: Hogan, Michael  
Subject: RE: Jagana 6-7-06

Mike,

I consulted with my immigration advisors about the proposal to offer solicitation to deliver. It looks like that would offer no benefit, anyway. The reasons for this are somewhat complicated and probably not worth going into here. Mr. Jagana will be better off under the original offer that you wrote up: Possession with a non-agreed 3 month WER rec, with 30 days converted to CS. Please keep this offer available for the P&S date on 6/7.

Thank you,  
- Daron

-----Original Message-----  
From: Hogan, Michael  
To: Morris, Daron  
Sent: 5/16/06 8:45 AM  
Subject: RE: Jagana 6-7-06

Sol on a low end std range is the best I can offer. It gives him what he needs. He is not bound by it.

-----Original Message-----  
From: Morris, Daron  
Sent: Monday, May 15, 2006 3:21 PM  
To: Hogan, Michael  
Subject: RE: Jagana 6-7-06

I believe that does address the eligibility issues. But 9 months is a very big increase off of his standard range as charged, which is 0 to 6 months. Would it be possible to do an agreed FTOW on Solicitation to deliver, where you recommend 90 days? I appreciate you trying to help Mr. Jagana out with the immigration situation, but there must be some way to do it that doesn't result a 9-15 month standard range.

Thanks,  
- Daron

-----Original Message-----  
From: Hogan, Michael  
To: Morris, Daron

Sent: 5/15/06 11:00 AM

Subject: Jagana 6-7-06

I talked with Erin Becker. I can offer Solicitation to Deliver, a std range of 9-15 motnhs and First Offender Eligible, which is 0-90 days. I would recommend 9 months, etc. Let me know if he wants it, it is the best I can offer and seems to address his elibility issues.

## CERTIFICATION OF SERVICE

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Eric Broman, Nielsen, Broman & Koch, 1908 East Madison, Seattle, WA 98122-2842, attorneys for the petitioner Muhammadou Jagana, containing a copy of the State's Supplemental Brief in In re Personal Restraint of Jagana, No. 88770-5, in the Supreme Court of the State of Washington.

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Eric Nielsen, Nielsen, Broman & Koch, 1908 East Madison, Seattle, WA 98122-2842, attorneys for the petitioner Yung-Cheng Tsai, containing a copy of the State's Supplemental Brief in In re Personal Restraint of Jagana, No. 88770-5, in the Supreme Court of the State of Washington.

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Kathleen Proctor, Pierce County Prosecuting Attorney's Office, 930 Tacoma Avenue S., Room 946, Tacoma, WA 98402-2171, attorneys for the respondent, containing a copy of the State's Supplemental Brief in In re Personal Restraint of Jagana, No. 88770-5, in the Supreme Court of the State of Washington.

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Sarah Dunne and Nancy Talner, ACLU of Washington Foundation, 901 5<sup>th</sup> Ave., Suite 630, Seattle, WA 98164-2008, attorneys for amicus curiae ACLU, containing a copy of the State's Supplemental Brief in In re Personal Restraint of Jagana, No. 88770-5, in the Supreme Court of the State of Washington.

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Ann Benson and Travis Stearns, WA Defenders Assn., 110 Prefontaine Place S, Suite 610, Seattle, WA 98104-2626, attorneys for amicus curiae Washington Defenders Association, containing a copy of the State's Supplemental Brief in In re Personal Restraint of Jagana, No. 88770-5, in the Supreme Court of the State of Washington.

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

U Brame

Name

Done in Seattle, Washington

8/15/14  
Date

## OFFICE RECEPTIONIST, CLERK

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**To:** Brame, Wynne  
**Subject:** RE: State v. Muhammadou Jagana, Supreme Court No. 89992-4 consolidated with 88770-5

Received 8-15-14

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:** Brame, Wynne [mailto:Wynne.Brame@kingcounty.gov]  
**Sent:** Friday, August 15, 2014 11:42 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Summers, Ann; bromane@nwattorney.net; nielsene@nwattorney.net; PCpatcecf@co.pierce.wa.us; dunne@aclu-wa.org; talner@aclu-wa.org; abenson@defensenet.org; stearns@defensenet.org; Sloane, John  
**Subject:** State v. Muhammadou Jagana, Supreme Court No. 89992-4 consolidated with 88770-5

Please accept for filing the attached document (Supplemental Brief of Respondent) in State of Washington v. Muhammadou Jagana, Supreme Court No. 89992-4 consolidated with 88770-5.

Thank you.

Ann Summers  
Senior Deputy Prosecuting Attorney  
WSBA #21509  
King County Prosecutor's Office  
W554 King County Courthouse  
Seattle, WA 98104  
206-477-1909  
E-mail: [Ann.Summers@kingcounty.gov](mailto:Ann.Summers@kingcounty.gov)  
E-mail: [PAOAppellateUnitMail@kingcounty.gov](mailto:PAOAppellateUnitMail@kingcounty.gov)  
WSBA #91002

This e-mail has been sent by Wynne Brame, paralegal (phone: 206-296-9650), at Ann Summer's direction.

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