

No. 97066-1

Court of Appeals No. _____
Pierce County Superior Court No. 10-1-01903-2

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION TWO

In re the Personal Restraint of:
AMANDA CHRISTINE KNIGHT,
Petitioner.

PERSONAL RESTRAINT PETITION WITH LEGAL ARGUMENT
AND AUTHORITIES

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TABLE OF CONTENTS

I. STATUS OF PETITIONER/PROCEDURAL HISTORY1

II. STATEMENT OF THE CASE.....1

III. GROUNDS FOR RELIEF4

IV. ARGUMENT4

 A. THE ROBBERY OF JAMES SANDERS MERGES WITH THE
 FELONY MURDER OF JAMES SANDERS, AND THE
 ASSAULT OF CHARLENE SANDERS MERGES WITH THE
 ROBBERY OF CHARLENE SANDERS4

 1. Introduction4

 2. Whether One Conviction was used to Increase the Degree of
 Another Depends on the Specific Terms of the Jury
 Instructions and Verdicts, Rather than on the Facts of the Case
 or the Arguments of Counsel. Further, when the Jury’s Verdict
 is Ambiguous, the Rule of Lenity Applies.....5

 3. Under the Standards Set Out Above, The Robbery of James
 Sanders Merges with the First-Degree Felony Murder Charge.....10

 4. The Assault of Charlene Sanders Merges with Her Robbery
 Charge13

 5. This Court should Revisit whether the Assault of Charlene
 Merges with Her Robbery19

 B. IN THE ALTERNATIVE, IF THE PROSECUTOR’S AND
 TRIAL COURT’S INTERPRETATION OF THE CASE IS
 CORRECT, THERE IS INSUFFICIENT EVIDENCE TO
 SUPPORT FIRST-DEGREE FELONY MURDER, AND
 THERE IS NO ACCOMPLICE LIABILITY FOR SOME OF
 THE CHARGES22

V. REQUEST FOR RELIEF24

VI. OATH24

TABLE OF AUTHORITIES

Cases

<i>Evitts v. Lucey</i> , 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821, <i>reh'g denied</i> , 470 U.S. 1065, 105 S.Ct. 1783, 84 L.Ed.2d 841 (1985)	20
<i>In re Francis</i> , 170 Wn.2d 517, 242 P.3d 866 (2010).....	4, 12, 18
<i>In re Heidari</i> , 174 Wn.2d 288, 274 P.3d 366 (2012).....	23
<i>In re Maxfield</i> , 133 Wn.2d 332, 945 P.2d 196 (1997)	20
<i>In re Percer</i> , 150 Wn.2d 41, 75 P.3d 488 (2003)	19
<i>In re Pers. Restraint of Andress</i> , 147 Wn.2d 602, 56 P.3d 981 (2002), <i>as corrected</i> (Oct. 29, 2002), <i>as amended on denial of reconsideration</i> (Mar. 14, 2003) (superseded by statute on other grounds)	11
<i>In re Taylor</i> , 105 Wn.2d 683, 717 P.2d 755 (1986).....	19
<i>Personal Restraint of Dalluge</i> , 152 Wn.2d 772, 100 P.3d 279 (2004).....	21
<i>State v. Chesnokov</i> , 175 Wn. App. 345, 305 P.3d 1103 (2013).....	13
<i>State v. Dennison</i> , 115 Wn.2d 609, 801 P.2d 193 (1990).....	11
<i>State v. DeRyke</i> , 110 Wn. App. 815, 41 P.3d 1225 (2002), <i>aff'd</i> , 149 Wn.2d 906, 73 P.3d 1000 (2003).....	7
<i>State v. Freeman</i> , 153 Wn.2d 765, 108 P.3d 753 (2005) (consolidated with <i>State v. Zumwalt</i>)	5, 13, 17
<i>State v. Gohl</i> , 109 Wn. App. 817, 37 P.3d 293 (2001), <i>review denied</i> , 146 Wn.2d 1012, 52 P.3d 519 (2002).....	5
<i>State v. Kier</i> , 164 Wn.2d 798, 194 P.3d 212 (2008).....	8, 9, 13
<i>State v. Knight</i> , 176 Wn. App. 936, 309 P.3d 776 (2013), <i>review denied</i> , 179 Wn.2d 1021, 318 P.3d 279 (2014)	1, 6, 10, 19

<i>State v. Lindsay</i> , 171 Wn. App. 808, 288 P.3d 641 (2012), <i>review granted in part</i> , 177 Wn.2d 1023, 303 P.3d 1064 (2013), <i>reversed on other grounds</i> , 180 Wn.2d 423, 326 P.3d 125 (2014)	18
<i>State v. Parmelee</i> , 108 Wn. App. 702, 32 P.3d 1029 (2001), <i>review denied</i> , 146 Wn.2d 1009, 52 P.3d 519 (2002)	7
<i>State v. Prater</i> , 30 Wn. App. 512, 635 P.2d 1104 (1981), <i>review denied</i> , 97 Wn.2d 1007 (1982)	17
<i>State v. Ralph</i> , 175 Wn. App. 814, 308 P.3d 729 (2013), <i>review denied</i> , 179 Wn.2d 1017, 318 P.3d 280 (2014)	5
<i>State v. Whittaker</i> , 192 Wn. App. 395, 367 P.3d 1092 (2016).....	passim
<i>State v. Williams</i> , 131 Wn. App. 488, 128 P.3d 98, <i>review granted, cause remanded on other grounds</i> , 158 Wn.2d 1006, 143 P.3d 596 (2006).....	11, 12, 23
Statutes	
RCW 10.73.100	1
RCW 9A.46.110	9
Rules	
RAP 16.4.....	19
Constitutional Provisions	
U.S. Const., amend. XIV (Due Process).....	20

I. STATUS OF PETITIONER/PROCEDURAL HISTORY

Amanda Knight is serving a sentence of 860 months at the Washington Corrections Center for Women in Purdy, Washington. She was sentenced in Pierce County Superior Court on May 13, 2011, after a jury trial before the Honorable Rosanne N. Buckner. She was represented at trial by Harry Steinmetz, 724 South Yakima Avenue, Second Floor, Tacoma, Washington, 98405.

Ms. Knight filed an appeal to the Court of Appeals, Division II, represented by Mitch Harrison and John Crowley. *See State v. Knight*, 176 Wn. App. 936, 309 P.3d 776 (2013), *review denied*, 179 Wn.2d 1021, 318 P.3d 279 (2014). Ms. Knight has not previously sought postconviction relief.

This personal restraint petition (PRP) is filed more than one year after the direct appeal became final. Because the claims are based on Double Jeopardy and insufficient evidence, they fall within exceptions to the one-year time bar. *See* RCW 10.73.100(3) and (4).

II. STATEMENT OF THE CASE

On May 3, 2010, Joshua Reese, Kiyoshi Higashi, John Doe, and Amanda Knight were each charged as co-defendants. John Doe was later identified as Claybon Berniard. CP 451. The charges arose from a home invasion robbery. CP 451-52.

On May 5, 2010, the State filed an amended information that charged Ms. Knight as an accomplice to First-Degree Murder (one count),

First-Degree Burglary (one count), First-Degree Robbery (two counts), and Second-Degree Assault (two counts). CP 6-9. The State alleged that Ms. Knight acted as an accomplice to all of these crimes and that one of the participants in the crime was armed with a firearm when each of the crimes occurred. CP 6-9. On January 7, 2011, the State filed a second amended information that alleged each of the above counts were committed under one or more of the aggravating circumstances as defined by RCW 9.94A.535(3)(a). CP 87-91.

Mr. Higashi was the first of the four co-defendants to stand trial. CP 452. He was convicted and sentenced on March 11, 2011. CP 452. Ms. Knight's trial occurred second.

At Ms. Knight's trial, it was essentially undisputed that she participated in the robbery. Ms. Knight admitted that she entered the home of the victims on April 28, 2010, together with Higashi. RP 909-15. Higashi and Ms. Knight gained access to the home on the pretext that they wished to buy a ring that the Sanders's had advertised on Craigslist. RP 910-14. Once in the home, Higashi pulled a gun out of his pocket and pointed it at James Sanders. RP 916-17.

Ms. Knight then, at Higashi's direction tied Charlene Sanders's hands behind her back with a "zip tie." RP 917-18. Then, the two other co-defendants, Berniard and Reese, entered the home, went upstairs, and brought the two children downstairs at gunpoint. RP 918. Ms. Knight immediately ran upstairs and began to gather valuables from the home. RP 919.

While Ms. Knight was upstairs, the co-defendants began to physically assault the victims downstairs. RP 585-92. Berniard pointed a pistol at Charlene Sanders. RP 585. He then hit and kicked her in an attempt to get the combination to the safe in the house. RP 585- 87. Berniard then began to assault the son, J.S. RP 587- 92. James Sanders then broke free of his restraints and jumped up to join the fight. These assaults all occurred while Ms. Knight was upstairs. RP 919-20, 596-98.

As Ms. Knight gathered the items from upstairs, she heard a gunshot and ran out the front door. RP 920. It is not clear which of the co-defendants shot and killed James Sanders, but Ms. Knight never held a gun during the incident. RP 915. After the shooting, all of the defendants, except Berniard, fled to California together and were apprehended a few days later. RP 923.

Ms. Knight testified in her defense. RP 894-904. She did not deny most of the facts as argued by the State. Instead, Ms. Knight told the jury that she committed these acts while under duress. Specifically, she testified that co-defendant Higashi stole a gun from her when he was working on her stereo and threatened to shoot her and her family if she did not participate in the robbery. RP 900-04. She further testified that she did not go to police immediately after the shooting because Higashi maintained possession of her gun and pointed it at her face on several occasions. RP 926-27.

Ultimately, the jury found Ms. Knight guilty of all counts. CP 376-93. She was sentenced to 860 months, the high end of the standard range. CP 450, 502-16. The jury rejected the aggravating factors.

III. GROUNDS FOR RELIEF

1. The robbery of James Sanders merges with the felony murder of James Sanders, and the assault of Charlene Sanders merges with the robbery of Charlene Sanders.
2. In the alternative, if the prosecutor's and trial court's interpretation of the case is correct, there is insufficient evidence to support first-degree felony murder, and there is no accomplice liability for some of the charges.

IV. ARGUMENT

A. THE ROBBERY OF JAMES SANDERS MERGES WITH THE FELONY MURDER OF JAMES SANDERS, AND THE ASSAULT OF CHARLENE SANDERS MERGES WITH THE ROBBERY OF CHARLENE SANDERS

1. Introduction

“Under the merger doctrine, when the degree of one offense is raised by conduct separately criminalized by the legislature, we presume the legislature intended to punish both offenses through a greater sentence for the greater crime.” *In re Francis*, 170 Wn.2d 517, 525, 242 P.3d 866 (2010). However, the lesser crime may not merge if it had an “independent purpose or effect.” *Id.* Punishment for crimes not intended by the legislature violates the Double Jeopardy clauses of the state and federal constitutions. *Id.* Whether the merger doctrine bars double punishment is a question of law that the appellate court reviews de novo.

State v. Freeman, 153 Wn.2d 765, 770, 108 P.3d 753 (2005) (consolidated with *State v. Zumwalt*). When a count merges, any associated enhancements are vacated. *State v. Gohl*, 109 Wn. App. 817, 819-20, 37 P.3d 293, 294 (2001), *review denied*, 146 Wn.2d 1012, 52 P.3d 519 (2002).

Merger claims may be raised for the first time on appeal. *See State v. Ralph*, 175 Wn. App. 814, 823, 308 P.3d 729 (2013), *review denied*, 179 Wn.2d 1017, 318 P.3d 280 (2014). The claim that the robbery of James Sanders merges with the felony murder of James Sanders was raised and rejected in the trial court, but was not raised on appeal. The claim that the assault charge against Charlene Sanders merges with the robbery charge was raised and rejected by this Court on direct appeal. However, the former appellate attorney failed to present a clear argument, causing this Court to misperceive his position. Further, more recent cases provide stronger support for Ms. Knight's claim. It is therefore in the interests of justice to revisit the issue. *See* Section IV(A)(4) and IV(A)(5), below.

2. Whether One Conviction was used to Increase the Degree of Another Depends on the Specific Terms of the Jury Instructions and Verdicts, Rather than on the Facts of the Case or the Arguments of Counsel. Further, when the Jury's Verdict is Ambiguous, the Rule of Lenity Applies.

On direct appeal, trial counsel attempted to make the point that ambiguities in the jury verdicts must be resolved in favor of the defendant when analyzing merger issues. His briefing was so confusing, however, that this Court believed he was arguing that the instructions were

improper. The Court declined to address that apparent issue because it had not been raised at trial. *See Knight*, 176 Wn. App. at 950-51.

In fact, the trial court acted within its discretion when it declined to require the jurors to specify which alternatives they relied on when finding Ms. Knight guilty of the assault and robbery charges. This lack of specificity, however, has implications for the merger doctrine. Under the rule of lenity, this Court must assume that the jurors found the alternate means that would best support merger.

This point has recently been amplified by Division One's ruling in *State v. Whittaker*, 192 Wn. App. 395, 367 P.3d 1092 (2016). *Whittaker* also explains that merger issues must be decided based on the jury instructions and verdict forms, rather than on the trial testimony or the arguments of counsel.

Derek Whittaker was found guilty of one count of a domestic violence felony violation of a court order (count 1) and one count of felony stalking (count 2). *Id.* at 399. Whittaker's stalking conviction was elevated to a felony because his stalking violated a court order of protection. The State also convicted Whittaker of violating a court order.

Thus, the question is whether the jury's verdict tells us on which of several violations it relied on to elevate Whittaker's stalking conviction to a felony. If the jury relied on the same violation it used to convict Whittaker of violation of a court order, then his convictions must merge.

Id. at 411.

The *Whittaker* Court relied primarily on three cases. First, in *State v. Parmelee*, 108 Wn. App. 702, 32 P.3d 1029 (2001), *review denied*, 146

Wn.2d 1009, 52 P.3d 519 (2002), the Court concluded that two of Parmelee's three convictions for violation of a court order merged into his felony stalking conviction. Parmelee was charged with one count of felony stalking and three counts of violating a court order based on three letters sent to the protected person. *Id.* at 708. Because the stalking charge required repeated violations of a court order, two of the three violations were needed as elements of the greater charge. Accordingly, those two convictions merged with the stalking charge. *Id.* at 711.

The *Whittaker* Court then turned to the decision in *State v. DeRyke*, 110 Wn. App. 815, 41 P.3d 1225 (2002), *aff'd*, 149 Wn.2d 906, 73 P.3d 1000 (2003). *See Whittaker*, 192 Wn. App. at 413. Mr. DeRyke pointed a gun at a minor and took her to a wooded area. *DeRyke*, 110 Wn. App. at 818. He was found guilty of first-degree attempted rape and first-degree kidnapping. *Id.* The jury was instructed that DeRyke could be convicted of first-degree attempted rape "either by using or threatening to use a deadly weapon, or by kidnapping the victim." *Id.* at 823. Although the jury unanimously concluded that DeRyke was armed with a deadly weapon and that he kidnapped the minor, "there was no way to tell which basis the jury relied upon in convicting him of first degree attempted rape." *Id.* at 824. "[N]either the jury instructions nor the verdict form required the jury to specify which act it chose to reach its verdict on the attempted rape charge." *Id.* The State could have, but did not submit a proposed instruction excluding kidnapping as a basis for finding DeRyke guilty of first-degree attempted rape. *Id.* Thus, the Court concluded that the

principles of lenity required it “to interpret the ambiguous verdict in favor of DeRyke.” *Id.* The Court therefore assumed that “the jury based its verdict on DeRyke’s kidnapping of [the minor] rather than his use of a deadly weapon.” *Id.* Accordingly, the kidnapping offense merged into the attempted rape offense. *Id.*

The *Whittaker* Court then analyzed the Supreme Court case of *State v. Kier*, 164 Wn.2d 798, 194 P.3d 212 (2008). In that case, the defendant was convicted of first-degree robbery and second-degree assault from a carjacking incident. *Id.* at 802. Kier maintained that his second-degree assault conviction merged into his first-degree robbery conviction. “His argument was that because the incident involved two victims, and the State identified one victim as the robbery victim and the other victim as the assault victim, an ambiguity existed.” *Id.* at 805, 811.

The Supreme Court determined that “[t]he merger doctrine is triggered when second degree assault with a deadly weapon elevates robbery to the first degree.” *Id.* at 806. The jury verdict was ambiguous because there was evidence describing both victims as victims of the robbery and the instructions did not specify a victim. *Id.* at 812. The jury instructions also allowed the jury to consider one victim as both the robbery and assault victim. *Id.* at 814. The Court concluded that this ambiguity must be resolved in Kier’s favor under the lenity rule. *Id.* at 811. Therefore, the assault merged into the conviction for robbery because it was “unclear from the jury’s verdict whether the assault was used to elevate the robbery to first degree.” *Id.* at 813.

In *Whittaker* the jury verdict for count 2 stated only that Whittaker was guilty of the crime of stalking. *Whittaker*, 192 Wn. App. at 415. The crime could be elevated to a felony only by showing a violation of the court order of protection. *Id.*; RCW 9A.46.110(5)(b)(ii). “But the jury verdict fails to identify which of several violations of the court order served to elevate the stalking conviction to a felony.” *Whittaker*, 192 Wn. App. at 415. The Court noted that the testimony included multiple violations, but the Court could not exclude the possibility that the jury convicted on the basis most favorable to him, that is, that the jury relied on Whittaker repeatedly following the protected person on a particular date. Although testimony included many other incidents, the Court could not assume that the jury relied on those. *Id.* at 416.

The *Whittaker* Court noted that in *Kier*, the Court rejected the notion that a prosecutor’s election of a particular incident in closing argument could eliminate ambiguity. *Kier*, 164 Wn.2d at 813.

The *Whittaker* Court concluded:

While it is true there were multiple violations of the court order protecting Spalding throughout the charging period, we cannot be certain which served as the basis for the jury to convict Whittaker of felony stalking. The possibility that the jury could have convicted Whittaker on a basis that does not offend the double jeopardy protections to which he is entitled is simply not enough to cure the problem. The verdict is ambiguous. The rule of lenity applies. In this case, the conviction for violation of a court order must merge into the stalking conviction.

Whittaker, 192 Wn. App. at 417.

Thus, there is now stronger authority that merger must be analyzed based on the jury instructions and verdicts, and that they must be viewed in the light most favorable to the defendant. In Ms. Knight's case, however, this Court and the trial court relied on testimony and argument and did not apply the rule of lenity. *See Knight*, 176 Wn. App. at 953-55.

3. Under the Standards Set Out Above, The Robbery of James Sanders Merges with the First-Degree Felony Murder Charge

The jury instructions on the felony murder charge read as follows:

To convict the defendant of the crime of Murder in the First Degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about April 28, 2010, the defendant or an accomplice committed Robbery in the First Degree;
- (2) That the defendant or an accomplice caused the death of James Sanders, Sr, in the course of or in furtherance of such crime:
- (3) That James Sanders, Sr. was not a participant in the crime of Robbery in the First Degree; and
- (4) That any of these acts occurred in the State of Washington

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

App. A.

The separate crime of robbery in the first degree is explicitly listed as an element. Further, the jury must find that there is a connection between that particular robbery and the killing; that is, that the killing took place during the course of or in furtherance of the crime. Our Supreme Court has described this connection as requiring the underlying crime to be part of the *res gestae* of the murder. *In re Pers. Restraint of Andress*, 147 Wn.2d 602, 609, 56 P.3d 981, 984-85 (2002), *as corrected* (Oct. 29, 2002), *as amended on denial of reconsideration* (Mar. 14, 2003) (superseded by statute on other grounds).

The jury instructions do not give the jurors any option to find that multiple robberies were connected to the murder. The verdict form simply requires “guilty” or “not guilty.” *See* App. B. The most favorable interpretation of the verdict is that the jurors relied on the first-degree robbery of Mr. Sanders as a predicate to the felony murder.

Certainly there can be no “independent purpose” between the robbery and the felony murder. The premise of felony murder is that the *mens rea* of the underlying crime substitutes for premeditation or intent to kill. *State v. Dennison*, 115 Wn.2d 609, 615, 801 P.2d 193, 196-97 (1990). Thus, the purpose of the robbery is the same as the purpose of the felony murder.

State v. Williams, 131 Wn. App. 488, 497-500, 128 P.3d 98, *review granted, cause remanded on other grounds*, 158 Wn.2d 1006, 143 P.3d 596 (2006), is directly on point. Williams was convicted of attempted first-degree robbery and first-degree felony murder. The Court rejected the

State's argument that the two crimes had a different intent and purpose. Rather, the shooting had no purpose or intent outside of accomplishing the robbery or facilitating Mr. Williams' departure from the scene. *Id.* at 497-500. The same is true here. The sole purpose of this home invasion robbery was to use force to steal as much valuable property as possible. The plan included tying up Mr. Sanders so that he could not interfere. When Mr. Sanders managed to break free and began fighting the robbers, they fought back and quickly escalated to deadly force. All of this happened within the same house and within no more than 15 or 20 minutes. All of the violence and threatened violence was directed towards the purpose of robbery.

The Washington Supreme Court cited *Williams* with approval in *State v. Francis, supra*.

If Francis had pleaded to the attempted robbery of Lucas and felony murder of Lucas, double jeopardy would preclude conviction on the attempted robbery count. The killing "had no purpose or intent outside of accomplishing the robbery" and therefore the attempted robbery would merge into the felony murder. *State v. Williams*, 131 Wn. App. 488, 499, 128 P.3d 98 (2006) (addressing the merger of attempted robbery and felony murder of the same victim); see also *State v. Vladovic*, 99 Wn.2d 413, 421, 662 P.2d 853 (1983) (mirroring the above analysis in the context of kidnapping and robbery).

Id. at 527-28.

But because Francis pled guilty to the attempted robbery of one person and the felony murder of another, the counts did not merge. *Id.* at 528. Of course, there was no question in *Francis* that the robbery and

murder involved separate victims because Mr. Francis expressly pled guilty to that. Here, however, there is nothing in the jury instructions or verdicts to rule out that the jury relied on the robbery of Mr. Sanders as the predicate for his felony murder. The rule of lenity requires the Court to accept that option.

Therefore, the robbery charge merges with the first-degree felony murder charge.¹

4. The Assault of Charlene Sanders Merges with Her Robbery Charge

In several cases, the Washington courts have found that assault in the second degree merges with robbery in the first degree. *See, e.g., State v. Freeman*, 153 Wn.2d 765, 780, 108 P.3d 753, 760 (2005) (“Generally, it appears that these two crimes will merge unless they have an independent purpose or effect.”); *Kier*, 164 Wn.2d at 814 (“Adhering to our analysis of the merger doctrine in *Freeman*, we hold that Kier’s second degree assault conviction merges into his conviction for first degree robbery. Accordingly, we reverse the second degree assault conviction and remand to the trial court for resentencing.”); *State v. Chesnokov*, 175 Wn. App. 345, 305 P.3d 1103 (2013) (same).

The robbery instruction for Charlene Sanders reads as follows:

To convict the defendant of the crime of Robbery in the First Degree as charged in Count IV, each of the following

¹ *See also, State v. Fagundes*, 26 Wn. App. 477, 485-86, 614 P.2d 198, *review denied*, 94 Wn.2d 1014 (1980), *amended*, 625 P.2d 179 (1981) (first-degree rape and first-degree kidnapping merged with first-degree felony murder).

six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 28th day of April, 2010 the defendant or an accomplice unlawfully took personal property from the person or in the presence of another (Charlene Sanders),

(2) That the defendant intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person or to the person or property of another;

(4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5) (a) That in the commission of these acts the defendant or an accomplice was armed with a deadly weapon;

or

(b) That in the commission of these acts the defendant or an accomplice inflicted bodily injury;

and

(6) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a) or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a) or (5)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

App. C.

The robbery could be elevated to first degree only if the defendant or an accomplice was armed with a deadly weapon, or if in the commission of the robbery, the defendant or an accomplice inflicted bodily injury.

The verdict form did not require the jurors to specify which prong they decided on.

The jury instruction for the assault of Charlene Sanders reads as follows:

To convict the defendant of the crime of Assault in the Second Degree as charged in Count V, each of the following two elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about April 28, 2010, the defendant or an accomplice:

(a) intentionally assaulted Charlene Sanders and thereby recklessly inflicted substantial bodily harm: or

(b) assaulted Charlene Sanders with a deadly weapon, and

(2) That this act occurred in the State of Washington

If you find from the evidence that element (2) and either alternative element (1)(a) or (1)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (1)(a) or (1)(b) has been proved beyond a reasonable doubt, as long as each

juror finds that either (1)(a) or (1)(b) has been proved beyond a reasonable doubt

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to either element (1) or (2), then it will be your duty to return a verdict of not guilty.

App. D.

The jurors were not required to state whether they relied on substantial bodily harm or on assault with a deadly weapon. Again, the jurors simply said “Guilty.”

In view of these instructions and verdict forms, the jurors could have found that the robbery of Charlene was elevated to first degree by the use of a deadly weapon. Likewise, the jurors could have found that the second-degree assault of Charlene was based on the threatened use of a deadly weapon. The assault also could have satisfied the element that the taking was accomplished through the threatened use of “immediate force violence, or fear of injury.” *See* App. E (Jury Instruction 18), explaining that an assault can be “an act done with the intent to create in another apprehension and fear of bodily injury.”

There was no “independent purpose” for this assault. It was clearly done for the purpose of taking the rings. In fact, as noted above, there was only one purpose to any of the actions taken by any of the perpetrators: to rob from the Sanders’s house as much property as possible. That the robbers never obtained anything more than the rings does not change their purpose.

State v. Prater, 30 Wn. App. 512, 635 P.2d 1104 (1981), *review denied*, 97 Wn.2d 1007 (1982), is instructive. In that case, the robbers broke into an apartment and made the husband and wife lie on the floor. One of the robbers then jabbed and poked at the wife with a gun to encourage her to locate money. While she was searching, one of the robbers shot the husband in the face.

The Court noted that the shooting of the husband was gratuitous. It “effectively hindered rather than aided the commission of the crime.” *Id.* at 516. Therefore, the robbers could be separately punished for the assault on the husband. “In contrast, the striking of [the wife] was part of the force used to induce her to find money, the object of the robbery. The purpose was to intimidate. It had that effect.” Therefore, the assault of the wife merged into the burglary. *Id.*

The Washington Supreme Court relied on *Prater* in *State v. Freeman*, for the proposition that there is no independent purpose when violence is used to obtain compliance with a robbery. *Freeman*, 153 Wn.2d at 779. Thus, in the companion case of *Zumwalt*, the *Freeman* Court found that the assault merged with the robbery.

There is no evidence in the record to support a conclusion that the violence used by Freeman to complete the robbery was “gratuitous,” or done to impress Freeman’s friends, or had some other and independent purpose or effect. Using force to intimidate a victim into yielding property is often incidental to the robbery.

Id.

Similarly, in *In re Francis*, 170 Wn.2d at 524-27, the court held that second-degree assault merged into attempted first-degree robbery where the defendant used a baseball bat in an effort to obtain \$2,000. “Here, the sole purpose of the second degree assault was to facilitate the attempted robbery. The assault was not “separate and distinct” from the attempted robbery; it was incidental to it.” *Id.*

Likewise, in Ms. Knight’s case, any assaults against Charlene were done for the purpose of obtaining, or attempting to obtain property.

That Charlene was assaulted more than once does not change the analysis. This issue was addressed in *State v. Lindsay*, 171 Wn. App. 808, 844-45, 288 P.3d 641 (2012), *review granted in part*, 177 Wn.2d 1023, 303 P.3d 1064 (2013), *reversed on other grounds*, 180 Wn.2d 423, 326 P.3d 125 (2014).

We agree with the State that the record supports several assaults against Wilkey, but this argument misses the question entirely. The precise issue here is whether the second degree assault, committed by Lindsay with the intent to commit a felony, had a purpose separate and distinct from his contemporaneous robbery of Wilkey.

The Court found that it did not, and therefore merged the assault charge into the first-degree robbery charge. *Id.* at 846.

Under the authorities discussed above, this Court must find that the assault of Charlene merges with the robbery.

5. This Court should Revisit whether the Assault of Charlene Merges with Her Robbery

The Washington Supreme Court has interpreted RAP 16.4(d) to mean that an issue that was heard and determined on appeal or in a prior petition cannot be heard on the merits in a PRP unless the petitioner can show that the “ends of justice” would be served by re-hearing the issue. *In re Taylor*, 105 Wn.2d 683, 686-89, 717 P.2d 755 (1986).

The “ends of justice” standard for relitigating a claim previously raised on direct appeal is less restrictive than the “good cause” standard for relitigating a claim previously raised in a collateral attack. *See In re Percer*, 150 Wn.2d 41, 47-48, 75 P.3d 488 (2003) (ends of justice satisfied simply because Court of Appeals clearly erred on direct appeal).

As discussed above, the ambiguity in the jury instructions and the rule of lenity is central to Knight’s claims. But this Court did not address that issue at all because it interpreted defense counsel’s argument to be a challenge to the instructions, and such a challenge was not preserved. *Knight*, 176 Wn. App. at 785. In fact, the trial court did not err in presenting instructions that did not require the jurors to specify the basis for their verdicts. The Court was not required to eliminate any ambiguity in the verdicts, such as whether the robberies were raised to first degree by the use of a deadly weapon or by the infliction of bodily injury.

Because trial counsel’s briefing was so sloppy, it is hard to know exactly what points he was trying to make. Most likely he was attempting

to explain that the ambiguity in the verdicts must be viewed in the light most favorable to the defendant's merger arguments. *See* App. F.

If so, however, he certainly could have made that more clear. In its response brief, the State interpreted counsel's argument as a challenge to the jury instructions. *See* App. G. Yet counsel did not file a reply brief on that (or any) point. It is understandable under those circumstances that this Court would have followed the State's interpretation.

In fact, particularly in view of the *Whittaker* case (and hopefully from the briefing now before this Court), it is clear that the jury instructions in this case should not have been challenged as faulty, but rather, should have been used to show that the verdicts were ambiguous as to the precise alternatives presented. Ms. Knight should have a chance to litigate this issue under the correct standards.

Therefore, the ends of justice require revisiting this claim.

Another basis for revisiting the issue is that appellate counsel was ineffective. The Due Process Clause of the Fourteenth Amendment guarantees the right to effective assistance of counsel on appeal. *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 83 L.Ed.2d 821, *reh'g denied*, 470 U.S. 1065, 105 S.Ct. 1783, 84 L.Ed.2d 841 (1985).

In order to prevail on an appellate ineffective assistance of counsel claim, a petitioner must show that counsel failed to raise, or failed to adequately raise, a claim that had merit, and that she was actually prejudiced by the failure. *In re Maxfield*, 133 Wn.2d 332, 344, 945 P.2d 196 (1997). When appellate counsel is ineffective, the court could remand

for a new appeal. *Personal Restraint of Dalluge*, 152 Wn.2d 772, 788, 100 P.3d 279 (2004). But when, as here, the appellate court requires no further information to decide the merits of the underlying claim, it can be more efficient “to resolve the trial court error under the standard of review applicable upon direct appeal.” *Id.* at 789.

Here, if counsel believed that challenging the jury instructions would be helpful, he was dead wrong; if he was trying to explain the rule of lenity, he did a poor job.

Even a cursory glance at his brief shows that he did a slap-dash job. Nearly every page contains typographical errors. These include substituting Ms. Knight’s name with the name of a different client. Several more examples are highlighted in App. H. More importantly, counsel based his analysis of merger on the premise that James Sanders was the victim of one of the second-degree assault convictions when in fact those convictions applied only to J.S. and Charlene. *See Knight*, 176 Wn. App. at 951 n. 15. As discussed above, Ms. Knight has two meritorious merger arguments when the proper standards are applied. Thus, she was prejudiced by counsel’s ineffectiveness.

The defense brief lists John Crowley and Mitch Harrison as counsel, but in fact Mr. Harrison was the sole writer. *See Declaration of Amanda Knight*. App. I. Mr. Harrison is currently under investigation by Bar counsel due to incompetent work in five cases, including Ms. Knight’s. On June 16, 2016, Bar counsel filed a motion in the Washington

Supreme Court seeking interim suspension based on Harrison's failure to respond to the Bar's subpoena. *See* App. J.

B. IN THE ALTERNATIVE, IF THE PROSECUTOR'S AND TRIAL COURT'S INTERPRETATION OF THE CASE IS CORRECT, THERE IS INSUFFICIENT EVIDENCE TO SUPPORT FIRST-DEGREE FELONY MURDER, AND THERE IS NO ACCOMPLICE LIABILITY FOR SOME OF THE CHARGES

At the sentencing hearing, the prosecutor argued that the robberies were completed at the outset when Higashi brandished a gun. In the State's view, the rings were taken from Charlene and James Sanders before the assaults began. RP 1083-04. Therefore, once the other participants entered the home, no robbery was in progress. Rather, there was only an assault on J.S. and Charlene Sanders.

According to the prosecutor, the assault "with respect to Charlene, was committed by Defendant Berniard as he kicked Charlene Sanders in the head, put the firearm to her head and did a countdown. That was a subsequent act with a separate purpose, separate from the robbery." *Id.* "With respect to the second assault in the second degree where the victim was [J.S.] . . . [t]he robbery on James Sanders was completed before the assault on [J.S.] occurred." *Id.*

Between the robbery and the murder, different people entered the residence, children were brought down from upstairs, [J.S.] was beaten, Charlene Sanders was beaten, James Sanders was beaten. There is a significant amount of intervening acts between the robbery and the murder to separate the timing of those two.

Id. at 1086.

If the State's position is correct, then there can be no felony murder in the first degree because, according to the State, the killing did not take place during the course of or in furtherance of the robbery. Rather, according to the State, the killing took place when the only ongoing crimes were assaults. If the State is right, the murder was in the course of an assault in the second degree, rather than in the course of a first-degree robbery, and there is insufficient evidence for murder in the first degree. There would seem to be sufficient evidence for felony murder in the second degree, but this Court cannot remand for such a charge because the jury was not instructed on the lesser charge. *See In re Heidari*, 174 Wn.2d 288, 274 P.3d 366 (2012).

A similar issue arose in *State v. Williams*, supra. The State argued that the predicate attempted robbery should not merge with the felony murder because the robbery was "factually disconnected" from the murder. *Id.*, 131 Wn. App. at 498. Specifically, the State argued that the attempted robbery was complete when Mr. Williams took a substantial step towards the robbery several hours before the killing. If that were true, however,

then [the jury] could not have found that the shooting was in furtherance of or in flight from that attempt. And therefore the first degree murder conviction could not stand. Likewise, the State's assertion that the two crimes were completely unrelated is inconsistent with the felony murder charge.

Id. at 499. The same is true here.

Similarly, under the State's theory in Ms. Knight's case, there is no accomplice liability for Ms. Knight regarding the assaults on Charlene and

J.S., or the murder of James. While Ms. Knight agreed to assist in a plan for robbery, there is no hint that she ever contemplated gratuitous assaults unconnected with an effort to take money.

Thus, if the State's view of the case is correct, this Court must vacate Ms. Knight's convictions for felony murder, and for the assaults on Charlene and J.S.

V. REQUEST FOR RELIEF

This Court should find that the robbery of James Sanders merges with the felony murder of James Sanders, and the assault of Charlene Sanders merges with the robbery of Charlene Sanders. In the alternative, if the State's analysis of the case is correct, the felony murder charge must be vacated for insufficient evidence and Ms. Knight's accomplice liability must be limited to the initial taking of the rings.

VI. OATH

After being first duly sworn on oath, I depose and say that: I am the attorney for petitioner, I have read the petition, know its contents, and believe the petition is true.

DATED this 12th day of July, 2016.

Respectfully submitted,



David B. Zuckerman, WSBA #18221
Attorney for Amanda Knight

SUBSCRIBED AND SWORN TO before me, the undersigned
notary public, on this 12TH day of JULY, 2016.



Christina Alburas

Notary Public for Washington

My Commission Expires: 11/09/16

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by United States Mail one copy of the foregoing Personal Restraint Petition and accompanying Appendix to Personal Restraint Petition on the following:

Pierce County Prosecutor's Office
Appellate Unit
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402

Ms. Amanda Knight #349443
Washington Corrections Center for Women
9601 Bujacich Road NW
Gig Harbor, WA 98332-8300

07/12/2016
Date

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Court of Appeals No. _____
Pierce County Superior Court No. 10-1-01903-2

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION TWO

In re the Personal Restraint of:
AMANDA CHRISTINE KNIGHT,
Petitioner.

APPENDIX TO PERSONAL RESTRAINT PETITION

By:
David B. Zuckerman
Attorney for Petitioner
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104
(206) 623-1595

FILED
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INDEX TO APPENDIX

- App. A Jury Instruction No. 9, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2
- App. B Verdict Form A, April 14, 2011, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2
- App. C Jury Instruction No. 26, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2
- App. D Jury Instruction No. 25, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2
- App. E Jury Instruction No. 18, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2
- App. F Excerpt of Brief of Appellant, February 10, 2012, *State v. Amanda Christine Knight*, Court of Appeals No. 42130-5-II
- App. G Excerpt of Brief of Respondent, August 6, 2012, *State v. Amanda Christine Knight*, Court of Appeals No. 42130-5-II
- App. H Excerpt of Errors in Brief of Appellant
- App. I Declaration of Amanda Knight, July 4, 2016
- App. J Washington State Bar Association Petition for Interim Suspension of Mitch Harrison, June 16, 2016

App. A Jury Instruction No. 9, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2

INSTRUCTION NO. 9

To convict the defendant of the crime of Murder in the First Degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about April 28, 2010, the defendant or an accomplice committed Robbery in the First Degree;

(2) That the defendant or an accomplice caused the death of James Sanders, Sr , in the course of or in furtherance of such crime:

(3) That James Sanders, Sr. was not a participant in the crime of Robbery in the First Degree; and

(4) That any of these acts occurred in the State of Washington

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

App. B Verdict Form A, April 14, 2011, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2



10-1-01903-2 36220439 VRD 04-14-11

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

CAUSE NO. 10-1-01903-2

vs.

AMANDA CHRISTINE KNIGHT
Defendant

VERDICT FORM A



We, the jury, find the defendant Guilty of the crime of
(Not Guilty or Guilty)

Murder in the First Degree as charged in Count I.

Dean C. Tupa
PRESIDING JUROR

App. C Jury Instruction No. 26, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2

INSTRUCTION NO. 26

To convict the defendant of the crime of Robbery in the First Degree as charged in Count IV, each of the following six elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 28th day of April, 2010 the defendant or an accomplice unlawfully took personal property from the person or in the presence of another (Charlene Sanders),
- (2) That the defendant intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person or to the person or property of another;
- (4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) (a) That in the commission of these acts the defendant or an accomplice was armed with a deadly weapon;
 or
 (b) That in the commission of these acts the defendant or an accomplice inflicted bodily injury;

and

- (6) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a) or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a) or (5)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

App. D Jury Instruction No. 25, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2

INSTRUCTION NO 25

To convict the defendant of the crime of Assault in the Second Degree as charged in Count V, each of the following two elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about April 28, 2010, the defendant or an accomplice:
 - (a) intentionally assaulted Charlene Sanders and thereby recklessly inflicted substantial bodily harm; or
 - (b) assaulted Charlene Sanders with a deadly weapon, and
- (2) That this act occurred in the State of Washington

If you find from the evidence that element (2) and either alternative element (1)(a) or (1)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (1)(a) or (1)(b) has been proved beyond a reasonable doubt, as long as each juror finds that either (1)(a) or (1)(b) has been proved beyond a reasonable doubt

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to either element (1) or (2), then it will be your duty to return a verdict of not guilty.

App. E Jury Instruction No. 18, April 13, 2011, *State v. Amanda Christine Knight*, Pierce County Superior Court No. 10-1-01903-2

INSTRUCTION NO. 18

An assault is an intentional touching or striking of another person, with unlawful force, that is harmful or offensive. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

App. F Excerpt of Brief of Appellant, February 10, 2012, *State v. Amanda Christine Knight*, Court of Appeals No. 42130-5-II

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NO. 42130-5-11

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

AMANDA KNIGHT, Appellant,

v.

STATE OF WASHINGTON, Respondent,

BRIEF OF APPELLANT

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knowledge, she could not have aided and abetted in the assault. She neither associated himself with the co-defendants' assaults, participated in them with the desire to bring them about, nor sought to make the crimes succeed by any actions of her own. *See Wilson*, 91 Wn.2d at 491; *Galisia*, 63 Wn. App. at 839.

Her mere presence at the scene cannot amount to accomplice liability for the co-defendants' assaults. *See Wilson*, 91 Wn.2d at 491-92. Likewise, Ms. Knight's subsequent fleeing from the scene after the gunshots could not have aided and the co-defendants to commit the physical assaults because by then, the codefendants had already completed that crime.

Because the state failed to prove that Ms. Knight had knowledge that her actions would facilitate the assaults that occurred outside her presence and because she did not solicit or aid in those assaults, this court should vacate her assault convictions.

- 2. Ms. Knight's convictions for Second Degree Assault and First Degree Robbery of both Ms. Sanders James Sanders Sr. violate double jeopardy and the assaults must merge into the robberies.**
 - a. Even if there was sufficient evidence that Ms. Knight facilitated the assaults, the jury instructions and the jury verdict were ambiguous and must be interpreted in favor of Ms. Knight.**

When a verdict form is ambiguous and the State has failed to request a jury instruction as to which specific acts constituted a particular

element of a crime, the principle of lenity requires the court to interpret that verdict in the defendant's favor. *State v. DeRyke*, 110 Wn. App. 815, 824, 41 P.3d 1225 (2002). In another merger case, *State v. DeRyke*, the defendant was convicted of both first degree kidnapping while armed with a deadly weapon and attempted first degree rape while armed with a deadly weapon after he abducted a young girl at gunpoint and took her to a wooded area where he attempted to rape her before he was frightened off by a passerby. *Id.* at 818. Just as use of a firearm can elevate a Robbery 2 into a Robbery 1, possession of a deadly weapon can elevate a robbery from second to first degree. *Id.* at 823. The jury was instructed that either kidnapping or display of a deadly weapon could elevate the alleged attempted rape to that of the first degree, but was not asked to find which act it used to reach its verdict on the attempted rape. *Id.*

In holding that the two counts merged, the *DeRyke* court concluded that “[p]rinciples of lenity require [it] to interpret the ambiguous verdict in favor of DeRyke.” *Id.* at 824.¹ In doing so the court noted that the State was free to “but chose not to, submit[] a proposed instruction that did not include kidnapping as a basis for finding DeRyke guilty of attempted rape

¹ See also *State v. Taylor*, 90 Wn. App. 312, 317, 950 P.2d 526 (1998) (interpreting ambiguous verdict in defendant's favor).

in the first degree,” which would have alleviated any ambiguity in the verdict. *Id.* at 824.

Here, just as is *DeRyke*, the jury instructions and verdict form were ambiguous at best and the trial court erred by failing to merge the Second Degree Assault convictions and the Robbery convictions.

Ms. Knight was convicted of assaulting (two counts) and robbing (two counts) two separate victims: James Sanders Sr. and Charlene Sanders. To convict Ms. Knight of Assault in the Second Degree for either Charlene or James Sanders Jr., the jury must have found that (1) on April 28, 2010, Ms. Knight or an accomplice (a) intentionally assaulted Charlene Sanders and thereby recklessly inflicted substantial bodily harm, or (b) assaulted Charlene Sanders with a deadly weapon. CP 345-47; 350. That assault could have been an intentional touching with unlawful force that was harmful or offensive, or an act done to create a reasonable apprehension of fear in the victim. CP 345 (defining assault).

Looking at both of these instructions together, it is clear that the jury instructions required either actual force or threatened force to accomplish each respective crime. However, the jury instruction for assault in the second degree allowed the jury to convict Ms. Knight on two separate bases: either by inflicting substantial bodily harm or by simply displaying a firearm. CP 345. Thus, just as the court did in *DeRyke*, this

court must construe the jury verdict as finding that the same act that constituted the assault—or “the act done with the intent to create in another apprehension and fear of bodily injury”—was also the same act that constituted the force required for robbery—“the defendant’s use or threatened use of immediate force, violence or fear of injury.”

Furthermore, in *DeRyke*, the State failed to request a jury instruction that specified which crime—kidnapping or use of a deadly weapon—elevated his attempted rape charge to a higher degree, so the court was forced to interpret that verdict in favor of the defendant. Likewise here, the State failed to request a specific instruction on which particular acts were grounds for the Robbery and which ones it found to establish the Second Degree Assault.

Just as the State was free in *DeRyke* to offer more specific jury instructions (but decided not to), the State here simply gave the jury the broadest instructions possible to obtain a conviction on all counts. Because of this failure, the court should apply the rule of lenity to the ambiguous jury instructions and verdict, just as it did in *DeRyke*. Accordingly, the rule Lenity requires the court to interpret the assault verdict as relying upon the type of assault that is most favorable to the defendant, which in this case would be a finding that the assault occurred when the co-defendant pointed the gun at Charlene Sanders, which also established the

App. G Excerpt of Brief of Respondent, August 6, 2012, *State v. Amanda Christine Knight*, Court of Appeals No. 42130-5-II

NO. 42130-5

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

AMANDA C. KNIGHT, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Rosanne Buckner

No. 10-1-01903-2

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
MELODY CRICK
Deputy Prosecuting Attorney
WSB # 35453

930 Tacoma Avenue South
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125 Wn.2d 769, 776, 888 P.2d 155 (1995)). When a defendant's act supports charges under two statutes, the court must determine whether the legislature intended to authorize multiple punishments for the crimes in question. *Id.* "If the legislature intended that cumulative punishments can be imposed for the crimes, double jeopardy is not offended." *Id.* (citing *State v. Freeman*, 153 Wn.2d 765, 771, 108 P.3d 753 (2005)).

Defendant alleges that her conviction for robbery in the first degree and her convictions for assault in the second degree violate double jeopardy. As the jury instructions were correct, there was sufficient evidence for the verdicts and the crimes are not the same in law and fact, the convictions do not violate double jeopardy.

- a. The jury instructions were correct and the jury's verdicts were not ambiguous.

A trial court's jury instructions are reviewed under the abuse of discretion standard. A trial court does not abuse its discretion in instructing the jury, if the instructions: (1) permit each party to argue its theory of the case; (2) are not misleading; and, (3) when read as a whole, properly inform the trier of fact of the applicable law. *State v. Fernandez-Medina*, 94 Wn. App. 263, 266, 971 P.2d 521, review granted, 137 Wn.2d 1032, 980 P.2d 1285 (1999), citing *Herring v. Department of Social and Health Servs.*, 81 Wn. App. 1, 22-23, 914 P.2d 67 (1996). A criminal

defendant is entitled to jury instructions that accurately state the law, permit him to argue his theory of the case, and are supported by the evidence. *State v. Staley*, 123 Wn.2d 794, 803, 872 P.2d 502 (1994).

CrR 6.15 requires a party objecting to the giving or refusal of an instruction to state the reason for the objection. The purpose of this rule is to afford the trial court an opportunity to correct any error. *State v. Colwash*, 88 Wn.2d 468, 470, 564 P.2d 781 (1977). Consequently, it is the duty of trial counsel to alert the court to his position and obtain a ruling before the matter will be considered on appeal. *State v. Rahier*, 37 Wn. App. 571, 575, 681 P.2d 1299 (1984), citing *State v. Jackson*, 70 Wn.2d 498, 424 P.2d 313 (1967). Only those exceptions to instructions that are sufficiently particular to call the court's attention to the claimed error will be considered on appeal. *State v. Harris*, 62 Wn.2d 858, 872-3, 385 P.2d 18 (1963). The Court of Appeals will not consider an issue raised for the first time on appeal unless it involves a manifest error affecting a constitutional right. RAP 2.5(a); See *State v. Brewer*, 148 Wn. App. 666, 673, 205 P.3d 900 (2009).

Defendant did not object to the instructions that she now claims are ambiguous on appeal. The only objection defendant made to the jury instructions was in light of her halftime motion to dismiss. RP 988. The objection was that defendant was renewing her halftime motion and was

objecting to any jury instructions that pertained to the charges defendant had wanted dismissed. RP 988. There was not a specific objection to preserve an argument about the jury instructions on appeal. Further, defendant did not assign error to the jury instructions. Where no assignment of error has been made, the court will generally not consider a claimed error. See *Painting and Decorating Contractors of America v. Ellensburg School District*, 96 Wn.2d 806, 814-815, 638 P.2d 1220 (1992) (applying RAP 10.3(g)). As such, this Court should decline to consider defendant's argument that the jury instructions were ambiguous.

However, should this Court decide to address this issue, the jury instructions in this case were proper and the jury's verdict was supported by sufficient evidence. Criminal defendants have a right to a unanimous jury verdict. Const. art. 1, § 21; *State v. Goldberg*, 149 Wn.2d 888, 892-93, 72 P.3d 1083 (2003). A defendant may be convicted only when a unanimous jury concludes that the criminal act charged in the information has been committed. *State v. Stephens*, 93 Wn.2d 186, 190, 607 P.2d 304 (1980). Jury unanimity issues can arise when the State charges a defendant with committing a crime by more than one alternative means, *State v. Arndt*, 87 Wn.2d 374, 553 P.2d 1328 (1976). In an alternative means case the threshold test is whether sufficient evidence exists to

support each of the alternative means presented to the jury. *State v. Randhawa*, 133 Wn.2d 67, 74, 941 P.2d 661 (1997). If the evidence is sufficient to support each of the alternative means submitted to the jury, a particularized expression of unanimity as to the means by which the defendant committed the crime is unnecessary to affirm a conviction. *State v. Ortega-Martinez*, 124 Wn.2d 702, 708, 881 P.2d 231 (1994); *State v. Whitney*, 108 Wn.2d 506, 739 P.2d 1150 (1987). Unanimity is required as to the guilt of the single crime charged. *State v. Kitchen*, 110 Wn.2d 403, 410, 756 P.2d 105 (1988). Unanimity is not required as to the means by which the crime was committed as long as substantial evidence supports each alternative means. *Id.*

The jury was instructed appropriately. The jury was instructed that they did not have to be unanimous as to which of the alternative means, as long as each juror found one of the alternative means beyond a reasonable doubt. CP 325-375, Instructions numbers 13, 20, 25, 26. This is an appropriate statement of the law and mirrors the case law presented above. The jury instructions were clear and unambiguous. A jury is presumed to follow the trial court's instructions. *State v. Lough*, 125 Wn.2d 847, 864, 889 P.2d 487 (1995). There is no error.

Further, the jury's verdicts are not ambiguous. Defendant cites to *State v. DeRyke*, 110 Wn. App. 815, 41 P.3d 1225 (2002) for the

App. H Excerpt of Errors in Brief of Appellant

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STATE OF WASHINGTON

NO. 42130-5-11 *KB*
DEPUTY

COURT OF APPEALS, DIVISION II
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AMANDA KNIGHT, Appellant,

v.

STATE OF WASHINGTON, Respondent,

BRIEF OF APPELLANT

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Her mere presence at the scene cannot amount to accomplice liability for the co-defendants' assaults. *See Wilson*, 91 Wn.2d at 491-92. Likewise, Ms. Knight's subsequent fleeing from the scene after the gunshots could not have aided and the co-defendants to commit the physical assaults because by then, the codefendants had already completed that crime.

Because the state failed to prove that Ms. Knight had knowledge that her actions would facilitate the assaults that occurred outside her presence and because she did not solicit or aid in those assaults, this court should vacate her assault convictions.

- 2. Ms. Knight's convictions for Second Degree Assault and First Degree Robbery of both Ms. Sanders James Sanders Sr. violate double jeopardy and the assaults must merge into the robberies.**
 - a. Even if there was sufficient evidence that Ms. Knight facilitated the assaults, the jury instructions and the jury verdict were ambiguous and must be interpreted in favor of Ms. Knight.**

When a verdict form is ambiguous and the State has failed to request a jury instruction as to which specific acts constituted a particular

In sum, the jury instructions allowed the jury to convict Ms. Knight of both assault and robbery of the Sanders without finding an “independent purpose or effect” for each crime, contrary to Supreme Court precedent as the court laid out in *Kier* and *Freeman*. To hold that these crimes did not merge under the circumstances would allow the State to leave jury instructions vague and open ended so that they could always argue against merger because the jury “might have” convicted the defendant on separate grounds based upon separate harms. Yet, the Court could have rejected these same arguments as the court did in *Freeman*. *Id.* at 779. Consequently, the court should vacate Mr. Kim’s sentence for Assault in the Second Degree and remand the case for resentencing.

3. Defense counsel was deficient at sentencing because he failed to inform the court that it could impose an exceptional sentence downward.

To establish ineffective assistance of counsel, Ms. Knight must show that her trial attorney's performance was deficient and that she was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Failure to request an exceptional sentence downward may be objectively unreasonable and thus constitute ineffective assistance of counsel. In *State v. McGill*,² the defendant was sentenced to a prison term within the standard range for convictions on two cocaine delivery charges

² 12 Wn. App. 95, 98, 47 P.3d 173 (2002).

i. The trial court could have granted an exceptional sentence downward under RCW 9.94A.535 and RCW 9.94A.589

RCW 9.94A.589 provides that when a person is sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct, the sentences “shall be served consecutively to each other.” RCW 9.94A.589(a)(b). But, RCW 9.94A.535 grants a trial court the discretion to order sentences for multiple serious offenses to run concurrently as an exceptional sentence below the standard range if the court finds there are mitigating factors justifying such a sentence. RCW 9.94A.535. Prior to 2007, it was unresolved whether a court still had authority to impose an exceptional sentence downward. In *Mulholland*, the Supreme Court resolved the issue, holding that despite the seemingly mandatory language of RCW 9.94A.589(a)(b), a sentencing court has discretion to order multiple sentences for serious violent offenses to run concurrently, rather than consecutively, as an exceptional sentence under RCW 9.94A.535.³

In this case, if defense counsel had argued for an exceptional sentence downward, the court could have granted a lower sentence. At sentencing, the bulk of defense counsel’s argument was focused on whether any of Ms. Knight’s convictions should be vacated to avoid double jeopardy and merger concerns. *See* CP 401-12; CP 434-440; RP

³ *In Re Personal Restraint of Mulholland*, 161 Wn. 2d 322, 166 P.3d 677 (2007).

This intent is clear by an objective look at the record. At trial, many of the essential facts here were undisputed. It was undisputed that Ms. Knight entered the home of the victims, restrained one of the victims (Charlene Sanders), and then went upstairs to assist in taking valuables from the home. RP 910-14; RP 917-18. It is also undisputed that Ms. Knight did not carry a firearm and that she was the only defendant who did not. RP 920. Finally, it is undisputed that Ms. Knight was upstairs while the co-defendants physically assaulted two of the victims and killed another. RP 585-92. Once Ms. Knight heard the gun shots, she ran out of the home. RP 920.

These undisputed facts show that Ms. Knight only had one purpose throughout this brief encounter: to assist the codefendant's in stealing the run posted on craigslist and any other valuable items in the home. Corroborating this conclusion is the fact that Ms. Knight was upstairs while the violence occurred and was the only unarmed defendant in this case. Ms. Knight never physically harmed any of the defendants; she never carried a weapon. In short, she never evidenced any other objective intent than to commit a robbery inside the Sanders' family home.

c. Which crimes count against Ms. Knight's Offender score?

App. I Declaration of Amanda Knight, July 4, 2016

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

In re the Personal Restraint of:

AMANDA KNIGHT,

Petitioner.

Court of Appeals No. _____
Pierce Co. Superior No. 10-1-01903-2

DECLARATION OF AMANDA KNIGHT

I, Amanda Knight, hereby declare as follows:

1. I am the Petitioner in this personal restraint petition.
2. Although the opening brief on my direct appeal lists both John Crowley and Mitch Harrison as my attorneys, Mr. Crowley did not play any role on the briefing. Mr. Harrison was working for Mr. Crowley when I first hired him for the appeal, but Mr. Harrison left that firm during the course of the appellate proceedings.

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

07/04/2016
Date – Gig Harbor, Washington

Amanda Knight
Signature

App. K Washington State Bar Association Petition for Interim Suspension of Mitch Harrison, June 16, 2016



WSBA

OFFICE OF DISCIPLINARY COUNSEL

M Craig Bray
Disciplinary Counsel

direct line: (206) 239-2110
email: craigb@wsba.org

June 16, 2016

Susan L. Carlson, Supreme Court Clerk
Supreme Court of Washington
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Re: In re Mitch Harrison, Bar No. 43040
ODC File No. 16-00265

Dear Ms. Carlson:

Enclosed is a Petition for Interim Suspension of Mitch Harrison, with the following attachments: Declaration of Disciplinary Counsel with appendices. Also enclosed is a declaration of service by mail. See ELC 7.2(b)(1).

Please present these documents to the Chief Justice for appropriate action.

Sincerely,

A handwritten signature in black ink, appearing to read "CB", written over a horizontal line.

M Craig Bray
Disciplinary Counsel

Enclosures

cc: Mitch Harrison
Public Bar File

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

MITCH HARRISON,

Lawyer (Bar No. 43040).

Supreme Court No.
ODC File No. 16-00265

DECLARATION OF MAIL
SERVICE

The undersigned Disciplinary Counsel of the Washington State Bar Association declares that he caused a copy of ODC's Petition for Interim Suspension [ELC 7.2(a)(3)] to be mailed by regular first class mail with postage prepaid on June 16, 2016, to:

Mitch Harrison
Attorney at Law
221 1st Ave W Ste 320
Seattle, WA 98119-4224

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

June 16, 2016; Seattle, WA
Date and Place



M Craig Bray,
Bar No. 20821
Disciplinary Counsel
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 239-2110

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

MITCH HARRISON,
Lawyer (Bar No. 43040).

Supreme Court No.
ODC File No. 16-00265

ODC'S PETITION FOR
INTERIM SUSPENSION [ELC
7.2(a)(3)]

Under Rule 7.2(a)(3) of the Rules for Enforcement of Lawyer Conduct (ELC), the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association petitions this Court for an Order of Interim Suspension of Respondent Mitch Harrison pending cooperation with the disciplinary investigation.

This Petition is based on the Declaration of Disciplinary Counsel M Craig Bray, filed with this Petition.

STATEMENT OF GROUNDS/ARGUMENT

Respondent failed to respond to ODC's requests that he respond to a grievance filed against him, identified as ODC File No. 16-00265, and failed to appear at a non-cooperation deposition to which he was subpoenaed.

Respondent failed to produce his complete files and documents related to his representation of five separate clients in response to a

subpoena duces tecum issued by Disciplinary Counsel under ELC 5.3(h)(1).

It is necessary to obtain Respondent's response and records so that ODC can determine what Respondent did with fees paid him by the clients and the extent of work, if any, he performed on behalf of those clients. By refusing to respond or otherwise cooperate with the grievance investigation, Respondent has impeded and delayed the disciplinary process. Accordingly, ODC asks this Court to order that Respondent Mitch Harrison be immediately interim suspended from the practice of law pending compliance with ODC's investigation in this matter.

STANDARD

Under ELC 7.2(a)(3), a respondent lawyer may be immediately suspended from the practice of law when a lawyer fails without good cause to comply with a request from ODC for information or documents or fails without good cause to comply with a subpoena.¹ Respondent's

¹ ELC 7.2(a)(3) provides:

When any lawyer fails without good cause to comply with a request under rule 5.3(g) for information or documents, or with a subpoena issued under rule 5.3(h), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the lawyer pending compliance with the request or subpoena. A petition may not be filed if the request or subpoena is the subject of a timely objection under rule 5.5(e) and the hearing officer has not yet ruled on that objection. If a lawyer has been suspended for failure to cooperate and thereafter complies with the request or subpoena, the lawyer may petition the Court to terminate the suspension on terms the Court deems appropriate.

failure to comply with ODC's requests for response and its subpoena meets this standard.

EFFECT OF RESPONDENT'S FAILURE TO COOPERATE

The lawyer discipline system provides "protection of the public and preservation of confidence in the legal system." In re Disciplinary Proceeding Against McMurray, 99 Wn.2d 920, 930, 655 P.2d 1352 (1983). Given the limited resources available to investigate allegations of lawyer misconduct, "such investigations depend upon the cooperation of attorneys." Id. at 931.

"Compliance with these rules is vital." In re Disciplinary Proceeding Against Clark, 99 Wn.2d 702, 707, 663 P.2d 1339 (1983). Because Respondent has not responded to the grievance, appeared for a deposition, or produced his client files and documents, ODC has not been able to determine whether Respondent properly handled client funds paid to him in return for provision of legal services or whether he timely performed legal work for those clients. ODC's effective and timely investigation of the grievance and protection of the public has been impeded and delayed.

CONCLUSION

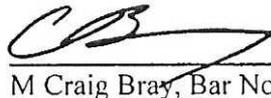
Respondent's failure to cooperate with a disciplinary investigation is an ongoing violation of ELC 7.2(a)(3). Accordingly, ODC asks the

Court to issue an order to show cause under ELC 7.2(b)(2) requiring Mitch Harrison to appear before the Court on such date as the Chief Justice may set, and show cause why this petition for interim suspension should not be granted.

DATED THIS 16th day of June, 2016.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



M Craig Bray, Bar No. 20821
Disciplinary Counsel
Washington State Bar Association
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 239-2110

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

MITCH HARRISON,
Lawyer (Bar No. 43040).

Supreme Court No.
ODC File No. 16-00265

DISCIPLINARY COUNSEL
DECLARATION

I, M Craig Bray, declare and state:

1. I am the disciplinary counsel assigned to investigate the grievance against Respondent lawyer Mitch Harrison identified as ODC File No. 16-00265. This statement is submitted based on personal knowledge and on a review of the records and files in this matter.

2. On February 22, 2016, the Office of Disciplinary Counsel (ODC) received a grievance against Respondent Mitch Harrison alleging that he had taken fees from five clients, but failed to timely do the legal work that he was hired to do for them and stopped communicating with them about their matters. Appendix A.

3. ODC opened grievance file number 16-00265 to investigate.

4. On February 25, 2016, ODC sent Respondent a letter acknowledging the grievance and requesting that he provide a written response to the grievance within 30 days. Appendix B.

5. Respondent did not respond.

6. On March 30, 2016, ODC sent Respondent a letter directing

him to file a written response to the grievance by April 12, 2016, informing him that if he did not respond he may be subpoenaed for a deposition and could be subject to interim suspension. Appendix C.

7. Respondent did not respond.

8. On April 26, 2016, ODC issued a subpoena duces tecum requiring Respondent to appear for a deposition on May 25, 2016 at 1:00 p.m. at the office of the Washington State Bar Association (WSBA), 1325 4th Avenue, Seattle, WA 98101, and to bring his complete files and whatever documents may be in his possession or control relating to his representations of the five separate clients denominated in the grievance. Appendix D.

9. Respondent was personally served with the subpoena on April 26, 2016. Appendix E.

10. On the morning of May 25, 2016, Respondent called me on the telephone, said he had been served with the subpoena, was accumulating the files and documents the subpoena directed him to bring to the deposition, and would appear at 1:00 p.m.

11. At approximately 11:30 a.m. that day (May 25, 2016), downtown Seattle, including the building in which the WSBA office is located, lost electrical power. Elevators stopped working. Stairwells were dark. Traffic signals stopped functioning leading to downtown gridlock.

Appendix F. The WSBA telephone system, however, continued to function.

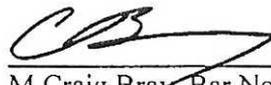
12. I reached Respondent by telephone at approximately 12:00 noon and advised him that, due to the electrical outage and uncertainty as to when power would be restored, I was continuing the deposition to Monday June 6, 2016 at 1:00 p.m. Respondent acknowledged the schedule change. I also told Respondent that I would cancel the deposition if he filed a written response to the grievance and provided the subpoenaed files and documents by June 3, 2016.

13. As of this date, Respondent has not provided a written response to the grievance and has not provided the subpoenaed files and documents.

14. Respondent did not appear for the deposition on June 6, 2016 at 1:00 p.m.

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

June 16, 2016; Seattle, WA
Date & Place


M Craig Bray, Bar No. 20821
Disciplinary Counsel

APPENDIX A



WASHINGTON STATE BAR ASSOCIATION

1325 Fourth Ave, Ste 600
Seattle, WA 98101-2539

GRIEVANCE AGAINST A LAWYER

General Instructions

- Read our information sheet *Lawyer Discipline in Washington* before you complete this form.
 - If you have a disability or need assistance with filing a grievance, call us at 206-727-8207. We will take reasonable steps to accommodate you.
 - Please note that this form is only for new grievances. *If you have already filed a grievance, do not use this form to send us additional information.* Mail any additional information with your grievance file number to our office address or send it to the email address caa@wsba.org.
 - If you provide an email address, you will receive a confirmation email after you submit your grievance. *We will communicate with you by letter after we review your grievance.*
-

Date Received: 2/22/2016 1:23:18 PM

Confirmation Number: 201602220002

Information about You

Prefix: Mr.
Name: David Zuckerman
Address: 705 2nd Ave., Ste 1300
Seattle, WA 98104-1741 USA
Phone Number: (206) 623-1595
Email Address: david@davidzuckermanlaw.com

Information about the Lawyer

Bar Number: 43040
Name: Mitch Harrison
Address: 221 1st Ave W., Ste 320
Seattle, WA 98119-4224 USA
Phone Number: (206) 732-6555
Email Address: mitch@mitchharrisonlaw.com

Information about the Grievance

Describe your relationship to the lawyer who is the subject of your grievance: Other, I am a lawyer who has become aware of ethical violations.

Is your grievance about conduct in a court case? Yes

If yes, what is the case name, file number, and court name?

Case Name: See Attached
File Number: See Attached
Court Name: See Attached

Explain your grievance in your own words. Give all important dates, times, places, and court file numbers.

See Attached

Attached Files

- Bar Complaint Against Mitch Harrison (with Exhibit) 02 22 16.pdf
-

Affirmation

I affirm that the information I am providing is true and accurate to the best of my knowledge. I have read *Lawyer Discipline in Washington* and I understand that all information that I submit can be disclosed to the lawyer I am complaining about and others.

WASHINGTON STATE BAR ASSOCIATION

GRIEVANCE AGAINST MITCH HARRISON, WSBA #43040

Grievant: David B. Zuckerman
Law Office of David B. Zuckerman
705 Second Avenue Suite 1300
Seattle, WA 98104
Phone: (206) 623-1595
Email: david@davidzuckermanlaw.com

Lawyer: Mitch Harrison
Harrison Law
221 - 1st Ave West, Suite 320
Seattle, WA 98119-4224
Phone: (206) 732-6555
Email: mitch@mitchharrisonlaw.com

I. SUMMARY

I am an appellate lawyer with a focus on post-conviction petitions. I am co-author of the post-conviction section of the Washington Appellate Deskbook, and I was the Washington Association of Criminal Defense Lawyers (WACDL) Spokesman for the recent amendments to the rules for personal restraint petitions. I am also co-president of the Washington Appellate Lawyers Association (WALA).

I have been aware for some time that Mr. Harrison sends out mass mailings to prisoners immediately after they have lost their first appeal. He offers to take on further appeals or petitions for relatively small fees. *See* Exhibit 1. I understand that this practice does not in itself violate the RPC's.

Within the last few months, however, I have received five complaints from prisoners who entered into fee agreements with Mr. Harrison. In four of these cases, Mr. Harrison took a flat fee for specific post-conviction litigation, dropped out of touch with the client without completing the promised work, and ignored requests for a refund. In the fifth case, Mr. Harrison

HARRISON GRIEVANCE - 1

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
206.623.1595
FAX 206.623.2186

1 did file a petition, but the court identified several deficiencies and asked him to correct them.
2 Over a period of five months the Court gave Mr. Harrison multiple opportunities to correct the
3 petition but he never responded at all. Ultimately, the Court dismissed the petition due to
4 abandonment.

5 In several of these cases, Mr. Harrison caused the client to miss a filing deadline, which
6 may mean they will never have a chance to challenge their convictions or sentences.

7 Mr. Harrison's conduct violated RPC 1.1 (Competence), RPC 1.3 (Diligence), and RPC
8 1.5 (Unreasonable Fee).

9 I am aware that the Bar has been hesitant to discipline criminal defense lawyers. I hope
10 that at least in these extreme cases the Bar will take the matter seriously. Mr. Harrison is
11 essentially preying on the most vulnerable clients with no regard for anything besides his
12 personal financial gain. I have taken on this project pro bono because lawyers like Mr. Harrison
13 sully the reputation of all criminal defense lawyers. I am hoping to see him disbarred, and for
14 the Bar to reimburse his victims through the client protection fund.

15 I am continuing to gather information on these cases, but I hope that the information I am
16 presenting now is sufficient for the Bar to open an investigation.

17 II. THE MARKWELL CASE

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19 John Markwell was convicted of a third "strike" and sentenced to life in prison. Through
20 the efforts of investigator Winthrop Taylor, Mr. Markwell had several strong claims for reversal,
21 including that the jurors were aware of Markwell's prior convictions although the trial court
22 excluded such evidence. Mr. Markwell paid Mitch Harrison \$10,000 to file a personal restraint
23 petition (PRP). Such petitions must generally be filed within one year from the date of the
24 mandate on direct appeal. There are some exceptions to that rule, however, including claims
25

1 based on newly discovered evidence which could not have been discovered earlier through due
2 diligence.

3 Mr. Harrison ultimately filed the PRP on June 23, 2015. Exhibit 2. On June 30, 2015, the
4 Clerk sent a letter to counsel noting that he failed to pay the filing fee or enclose a statement of
5 finances for a waiver of the fee. The Clerk gave him one month to correct the deficiency.

6 Exhibit 3. Mr. Harrison did not respond.

7 On July 23, 2015, the Court sent another letter to Mr. Harrison noting further
8 deficiencies. First, the table of contents pertained to a different case. Second, the Court noted
9 that Mr. Harrison had the wrong date for the mandate on Mr. Markwell's direct appeal. This
10 meant that, instead of being filed one day before the deadline, the PRP was filed three days late.
11 The Court helpfully enclosed a copy of the mandate and gave Mr. Harrison 30 days to submit a
12 corrected PRP. The Court noted that the re-submitted PRP would be subject to the time limits
13 set out in RCW 10.73.090 and .100. Exhibit 2.¹ Mr. Harrison did not respond.

14 On August 28, 2015, the Court sent a letter to Mr. Harrison noting that he had not filed a
15 corrected petition. "Unless you file the corrected personal restraint petition within 10 days from
16 the date of this letter, by **September 8, 2015**, this matter may be set on the Commissioner's
17 docket on a Court's motion to dismiss for abandonment." Exhibit 4 (emphasis in original). Mr.
18 Harrison did not respond.

19 On September 17, 2015, the Court sent the following notice to Mr. Harrison:

20 Pursuant to the Court's letter of August 28, 2015, you have failed to file the
21 corrected personal restraint petition in the above referenced case. Therefore, this
22 file has been forwarded to the Commissioner's office for setting on their docket
for dismissal for abandonment.

23 This matter will be considered on the docket of **October 7, 2015**, at 9 a.m.,
24 without oral argument.

25 ¹ It appears that at least some of the claims might have met the exception for newly discovered evidence.

1 Exhibit 5 (emphasis in original). Mr. Harrison did not respond.

2 On October 19, 2015, the Court sent the following letter to Mr. Harrison:

3 Enclosed is your copy of the Commissioner's Ruling, which was filed by this
4 Court today.

5 If objections to the ruling are to be considered (RAP 17.7), they must be made by
6 way of a Motion to Modify filed in this Court within 30 days from the date of this
7 ruling, **November 18, 2015**. Please file the original with one copy; serve a copy
8 upon the opposing attorney and file proof of such service with this office.

9 If a motion to modify is not timely filed, appellate review is terminated.

10 Exhibit 6 (emphasis in original). Again, Mr. Harrison did not respond.

11 The Court issued a Certificate of Finality on December 9, 2015. Exhibit 7.

12 Mr. Harrison did not inform Mr. Markwell of any of these events.

13 III. THE RIVAS CASE

14 Mary Jane Rivas is serving a sentence at the Washington Corrections Center for Women
15 (WCCW) for the crimes of drug possession and vehicular assault. On April 19, 2015, Ms.
16 Rivas's father, Dave Reisdorph, signed an agreement with Mitch Harrison, providing that for
17 \$8,000, Mr. Harrison would prepare and file a PRP challenging Ms. Rivas's convictions. One
18 provision of the contract states:

19 If for any reason the attorney/client relationship terminates prior to the conclusion
20 of services stated in this agreement, the Harrison Law Firm will refund any
21 unearned fees when requested to do so, if any such fees are still unearned at the
22 time of the request. This will be calculated by applying the hourly rated [sic] as
23 stated above.

24 Exhibit 8. The \$8,000 fee was paid in full on May 19, 2015.

25 On May 21, 2015, my partner Maureen Devlin met with Ms. Rivas for the purpose of
discussing a clemency petition. Ms. Rivas mentioned that Mr. Harrison was looking into a PRP
but that he had not filed anything yet. Ms. Rivas was concerned about the lack of progress on her

1 PRP and with the lack of communication from Mr. Harrison. Ms. Rivas told Ms. Devlin that her
2 father had nearly depleted his savings to pay Mr. Harrison. One reason her father was willing to
3 do so was that he was suffering from a fatal illness and wished to see Ms. Rivas free before he
4 died.

5 In the interest of coordinating their work and reassuring Ms. Rivas that her PRP was in
6 fact progressing, Ms. Devlin sent Mr. Harrison a signed release so they could discuss Ms.
7 Rivas's legal matters. After many unsuccessful attempts to reach Mr. Harrison by phone or
8 email, she spoke with him on June 2, 2015. He promised to update Ms. Rivas on his progress.
9 Ms. Devlin broached the subject of a refund if it appeared that no meritorious claims could be
10 found. He assured her that he was keeping track of his time and that he would return unearned
11 fees. Ms. Devlin also noted that I focused on post-conviction work and that I would be happy to
12 discuss the case with him. Mr. Harrison expressed an interest in that. Ms. Devlin memorialized
13 the conversation in a contemporaneous letter. Exhibit 9.

14 Ms. Devlin and I focused on a refund because it seemed unlikely that any litigation would
15 be helpful. Ms. Rivas was well beyond the one-year time limit, she had pled guilty to an agreed
16 sentence, and the plea agreement provided that she waived her right to appeal the sentence.

17 On June 27, 2015, Mr. Harrison sent a letter to Ms. Rivas saying that the case was
18 progressing. Exhibit 10.

19 Over a period of weeks, I attempted to contact Mr. Harrison by email and telephone. We
20 finally had a phone conversation on September 1, 2015. Mr. Harrison apologized that he had
21 been busy for a long time and unable to make much progress with Ms. Rivas's case. He said he
22 had obtained some documents from the prosecutor's office but did not yet have a complete file.
23 He suggested some possible claims regarding the sentencing, but had no answer for getting
24 around the waiver. At the time we spoke, he said he could not locate a copy of that document.
25 But he promised to send me a copy as soon as he found it. I memorialized my conversation in a

1 letter to Ms. Rivas dated September 4, 2015. *See* Exhibit 11. I sent reminder emails to Mr.
2 Harrison on September 18 and September 24, but received no response.

3 On October 27, 2015, I sent Ms. Rivas a letter explaining that it did not appear that Mr.
4 Harrison was doing much for her. Exhibit 12.

5 In early November, Ms. Rivas sent a letter to Mr. Harrison, with a copy to me asking him
6 to withdraw from the case and to send a refund. She authorized me to negotiate with Mr.
7 Harrison if he believed he was entitled to any payment. *See* Exhibit 13. On November 10, 2015,
8 I sent a copy of Ms. Rivas's letter to Mr. Harrison. Exhibit 14. On December 1, 2015, Mr.
9 Harrison sent me an email saying that he would send out a withdrawal letter and a check for a
10 full refund. Exhibit 15. We had some further email exchanges about to whom the money should
11 be sent and in what form. He never sent any money and he ignored my further emails to him.

12 On December 23, 2015, Ms. Rivas signed an authorization for Mr. Harrison to send all
13 his files to me. I emailed that to him on January 4, 2016. Exhibit 16.

14 To date, he has never sent any files to me.

15 IV. THE PHILLIPS CASE

16
17 Kimberly Phillips is serving a sentence at WCCW. On December 5, 2014, Ms. Phillips
18 and Mr. Harrison entered into a contract for a motion to reduce Ms. Phillips's sentence for a flat
19 fee of \$3,000. Exhibit 17. The terms are similar to those in Ms. Rivas's case. Ms. Phillips made
20 numerous attempts to contact Mr. Harrison and get an update on her case. The only response she
21 received was a brief letter from Mr. Harrison's law clerk dated September 21, 2015. It states that
22 Mr. Harrison had not even obtained Ms. Phillips's file as of that date. Exhibit 18.

23 Ms. Phillips has heard nothing from Mr. Harrison since then. She recently sent him a
24 letter formally firing him and requesting her file. She received no response.

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V. THE HIRST CASE

Lacey Hirst's mother paid Mr. Harrison \$1,000 for a "case review" on November 28, 2014." Exhibit 19. Hearing nothing from him, Ms. Hirst sent letters to Mr. Harrison on January 27, February 14, February 21 and June 15, 2015. See Exhibit 20.

Mr. Harrison has never responded to any of her inquiries.

VI. THE KNIGHT CASE

Amanda Knight is a prisoner at WCCW. On April 11, 2014, Mr. Harrison signed an agreement providing in part: "Appeal to Federal Court - \$4,000" and "Option for PRP - \$4,000."² Mr. Harrison explained to Ms. Knight that he intended to file a petition for certiorari. He told her that they had a year to file for certiorari, and that if it was unsuccessful, they would have another year to file a PRP. Exhibit 21.

In fact, the deadline for certiorari is 90 days. Had Mr. Harrison filed a timely petition for certiorari, Ms. Knight would have had a year from the date that petition was decided to file a PRP. But in fact, Mr. Harrison never filed anything, and he would not respond to Ms. Knight's many attempts to contact him. On November 16, 2015, about 17 months after Mr. Harrison took Ms. Knight's money, Ms. Knight sent him a letter by certified mail seeking a full refund. Exhibit 22. He did not respond.

In short, Mr. Harrison took \$4,000 from Ms. Knight, did nothing, and also prevented her from filing a timely postconviction petition.

Ms. Knight filed a Bar complaint regarding this matter in 2015. It was dismissed without a response from Mr. Harrison. It appears that the Bar treated this as a mere failure of Mr.

² It is not clear from the contract itself what Mr. Harrison meant by an appeal to a federal court. Ms. Knight had already lost her direct appeal from her state court conviction. The only avenues to federal court would have been a petition for certiorari filed in the U.S. Supreme Court or a federal habeas action in the federal district court for the Western District of Washington.

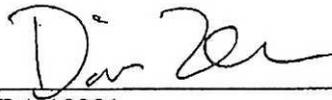
1 Harrison to communicate with his client. Ms. Knight may not have made clear the true nature of
2 Mr. Harrison's misconduct. Further, it is now clear that Mr. Harrison's conduct in Ms. Knight's
3 case was not an aberration, but rather a chronic problem.

4
5 **VII. CONCLUSION**

6 These five cases of misconduct which happened to come my way are likely only the tip
7 of the iceberg. Mr. Harrison's standard operating procedure appears to be taking as much money
8 as he can get from the client, promising great results, and then abandoning the client. I am
9 hoping the Bar will open an investigation and ultimately disbar him. I also hope the Bar will
10 reimburse the victims through the Bar's client protection fund. I will be happy to assist with
11 providing further documentation.

12 DATED this 22nd day of February, 2016.

13 Respectfully submitted:

14 

15 WSBA 18221
16 Law Office of David B. Zuckerman
17 705 Second Avenue, Suite 1300
18 Seattle, WA 98104
19 Phone (206) 623-1595
20 Fax (206) 623-2186
21 david@davidzuckermanlaw.com

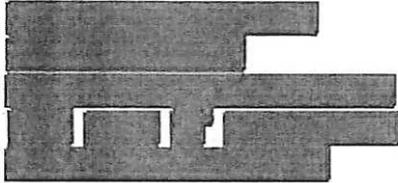


HARRISON LAW

101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2965 - Fax (888) 598-1715

June 30, 2015

To:



RE: You May Still Be Able to Challenge Your Conviction

Dear [REDACTED],

My name is Mitch Harrison. I am a private criminal appeals attorney here in Washington State. Court records show that the Court of Appeals has unfortunately affirmed your recent conviction on appeal. I am writing you to tell you that there may still be hope in overturning your conviction. If you still wish to fight your conviction, I may be able to help. The two most likely ways to do this would be through a Petition to the Supreme Court or through a Personal Restraint Petition (PRP).

My fees for these services are very reasonable. For a Petition to the Supreme Court, I typically charge approximately \$2,000. If we decide that filing a PRP is a better option for your case, I offer a full case evaluation and review of your file for \$500, after which I will give my honest opinion as to your cases of success if we were to file a PRP in an effort to overturn your conviction.

Important Deadlines. If you want to file a Petition for Review, you only have 30 days from the day the Court of Appeals denied your appeal to ask the Supreme Court to Review your case. Generally, if you want to challenge your conviction through a PRP, you have about one year from the date your appeal was denied (but the rule is not this simple, and you should consult with an attorney about when a PRP would be due in your case).

Please feel free to contact me so we may discuss your case and your options. I am based in Seattle, but I handle cases all over the State and in every county. If you would like to know more, you may contact me at any of the phone numbers below:

Seattle Area: (206) 732 - 6555

Tacoma Area: (253) 335 - 2965

Eastern Washington: (509) 778 - 4714

Mitch Harrison

Attorney

Harrison Law

Email: Mitch@MitchHarrisonLaw.com

Exhibit 1

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>



July 23, 2015

Mitch Harrison
Harrison Law
101 Warren Ave N
Seattle, WA 98109-4928
mitch@mitchharrisonlaw.com

CASE # 335445
Personal Restraint Petition of John Henry Markwell
GARFIELD COUNTY SUPERIOR COURT No. 111000153

Counsel:

The Court has received the above-referenced personal restraint petition filed by counsel in Division I of the Court of Appeals on June 23, 2015. The Court observes that the Table of Contents section at pages I-v pertains to a different case than Mr. Markwell's petition. The Court is returning the petition to counsel for appropriate correction.

The Court also observes that in the "Procedural Issues" section of the petition at pages 7-8, Mr. Markwell states that the petition is timely filed less than one year from when "Mr. Markwell's conviction became final on June 24, 2015, the day the court of appeals filed the mandate in his direct appeal." *Id.* at 8. The correct mandate date, however, is June 20, 2014. A copy of the mandate in the direct appeal no. 31167-8-III is enclosed for counsel's reference. Counsel may also make changes to the petition, if any, that counsel deems necessary in view of the June 20, 2014 mandate date. Counsel is advised that the petition remains subject to the strictures of RCW 10.73.090 and .100.

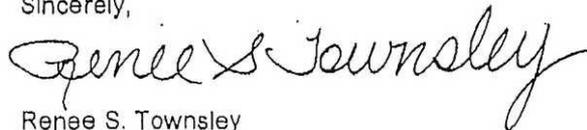
The Court requests that counsel resubmit the petition within 30 days hereof, no later than August 24, 2015.

Exhibit 2

Court of Appeal No. 335445
Personal Restraint Petition of John Henry Markwell
July 23, 2015
Page 2

In addition, given the respondent's brief is not due, no action will be taken on respondent's motion for extension of time to file the respondent's brief. This Court will notify the parties if a response is required in the above personal restraint petition.

Sincerely,



Renee S. Townsley
Clerk/Administrator

RST:jld

c: Matthew Lee Newberg
Garfield County Prosecuting Attorney
809 Columbia St
PO Box 820
Pomeroy, WA 99347-0820
mnewberg@co.garfield.wa.us

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

June 30, 2015

Mitch Harrison
Harrison Law
101 Warren Ave N
Seattle, WA 98109-4928
mitch@mitchharrisonlaw.com

CASE # 335445
Personal Restraint Petition of John Henry Markwell
GARFIELD COUNTY SUPERIOR COURT No. 111000153

Counsel:

We received the personal restraint petition and have opened a file under Court of Appeals No. 335445. We note you did not include petitioner's statement of finances or the \$250.00 filing fee.

Enclosed is a statement of finances form for a personal restraint petition. If Petitioner wants the court to consider a waiver of the filing fee, he must complete the enclosed form, sign it and return it to this office, by **July 31, 2015**.

Upon receipt of the \$250 filing fee or the completed statement of finances form we will proceed with the petition in the usual manner.

Sincerely,

A handwritten signature in cursive script that reads "Renee S. Townsley".

Renee S. Townsley
Clerk/Administrator

RST:jld

Exhibit 3

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

August 28, 2015

Mitch Harrison
Harrison Law
101 Warren Ave N
Seattle, WA 98109-4928
mitch@mitchharrisonlaw.com

CASE # 335445
Personal Restraint Petition of John Henry Markwell
GARFIELD COUNTY SUPERIOR COURT No. 111000153

Counsel:

Our records indicate the corrected personal restraint petition in the above-referenced case was due in this Court on August 24, 2015. To date, it has not been filed. Unless you file the corrected personal restraint petition within 10 days from the date of this letter, by **September 8, 2015**, this matter may be set on the Commissioner's docket on a Court's motion to dismiss for abandonment.

Sincerely,

RENEE S. TOWNSLEY
Clerk/Administrator

Janet L. Dalton, Case Manager

RST:jld

c: Matthew Lee Newberg
Garfield County Prosecuting Attorney
809 Columbia St, PO Box 820
Pomeroy, WA 99347-0820
Email

Exhibit 4

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

September 17, 2015

Mitch Harrison
Harrison Law
101 Warren Ave N
Seattle, WA 98109-4928
mitch@mitchharrisonlaw.com

CASE # 335445
Personal Restraint Petition of John Henry Markwell
GARFIELD COUNTY SUPERIOR COURT No. 111000153

Counsel:

Pursuant to the Court's letter of August 28, 2015, you have failed to file the corrected personal restraint petition in the above referenced case. Therefore, this file has been forwarded to the Commissioner's office for setting on their docket for dismissal for abandonment.

This matter will be considered on the docket of October 7, 2015, at 9 a.m., without oral argument.

Sincerely,

Renee S. Townsley
Clerk/Administrator

A handwritten signature in black ink, appearing to read "Bridget-Anne Lochelt".

Bridget-Anne Lochelt
Commissioners' Administrative Assistant

RST:bal
C: Matthew L. Newberg

Exhibit 5

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

October 19, 2015

Matthew Lee Newberg
Garfield County Prosecuting Attorney
809 Columbia St
PO Box 820
Pomeroy, WA 99347-0820
mnewberg@co.garfield.wa.us

Mitch Harrison
Harrison Law
221 1st Ave W Ste 320
Seattle, WA 98119-4224
mitch@mltchharrisonlaw.com

CASE # 335445
Personal Restraint Petition of John Henry Markwell
GARFIELD COUNTY SUPERIOR COURT No. 111000153

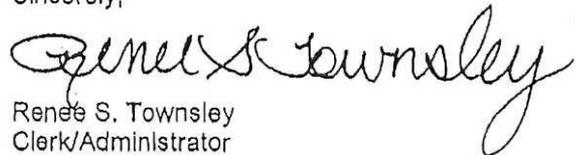
Counsel:

Enclosed is your copy of the Commissioner's Ruling, which was filed by this Court today.

If objections to the ruling are to be considered (RAP 17.7), they must be made by way of a Motion to Modify filed in this Court within 30 days from the date of this ruling, **November 18, 2015**. Please file the original with one copy; serve a copy upon the opposing attorney and file proof of such service with this office.

If a motion to modify is not timely filed, appellate review is terminated.

Sincerely,


Renee S. Townsley
Clerk/Administrator

RST:bal
Encl.

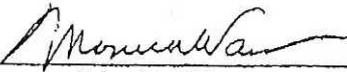
Exhibit 6

No. 33544-5-III

Mr. Markwell has not responded to the Court's letters, and he has not filed a corrected petition. The foregoing evidences his intent to abandon his personal restraint petition. Accordingly,

IT IS ORDERED, the personal restraint petition is dismissed as abandoned for failure to file a corrected petition.

October 19, 2015



Monica Wasson
Commissioner

FILED

DEC 09 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Application
for Relief From Personal Restraint
of:

JOHN HENRY MARKWELL,

Petitioner.

CERTIFICATE OF FINALITY

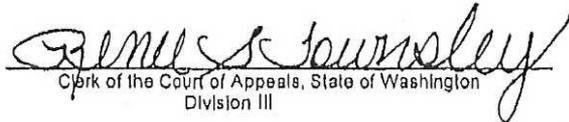
No. 33544-5-III

Garfield County No. 11-1-00015-3

The State of Washington to: The Superior Court of the State of Washington,
In and for Garfield County

This is to certify that the ruling of the Court of Appeals of the State of Washington, Division III, filed on October 19, 2015 became the decision terminating review of this court in the above-entitled case on November 18, 2015. The cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the ruling.

In testimony whereof, I have hereunto set my hand and affixed the seal
of said Court at Spokane, this 9th day of December, 2015.


Clerk of the Court of Appeals, State of Washington
Division III

cc: John Henry Markwell
Mitch Harrison
Matthew L. Newberg

Exhibit 7



HARRISON LAW

101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2965 - Fax (388) 598-1715

AGREEMENT FOR LEGAL SERVICES

This agreement is a contract between the Harrison Law Firm and the Client(s) named below. By signing this agreement, both the Client and the Harrison Law Firm agree to the terms as described below.

CLIENT INFORMATION

Client Name: Mary Rivas
Contact Name: Dave Reisdorph *Reisdorph*
Phone Number: (360) 960 - 0878
Mailing Address: *66155 161st St, Ct. E.*
Waujallup, WA
98375
Email Address: *dex-tar-1@live.com* *Check this box if you prefer to receive*
or dex-tar-2@gmail.com *email than mail* *prefer both mail & email*

**If you are in prison and would like to authorize someone else to discuss your case with the Harrison Law Firm, please include that person's name and contact information above.*

LEGAL SERVICES & FEE AMOUNT

Legal Services Included & Fee Amount. In return for the fee described below, the Harrison Law Firm agrees to perform the following legal services for the above named client:

Personal Restraint Petition Challenging Convictions in King County Superior Court
Vehicular Homicide -- DUI
\$8,000 to \$12,000

Legal Services Not Included in Fee Amount. This fee does not include the cost of any post appeal motions, such as motions for re-consideration, petitions to the Supreme Court, or any other legal work that may follow the decision of the court to grant or deny the relief requested.

METHOD AND TIMING OF PAYMENT(S)

This fee may be paid by cash, money order, check or credit card. Payment of \$8,000 will be due upfront. If no court hearings are required, that will be the total fee. If any hearings in the trial court are necessary, an additional \$4,000 will be due one month before that hearing. A down payment of \$2000 is necessary to start the work described above, with payments of \$1000 per month after that. Once the balance of \$8000 is paid in full, Harrison Law will file documents with the court of appeals.

Exhibit 8

The parties may later agree, once the majority of the balance is paid, that it is necessary to file the PRP before the full balance is paid.

TYPE OF LEGAL FEE

This is a *flat fee* case. In other words, the fees described in this agreement will be credited to the Harrison Law Firm's business account and will prepay for attorney's time and any paralegal time spent working on my case. These fees are earned upon receipt and may be deposited into the attorney's business operating account and shall not be deposited into the attorney's trust account.

Because this is a flat fee case, the fee noted above will be the final amount owed for the legal services described above. The Harrison Law Firm is required to notify you that this case *will not be billed on an hourly basis* (which would normally be \$300 per hour). The fee in this case will not change, regardless of the number of attorney hours spent on the case.

If for any reason the attorney/client relationship terminates prior to the conclusion of services stated in this agreement, the Harrison Law Firm will refund any unearned fees when requested to do so, if any such fees are still unearned at the time of the request. This will be calculated by applying the hourly rate as stated above.

COSTS

The fee stated above does not include fees or costs for services not mentioned above, including costs to pay for transcripts, investigator fees, filing fees, court costs, or any other costs not mentioned above.

FINAL TERMS OF THIS AGREEMENT

By signing this agreement, all parties agree to several final terms.

First, they agree that they fully understand the terms described above. If the client had any questions before signing this agreement, the Harrison Law Firm answered those questions and clarified any terms that may have been confusing or unclear.

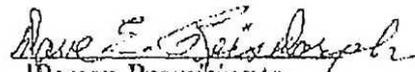
Second, if, after signing this agreement, any party wishes to change the terms of this agreement, the parties must agree to those changes in writing.

Finally, all signing parties have received a copy of this agreement.

DATED March 24, 2015.

DATED 04-19-, 2015.

Harrison Law Firm


[Person Promising to
Ensure Payment]

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 HOGE BUILDING
705 SECOND AVENUE
SEATTLE, WASHINGTON 98104

TELEPHONE:
(206) 538-5302

E-MAIL: MAUREEN@DAVIDZUCKERMANLAW.COM
WEBSITE: WWW.DAVIDZUCKERMANLAW.COM

FAX:
(206) 623-2186

June 2, 2015

Mitch Harrison
Harrison Law
101 Warren Ave N.
Ste 2
Seattle, WA 98109

Re: Mary Jane Rivas

Dear Mitch:

Thank you for speaking with me today.

It was reassuring to learn that you will be talking with Mary Jane this week. It was also reassuring to hear that you are keeping track of your time and that you will refund unearned fees. So many lawyers just take the money and run in these kinds of cases. Your compassion to the family's difficult financial situation and your commitment to accountability is refreshing.

Please feel free to give David a call if you want to run ideas by him or if you have any questions. I think he would be especially interested in the issue of Mary Jane's waiver of her right to appeal. It is possible that if there was no proper waiver, she could still be able to file an appeal. David is the expert on the intricacies of that sort of analysis, though.

Take care. I'm sure we will be in touch.

Sincerely,



Maureen T. Devlin
Attorney at Law

Exhibit 9



HARRISON LAW

101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2965 - Fax (888) 598-1715

June 27, 2015

To:

Mary Jane Rivas DOC No. 977751
Washington Corrections Center for Women
9601 Bujacich Road NW
Gig Harbor, WA 98332-8300

Re: Case Status Update

Mary,

Your case is progressing as expected. We have requested all of the documents relating to your conviction from King County, they have provided us with some of the documents in your case, but there are approximately 1025 pages and other materials they are currently processing right now. Reviewing these documents will be essential for your case.

Once King County provides me with the remaining documents and other evidence, I will review them thoroughly and the potential legal issues that they may reveal and then set up a phone call with you to discuss them in detail.

I also sent her the attached letter with regard to the risk of you being transferred out of the State. I have not yet heard back from her, but I will follow up with another phone call to her this coming week.

Best regards,

Mitch Harrison
Managing Attorney
Harrison Law
101 Warren Avenue North
Seattle, Washington 98121
Office (206) 732 - 6555
Cell (253) 335 - 2965
Fax (888) 598 - 1715

Exhibit 10

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 HOGE BUILDING
705 SECOND AVENUE
SEATTLE, WASHINGTON 98104

TELEPHONE:
(206) 623-1595

E-MAIL: DAVID@DAVIDZUCKERMANLAW.COM
WEBSITE: WWW.DAVIDZUCKERMANLAW.COM

FAX:
(206) 623-2186

September 4, 2015

Ms. Mary J. Rivas # 977751
Washington Corrections Center for Women
9601 Bujacich Rd. NW
Gig Harbor, WA 98332-8300

Dear Ms. Rivas:

Maureen Devlin and I are in the same law firm. Because I do a lot of post-conviction work, Maureen suggested that I check in with Mitch Harrison to see how his research into your case is going. It took quite a while for him to respond to my telephone calls and emails, but on September 1, we did have a phone conversation with each other.

Mr. Harrison apologized that he has been busy for a long time and unable to make much progress with your case. As of the time of our phone call, he had obtained a few documents from the prosecutor's office, but still did not have a complete file. He had some thoughts about challenging the calculation of your offender score because a juvenile conviction may have been counted as if it were an adult one. He also thought that it might be possible to challenge the "rapid recidivism enhancement." He acknowledged, though, that one major stumbling block is that you signed a waiver of the right to appeal, and perhaps also of the right to file a personal restraint petition. Mr. Harrison could not locate a copy of that document at the time we spoke on the phone, and I asked him to send me a copy so that I could take a look at it. That hasn't happened yet. One piece of advice that I gave to Mr. Harrison was that if, by some chance, the waiver was invalid, that might mean that you could file a very late appeal regarding your sentence. But at this point, I have no reason to think that there was any problem with the waiver.

The bottom line is that, Mr. Harrison is at a very early stage of looking into your case. I'll try to keep in touch with him to see what progress he is making. My guess at this point is that most likely there is no way file a legal challenge to your conviction and sentence, but there is no way to know for sure until all the information is available.

Take care.

Sincerely,

David B. Zuckerman

DBZ:ps

Exhibit 11

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 HOGE BUILDING
705 SECOND AVENUE
SEATTLE, WASHINGTON 98104

TELEPHONE:
(206) 623-1595

E-MAIL: DAVID@DAVIDZUCKERMANLAW.COM
WEBSITE: WWW.DAVIDZUCKERMANLAW.COM

FAX:
(206) 623-2186

October 27, 2015

Ms. Mary J. Rivas
DOC # 977751
Washington Corrections Center for Women
9601 Bujacich Rd. NW
Gig Harbor, WA 98332-8300

Dear Ms. Rivas:

I sent you a letter on September 4 regarding the little progress that Mitch Harrison had made on your case. As I mentioned in that letter, Mr. Harrison told me that you had signed an appeal waiver, but he was unable to find it during our phone call. He promised to get that to me soon. I sent him reminders on September 18 and September 24, but got no response.

I've also learned a little more about Mitch Harrison's practice. He has been sending out mass mailings to criminal defendants who have just lost their first appeal. He sends them all a form letter talking about how great a lawyer he is and how he's going to help them by taking the matter up to the Washington Supreme Court. I consider this kind of practice to be bordering on unethical, because in many cases, there is no point in taking a case to the Washington Supreme Court. They will only look at a case under certain specific circumstances. Mr. Harrison is also ignoring that many of these people already have lawyers and do not appreciate somebody trying to interfere with the current lawyer's strategy and advice.

The bottom line is that I think that Mr. Harrison has had more than enough chance to show that he's going to do any work for you, and he has failed to do that. I recommend that you immediately send him a letter telling him that you wish to discharge him and to return the money that was provided to him. If he doesn't agree to return the money (or at least a major part of it), I will personally file a bar complaint against him. Typically, that sort of pressure will convince a lawyer to refund the money.

I would suggest that your letter say something like this:

Dear Mr. Harrison,

David Zuckerman has been filling me in on your progress in my case. He has also informed me about your practice of mass

Exhibit 12

mailing solicitations for appeal and post-conviction work. It appears that you are much too busy with other cases to deal promptly with my case. Please withdraw from my case immediately and refund the money that I sent you. If there is any question about how much money should be refunded, I am authorizing David Zuckerman to negotiate that with you.

Sincerely,

Mary Jane Rivas

Please feel free to call me collect if you want to discuss this before sending out a letter. If you do decide to send him a letter, please let me know when you've done that so that I'll know when to check in with him about returning the money. Once the money is returned, I can help you find a better post-conviction lawyer. I do not want to take that job on myself because I wouldn't want it to appear that the reason I'm recommending firing Mitch Harrison was that I wanted to get the money for myself.

Take care.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Zuckerman', with a long horizontal flourish extending to the right.

David B. Zuckerman

DBZ:ps

Exhibit 13

Dear Mr. Harrison,

David Zuckerman has been filing me in on your progress in my case. You have also told me yourself you cannot start till you get all of court papers. But it's been 8 months and that's a long time.

He has also informed me about your

practice of mass mailing solicitations for

appear and post-conviction work. It appears

that you also much to busy with other

cases to deal promptly with my case.

Please withdraw from my case

immediately and refund the money I

sent you. If there is any question about

how much money should be refunded

I am authorizing David Zuckerman to

negotiate that with you.

Any questions call my husband Scott at -

953-241-9839 or

David Zuckerman

Sincerely,

Mary Jane Kwas

You can direct deposit to my account in

Alaska. The Madalaska Valley Federal Credit

Union, main branch

1020 So. Bailey

Palmer, AK 99755

#1's for bank

907-694-4891

907-745-1891

ACC# 117000RI

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 HOGE BUILDING
705 SECOND AVENUE
SEATTLE, WASHINGTON 98104

TELEPHONE:
(206) 623-1595

E-MAIL: DAVID@DAVIDZUCKERMANLAW.COM
WEBSITE: WWW.DAVIDZUCKERMANLAW.COM

FAX:
(206) 623-2186

November 10, 2015

Mr. Mitch Harrison
Harrison Law
221 – 1st Avenue West, Suite 320
Seattle, WA 98119-4224

Dear Mitch:

Mary Jane Rivas has sent me a copy of the letter she recently sent to you. I assume you will promptly file a notice of withdrawal and refund her money. If you feel that you are entitled to some portion of the fees, Ms. Rivas has authorized me to discuss that with you. I have told Ms. Rivas that I will not take over the case because I would not want it to appear that my motivation was to get the money for myself. I will, however, refer her to competent post-conviction counsel. If this matter is not resolved on reasonable terms within two weeks, I will take the matter to the Bar.

Sincerely,

David B. Zuckerman

cc: Mary Jane Rivas
DBZ:ca

Exhibit 14

David Zuckerman

From: Mitch Harrison <mitch@mitchharrisonlaw.com>
Sent: Tuesday, December 01, 2015 10:30 AM
To: David Zuckerman
Subject: RE: Rivas

David,

Thank you for clearing that up. I will send Mary Jane a withdrawal letter today and a check for a full refund. Just to make sure I have things clear: Mary Jane would prefer for me to write the check out to you. Do I understand that correct?

Regards,

Mitch Harrison
Attorney
Harrison Law
221 First Avenue West, Ste 320
Seattle, Washington 98119
Office: (206) 732 - 6555
Cell: (253) 335 - 2965
Fax: (888) 598 - 1715

David Zuckerman

From: David Zuckerman <david@davidzuckermanlaw.com>
Sent: Monday, January 04, 2016 1:16 PM
To: 'Mitch Harrison'
Subject: Request for File
Attachments: Signed ROI re Mitch Harrison File DATED 12.23.15.pdf

Hi Mitch.

Please send these files to me ASAP. This should include the fee agreement, any correspondence between you and Ms. Rivas, your work product, and anything else associate with Ms. Rivas's case.

It appears that you were just bluffing about returning the money. I assure you that I will not give up on that, even if it takes a civil suit.

--

David B. Zuckerman

Law Office of David B. Zuckerman
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104
Phone: 206-623-1595
Fax: 206-623-2186
Website: www.davidzuckermanlaw.com
Email: david@davidzuckermanlaw.com



HARRISON LAW

101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 333-2966 • Fax (888) 598-1716

November 21, 2014

To:
Kimberly Phillips, DOC # 930811
Washington Corrections Center for Women
9601 Bujacich Rd. NW
Gig Harbor, WA 98332-8300

Re: Motion to Modify Sentence

Kimberly,

This letter is to inform you that Mitch Harrison has agreed to take your case. Mitch can do a motion to modify sentence for an amount of \$~~3,000.00~~ ^{3,000.00}. If you agree to this amount please contact our office to begin your legal services.

If you have any questions, please contact our office.

Best regards,

Kaitlyn Jackson
Legal Intern
J.D. Candidate, 2016
101 Warren Avenue North
Seattle, Washington 98121
Tel (206) 494-0400 ext. 7000
Fax (888) 598-1715

*In re Mulholland,
161 Wn. 2d 322,
166 P.3d 677*

11.26.14

*Kimberly-
Please sign & return
one copy to our office
via mail. We will begin
after payment & copy of
agreement is returned.*

Exhibit 17

\$ 3000.00

** Kimberly Phillips
I Agree 11-27-14*



HARRISON LAW

101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2965 - Fax (888) 598-1715

December 5, 2014

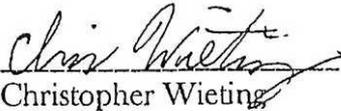
Kimberly Phillips, DOC #930811
Washington Corrections Center for Women
9601 Bujacich Rd. NW
Gig Harbor, WA 98332-8300

RE: Agreement for Legal Services

Dear Ms. Phillips,

Mr. Harrison has asked that I mail you the enclosed *Agreement for Legal Services*. I have provided two copies; one for you to sign and return to us in the self-addressed, stamped envelope, and one for you to keep for your records. Please sign and return the document at your earliest convenience. Thank you.

Respectfully,



Christopher Wieting

Attorney

101 Warren Avenue North

Seattle, Washington 98109

Tel (253) 335 - 2965

Fax (888) 598 - 1715

Email: Chris@MitchHarrisonLaw.com



HARRISON LAW

101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2965 - Fax (888) 598-1715

AGREEMENT FOR LEGAL SERVICES

This agreement is a contract between the Harrison Law Firm and the Client(s) named below. By signing this agreement, both the Client and the Harrison Law Firm agree to the terms as described below.

CLIENT INFORMATION

Client Name: Kimberly Phillips

Contact Name:

Phone Number: _____

Mailing Address: _____

Email Address: _____

Check this box if you prefer to receive email than mail

**If you are in prison and would like to authorize someone else to discuss your case with the Harrison Law Firm, please include that person's name and contact information above.*

LEGAL SERVICES TO BE PROVIDED & FEE AMOUNT

In return for the fee described below, the Harrison Law Firm agrees to perform the following legal services for the above named client:

Motion to Modify and Reduce Sentence - - \$3,000 Price

The motion will investigate and pursue the following issues:

- (1) double jeopardy on all three counts that alleged the same victim,
- (2) if not that then then trial court and the court of appeals at least screwed up on the same criminal conduct issue for these counts, and
- (3) any other legitimate sentencing issues that may arise.

METHOD AND TIMING OF PAYMENT(S)

This fee may be paid by cash, money order, check or credit card. Once payment is made in full, Mr. Harrison will file the motions with the court.

DETAILS ABOUT THE FEE

This is a *flat fee* case. In other words, the fees described in this agreement will be credited to the Harrison Law Firm's business account and will prepay for attorney's time and any paralegal time

spent working on my case. These fees are earned upon receipt and may be deposited into the attorney's business operating account and shall not be deposited into the attorney's trust account.

Also, because this is a flat fee case, the fee noted above will be the final amount owed for the legal services described above. The Harrison Law Firm is required to notify you that this case *will not be billed on an hourly basis* (which would normally be \$300 per hour). The fee in this case will not change, regardless of the number of attorney hours spent on the case.

If for any reason the attorney/client relationship terminates prior to the conclusion of services stated in this agreement, the Harrison Law Firm will refund any unearned fees when requested to do so, if any such fees are still unearned at the time of the request. This will be calculated by applying the hourly rate as stated above.

FINAL TERMS OF THIS AGREEMENT

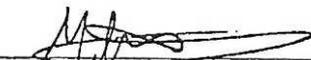
By signing this agreement, all parties agree to several final terms.

First, they agree that they fully understand the terms described above. If the client had any questions before signing this agreement, the Harrison Law Firm answered those questions and clarified any terms that may have been confusing or unclear.

Second, if, after signing this agreement, any party wishes to change the terms of this agreement, the parties must agree to those changes in writing.

Finally, all signing parties have received a copy of this agreement.

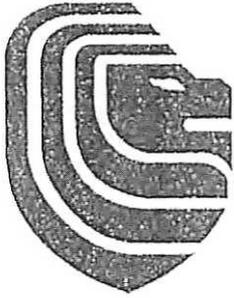
DATED December 5 2014



Harrison Law Firm



Kimberly Phillips



HARRISON LAW

221 FIRST AVENUE WEST
SUITE 320
SEATTLE, WA 98119

September 21, 2015

To:
Kimberly Ann Phillips DOC No. 930811
Washington Corrections Center for Women
9601 Bujacich Road NW
Gig Harbor, WA 98332-8300

Re: Case Status

Dear Miss Phillips,

We have been attempting to obtain your case file from your former attorney but with no success. We have recently reached out to the Court of Appeals Division II to obtain the transcripts from your direct appeal and we will pay for the cost of obtaining them.

Let us know if you have any further questions or concerns.

Best regards,

Julie M Pendleton

Law Clerk

J.D. Candidate 2017

Harrison Law Firm

221 First Ave West

Suite 320

Seattle, WA 98119

Julie@mitchharrisonlaw.com

Exhibit 18



HARRISON LAW

101 Warren Avenue North
Seattle, Washington 98109
Tel (253) 335-2966 - Fax (888) 598-1715

AGREEMENT FOR LEGAL SERVICES

This agreement is a contract between the Harrison Law Firm and the Client(s) named below. By signing this agreement, both the Client and the Harrison Law Firm agree to the terms as described below.

CLIENT INFORMATION

Client Name: Lacey Hirst-Pavck
Contact Name: Bonnie Hirst
Phone Number: 509.480.2284
Mailing Address: 30792 Hwy 97
Tonasket, wa 98855

Email Address: _____

Check this box if you prefer to receive email than mail

**If you are in prison and would like to authorize someone else to discuss your case with the Harrison Law Firm, please include that person's name and contact information above.*

LEGAL SERVICES TO BE PROVIDED & FEE AMOUNT

In return for the fee described below, the Harrison Law Firm agrees to perform the following legal services for the above named client:

Case Review for Potential PRP in the Court of Appeals - - \$1,000 Price

METHOD AND TIMING OF PAYMENT(S)

This fee may be paid by cash, money order, check or credit card. Once payment is made in full, Harrison Law will begin working on the case.

DETAILS ABOUT THE FEE

This is a flat fee case. In other words, the fees described in this agreement will be credited to the Harrison Law Firm's business account and will prepay for attorney's time and any paralegal time spent working on my case. These fees are earned upon receipt and may be deposited into the attorney's business operating account and shall not be deposited into the attorney's trust account.

Also, because this is a flat fee case, the fee noted above will be the final amount owed for the legal services described above. The Harrison Law Firm is required to notify you that this case will not

be billed on an hourly basis (which would normally be \$300 per hour). The fee in this case will not change, regardless of the number of attorney hours spent on the case.

If for any reason the attorney/client relationship terminates prior to the conclusion of services stated in this agreement, the Harrison Law Firm will refund any unearned fees when requested to do so, if any such fees are still unearned at the time of the request. This will be calculated by applying the hourly rate as stated above.

FINAL TERMS OF THIS AGREEMENT

By signing this agreement, all parties agree to several final terms.

First, they agree that they fully understand the terms described above. If the client had any questions before signing this agreement, the Harrison Law Firm answered those questions and clarified any terms that may have been confusing or unclear.

Second, if, after signing this agreement, any party wishes to change the terms of this agreement, the parties must agree to those changes in writing.

Finally, all signing parties have received a copy of this agreement.

DATED November 25, 2014.

Harrison Law Firm


Lacey Hirst-Pavek

January 27, 2015

Mitch Harrison
101 Warren Ave, N.
Seattle, Wa 98109

Re: Lacey Hirst-Pavek

Dear Mr. Harrison

Hi, I was just wondering at the progress of my case with you and wondering what you thought of the letters describing the two men, Ryan Bass and Ken Clark, with regards to them willing to give statements to the fact of the prosecutor basically telling Mr. Phillips to change his story for less time. Could this be "new evidence" to use to get another PRP looked at? I have also been told by Andrea Orlando (victim's cousin that testified) that she would be willing to say that she was coerced and felt pressured to testify by the detectives.

Please let me know if there is anything at all you need as I have access to all discovery and briefs, etc..

Your time is appreciated,

Sincerely,

Lacey Hirst-Pavek
345340 AL125

WCCW

9601 Dujaclon Rd. LW
Big Harbor, Wa 98832

Exhibit 20

February 14, 2015

Mitch Harrison
Attorney at Law
101 Warren Ave, N.
Seattle, Wa 98109

Re: Lacey Hirst-Pavek

Dear Mitch,

Hi, I hope things are going well with your reading of my case. I had another thought to convey in hopes it might trigger something of use to you. Would there be any new argument in the lack of evidence of murder due to the fact that Michelle wasn't dead when they left her. According to the medical examiner and the detectives testimony, she had gotten up and walked up the road to where she was found. That point wasn't ever brought up in any of the appeals. Just a thought that came to me. You may get more "thoughts" that come to me over the weeks as well.

Thank you for your work and time and I look forward to hearing from you. My motion for discretionary review still sits in the Supreme Court, and I have finished my Federal Appeal and will file it should the courts deny the review.

Sincerely,

Lacey Hirst-Pavek
345340 MA125
WCCW
9601 Bugacich Rd, NW
Gig Harbor, Wa 98332

2-21-15

Mitch Harrison
Attorney at Law
101 Warren Ave N.
Seattle, WA 98109

Re: Lacey Hirst-Park

Dear Mitch,

Just an FYI, my mom, Bonnie Hirst called your office last week and spoke to someone there about me and they told her that you and I had had a telephone conference on Thursday the 12th? Did I miss something?

Also I am hearing a rumor that there is talk in Supreme Court of doing something to the aggravating factor of solicitation, do you know anything about this?

Your response is appreciated, thank you -

Lacey Park

315340 MA125
WCCW

9601 Bujacich Rd
Gig Harbor, WA
98330

June 15th 2015

Mitch Harrison
Attorney at Law
101 Warren Ave N.
Seattle, WA 98109

Re: Lacey Hirst-Pavek

Mr. Harrison;

I am writing to you to see if there is any progress in your review of my transcripts, briefs and letters? Money was sent to you in late November early December. I have sent you several follow up letters with "bits of interest" I thought might be beneficial to you.

It is now June and I have not heard any word from you or your office. My mother Bonnie Hirst has made several calls to your office with the promise from someone there that you will get back to her and you have not. I understand that I am not on any deadline per se, however my latest filed Motion for Discretionary Review has just been denied and I am filing a Motion to Modify and have my Habeas ready to go, but I would still like to keep abreast of what is happening.

If you are not able to do the review and are too busy to continue to look at my case please advise and return my documents, disks and fee to Bonnie Hirst.

If you are reviewing my case, I would appreciate some sort of correspondence from you in that regard, as to where you are and what you think about what you have read.

Your reply is appreciated,

Lacey Hirst-Pavek DOC 345340
Washington Corrections Center for Women
9601 Bujalch Road NW
Gig Harbor, WA 98332

GRIEVANCE AGAINST A LAWYER



Return your completed form to:

Office of Disciplinary Counsel
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

GENERAL INSTRUCTIONS

- Read our information sheet *Lawyer Discipline in Washington* before you complete this form, particularly the section about waiving confidentiality.
- Type or write legibly but do not use the back of any page.
- Do not fax your form to us or send your form to us via the Internet.
- If you have a disability or need assistance with filing a grievance, call us at (206) 727-8207. We will take reasonable steps to accommodate you.

INFORMATION ABOUT YOU

Knight, Amanda
Last Name, First Name

WCCW, 9601 Bujarich Rd. NW.
Address

Gig Harbor, WA 98332
City, State, and Zip Code

/
Telephone Number (Day/Evening)

INFORMATION ABOUT THE LAWYER

Harrison, Mitch
Last Name, First Name

101 Warren Avenue North
Address

Seattle, WA 98109
City, State, and Zip Code

253 325 2965
Telephone Number

Alternate address/phone where we can reach you

INFORMATION ABOUT YOUR GRIEVANCE

Describe your relationship to the lawyer who is the subject of your grievance by checking the box that best describes you:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Client | <input type="checkbox"/> Opposing Counsel |
| <input type="checkbox"/> Former Client | <input type="checkbox"/> Judicial |
| <input type="checkbox"/> Opposing Party | <input type="checkbox"/> Other: _____ |

Is there a court case related to your grievance? YES NO

If yes, what is the case name and file number, and who is the lawyer representing you?

Explain your grievance in your own words. Give all important dates, times, places, and court file numbers. Attach additional pages, if necessary. Attach copies (not your originals) of any relevant documents.

I hired Mitch Harrison to represent me through my appeal following the outcome of my direct appeal. He explained that filing a writ of certiorari would be the next best logical step. I agreed, and my family paid him for his services. He explained to me that we had a year to file the writ of certiorari, and following the outcome of that (if I wished to retain his services again) we could file a PRP, in which we had another year to file. The deadline for the writ of certiorari to be filed was in the beginning of April 2015. I have been unable to reach Mr. Harrison since the middle of March. He has not responded to any form of correspondence, including phone calls from me, my family, the law clerk at the prison, emails through JPay, text messages from my family, or through letters via USPS. Messages have been left for him and he has not returned any of them. I am now past my deadline to file. I have contacted District Court, Supreme Court (Court Clerk Melissa Perez), and Court of Appeals. All advised me that nothing has been filed on my behalf. Ms. Perez (the court clerk for the Supreme Court) also ran a cross check for Mr. Harrison and has not filed any motions for anyone in any court for 3 months.

AFFIRMATION

I affirm that the information I am providing is true and accurate to the best of my knowledge.

Signature: Amanda Kugler

Date: 5/20/2015

Amanda Knight DOC# 349443
Washington Correction Center for Women MSU B 255
9601 Bujacich Road NW
Gig Harbor, WA 98332

November 16, 2015

Attn: Mitch Harrison, Attorney & Harman Bual, Law Clerk
Harrison Law Firm
221 First Avenue West, Suite 320
Seattle, WA 98119

Dear Mr. Harrison & Mr. Bual,

My family and I have made excessive attempts to contact you via JPay, phone (calls and texts), and letter, and neither I nor my family have received any reply. Mr. Harrison is passed my deadline and has provided several dates that he expected to file and has not done so. The last prospected date he quoted was August 2015 and I have not heard from Mr. Harrison since then despite the many attempts my family and I have made to contact him.

At this point I don't believe any attempt is being made to follow through with the agreement and contract Mr. Harrison provided to my family and I. I would like my family to be refunded the full amount, and I feel that is absolutely reasonable since Mr. Harrison has violated and defaulted on his contract/agreement and failed to make any contact with me or my family. This is my formal request and I will not reconsider. I do not expect that, after receiving this letter, either you (Mr. Harrison), or Mr. Bual will acquiesce to confirming your receipt of this letter; however, I am requesting that you please do so.

Sincerely,

Amanda Knight

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or the front if space permits.	A. Signature X <i>Mitch Harrison</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
2. Article Number (Transfer from service label) PS Form 3811, February 2004	B. Received by (Printed Name)	C. Date of Delivery
	D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee)	<input type="checkbox"/> Yes	

Exhibit 22

APPENDIX B



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Acknowledgment That We Have Received A Grievance

Date: February 25, 2016 ODC File: 16-00265

To the Grievant:

We received your grievance against a lawyer and opened a file with the file number indicated above. We are requesting a written response from the lawyer. You generally have a right to receive a copy of any response submitted by the lawyer. After we review the lawyer's response, if it appears that the conduct you describe is not within our jurisdiction, does not violate the Supreme Court's Rules of Professional Conduct (RPC), or does not warrant further investigation, we will write you a letter to tell you that. If we begin an investigation of your grievance, we will give you our investigator's name and telephone number. If, as a result of an investigation and formal proceeding, the lawyer is found to have violated the RPC, either the Disciplinary Board or the Supreme Court may sanction the lawyer. Our authority and resources are limited. We are not a substitute for protecting your legal rights. We do not and cannot represent you in legal proceedings. If you believe criminal laws have been broken, you should contact your local police department or prosecuting attorney. There are time deadlines for both civil and criminal proceedings, so you should not wait to take other action.

Grievances filed with our office are not public information when filed, but **all information related to your grievance may become public**. Our office handles a large number of files. We urge you to communicate with us only in writing, including any objection you have to information related to your grievance becoming public, until we complete our initial review of your grievance. You should hear from us again within four weeks.

Request for Lawyer Response

To the Lawyer:

The grievance process is governed by the Rules for Enforcement of Lawyer Conduct (ELC). Although we have reached no conclusions on the merits of this grievance, we are requesting your preliminary written response. If you do not respond to this request within **thirty (30) days** from the date of this letter, we will take additional action under ELC 5.3(h) to compel your response. You must personally assure that all records, files, and accounts related to the grievance are retained until you receive written authorization from us, or until this matter is concluded and all possible appeal periods have expired.

Absent special circumstances, and unless you provide us with reasons to do otherwise, **we will forward a copy of your entire response to the grievant**. If the grievant is not your client, or you are providing personal information, please clearly identify any information to be withheld and we will forward a copy of your redacted response to the grievant, informing the grievant that he or she is receiving a redacted copy. Decisions to withhold information may be considered by a review committee of the Disciplinary Board. If you believe further action should be deferred because of pending litigation, please explain the basis for your request under ELC 5.3(d).

Sincerely,

A handwritten signature in cursive script that reads "Felice P. Congalton".

Felice P. Congalton
Associate Director

Original: **Grievant: David B. Zuckerman**
cc: **Lawyer: Mitch Harrison (with copy of grievance)**

DO NOT SEND US ORIGINALS. We will scan and then destroy the documents you submit.

APPENDIX C



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Felice P. Congalton
Associate Director

March 30, 2016

Mitch Harrison
Harrison Law
221 1st Ave W Ste 320
Seattle, WA 98119-4224

Re: ODC File: 16-00265
Grievance filed by David B. Zuckerman

Dear Mr. Harrison:

We asked you to provide a written response to the above referenced grievance. To the best of our knowledge, your response, which is required by Rule 5.3(b) of the Rules for Enforcement of Lawyer Conduct (ELC), has not been received.

Under ELC 5.3(h), you must file a written response to the allegations of this grievance within ten days of this letter, *i.e.*, on or before **April 12, 2016**. If we do not receive your response within the ten-day period, we will subpoena you for a deposition. If we must serve a subpoena, you will be liable for the costs of the deposition, including service of process, and attorney fees of \$500. You should be aware that failing to respond is, in itself, grounds for discipline and may subject you to interim suspension under ELC 7.2(a)(3).

Sincerely,

A handwritten signature in cursive script that reads "Felice P. Congalton".

Felice P. Congalton
Associate Director

cc: David B. Zuckerman

APPENDIX D



WSBA
OFFICE OF DISCIPLINARY COUNSEL

M Craig Bray
Disciplinary Counsel

direct line :206; 239-2110
fax: :206; 727-8325

April 26, 2016

Mitch Harrison
Attorney at Law
221 1st Ave W Ste 320
Seattle, WA 98119-4224

Re: Grievance of David B. Zuckerman against you
ODC File No. 16-00265

Dear Mr. Harrison:

Being served along with this letter is a subpoena duces tecum compelling your attendance at a deposition in accordance with Rule 5.3(h) of the Rules for Enforcement of Lawyer Conduct (ELC). The subpoena has been issued because of your failure or refusal to respond or cooperate with the investigation of this grievance. As you already have been informed in writing, you will be liable for the costs associated with the deposition, including service of the subpoena, court reporter charges, and a \$500 attorney fee.

We wish to avoid any further delay in the completion of this investigation. Accordingly, we will not cancel or continue the deposition unless disciplinary counsel so confirms in writing. Absent a written confirmation of cancellation or continuance, your appearance at the deposition in the Washington State Bar Association's offices on May 25, 2016 at 1:00 p.m. is mandatory. If you fail to appear, we will petition the Washington Supreme Court for your immediate interim suspension from the practice of law under ELC 7.2(a)(3), and may treat your failure to appear as a violation of disciplinary rules and refer this grievance to Review Committee with a recommendation of a public disciplinary hearing without your response.

Sincerely,



M Craig Bray
Disciplinary Counsel

Enclosure

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MITCH HARRISON,
Lawyer (Bar No. 43040).

ODC File No. 16-00265
SUBPOENA DUCES TECUM

THE STATE OF WASHINGTON TO: Mitch Harrison

YOU ARE HEREBY COMMANDED under Rules 5.3 and/or 5.5 of the Rules for Enforcement of Lawyer Conduct (ELC) to be and appear at the Washington State Bar Association offices, 1325 4th Avenue, Suite 600, Seattle, WA 98101, on May 25, 2016 at 1:00 p.m., to testify in investigatory proceedings being conducted by the Office of Disciplinary Counsel of the Washington State Bar Association. The testimony will be recorded by a certified court reporter.

YOU ARE FURTHER COMMANDED to bring the following with you at the above time:

1. Your complete files and whatever documents may be in your possession or control relating to your representations of John Markwell, Mary Jane Rivas, Kimberly Phillips, Lacey Hirst and Amanda Knight. "This demand includes all financial records, including trust account

1 and client ledgers, canceled checks, and bank statements, related to funds received in
2 connection with your representations of John Markwell, Mary Jane Rivas, Kimberly Phillips,
3 Lacey Hirst and Amanda Knight.

4 Dated this 26th day of April, 2016.

5
6 
7 M Craig Bray, Bar No. 20821
8 Disciplinary Counsel

9 CR 45 Sections (c) and (d):

10 (c) Protection of Persons Subject to Subpoenas.

11 (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue
12 burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this
13 duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

14 (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things,
15 or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing
16 or trial.

17 (B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days
18 after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or
19 attorney designated in the subpoena a written objection to inspection or copying of any or all of the designated materials or of the premises. If
20 objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant
21 to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the
22 person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel
23 production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying
24 commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) fails to comply with RCW 5.56.010 or subsection (c)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement that the
subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute
and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the
subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or
material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably
compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall
organize and label them to correspond with the categories in the demand.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation
materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things
not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the
person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must
promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is
resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the
information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until
the claim is resolved.

APPENDIX E

BEFORE THE DISCIPLINARY BOARD OF THE WASHINGTON STATE BAR ASSOCIATION

Case No.: 16-00265
DECLARATION OF SERVICE

In re Mitch Harrison, Lawyer (Bar No. 43040)

STATE OF WASHINGTON
COUNTY OF KING ss



The undersigned, being first duly sworn on oath deposes and says: That he/she is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

That on 4/26/2016 at 2:19 PM at the address of 221 1st Avenue West, # 320 Seattle, within King County, WA, the undersigned duly served the following document(s): Subpoena Duces Tecum and Letter dated April 26, 2016 in the above entitled action upon Mitch Harrison, by then and there personally delivering 1 true and correct set(s) of the above documents into the hands of and leaving same with Mitch Harrison.

Physical description of person served: Gender: Male | Race: White | Age: 35 | Height: | Weight: Medium | Hair: Brown

I declare under penalty of perjury under the laws of the state of WASHINGTON that the foregoing is true and correct

DATE: 4/27/2016
TOTAL: \$ 70.00



SL


A. Stinson
Registered Process Server
License#: 1418121 - Expiration Date: 3/8/2017
Seattle Legal Messengers
4201 Aurora Avenue N, #200
Seattle, WA 98103
(206) 443-0885

APPENDIX F

Power restored after major, hour-long outage in downtown Seattle

Originally published May 25, 2016 at 11:52 am Updated May 26, 2016 at 12:03 am



1 of 10

Wednesday's power outage in downtown Seattle snarled traffic, especially on east-to-west streets where north-to-south traffic did not let them cross. (Alan Berner / The Seattle Times)

A major power outage in downtown Seattle started about 11:30 a.m. Wednesday, with several buildings and traffic signals without power during the hour-long outage.

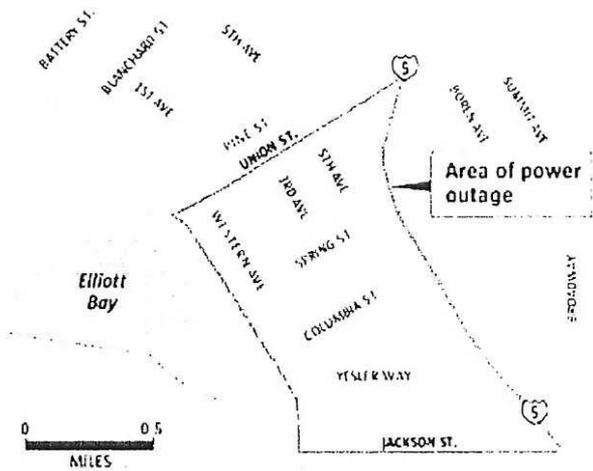
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Downtown Seattle lost power for about an hour mid-Wednesday, killing traffic signals in about 60 percent of the neighborhood and trapping people in the elevators of various buildings in the downtown core. Seattle City Light is still unsure of the cause.

The outage began just after 11:30 a.m. Seattle City Light initially estimated power would be out for a few hours, but then got it mostly restored by around 12:30 p.m. Connie McDougall of Seattle City Light warned power could go out briefly for small pockets of the downtown area during the restoration process.

Seattle firefighters made 15 elevator rescues and responded to 10 automatic fire alarms. Firefighters typically respond to elevator rescues without using lights and sirens, but they were authorized to use lights and sirens today.

911 service was not interrupted.



Source: Seattle Department of Transportation

THE SEATTLE TIMES

No customer count is available yet, but 12,000 electric meters were affected, McDougall said.

"Clearly, because it was such a large outage, there were many thousands affected," she said. "In terms of cause, all we know at this point is that crews were working in a substation, they detected an outage, immediately reported it and reported the problem." City Light crews are investigating.

McDougall said around noon that there had been an equipment failure at the Massachusetts Street substation downtown. A downtown outage is "rare," she said. Power cables and other equipment are underground downtown, which makes the system less vulnerable, she said.

Traffic around downtown was gridlocked during the outage. Buses were especially impacted because traffic lights were dark, creating four-way stops.

Seattle police said they were not aware of any collisions as a result of the outage.

Trolley buses were unaffected because the trolley wires still had power, said Jeff Switzer of King County Metro.

"But, they were all stuck behind the traffic lights. So where traffic was bad, bus service was facing delays," he said.

ST Express routes 512, 522, 545, 554, 577/578, and 590/594 were delayed, according to Sound Transit. Link light rail was temporarily interrupted.

Switzer said the downtown transit tunnel was closed for six minutes, but even small closures can cause substantial delays. "We're getting back to normal," he said. "Hopefully, everything will be smooth sailing heading into the commute."

"We started to shut down the downtown Seattle transit tunnel when they lost power to Pioneer Square Station and University Station to some of the backup emergency ventilation fans," said Bruce Gray, of Sound Transit. "They started shutting down the tunnel for 5 minutes before power came back and the trains are moving again."

"We're getting back to normal now," Gray said at about 12:40 p.m. "The buses are going to have some rolling

delays as we get traffic moving through downtown.”

Ironically, the Seattle City Light offices in the Seattle Municipal Tower also lost power.

“We have no power here, so we’re tweeting off our telephones,” McDougall said around noon.

No Seattle public schools were affected.

Barbara Serrano, a prosecutor with the Seattle City Attorney’s Office, was writing an email at her desk on the 18th floor of the Seattle Municipal Tower when “all of a sudden, everything went out. The office got dark, the hallways got dark.”

She walked down 18 flights of stairs and headed to lunch in the International District with five other prosecutors.

“We can’t do any work right now,” Serrano said. “The phones work, but the computers don’t. And attorneys are pretty much helpless without their computers.”

She was happy to leave early for lunch, but not happy that she wasn’t able to finish her work.

Was there anything about the blackout that worried her?

“I don’t want to walk back up 18 floors of stairs ...”

The power went out at City Hall, but emergency generators kicked on, so lights and elevators there were working.

King County Deputy Prosecutor Ian Ith had walked out of the King County Administration Building with a friend to grab lunch when the power went out around 11:30 a.m. His colleagues, who work in the King County Courthouse across the street, began leaving the building and gathering outside.

“All the generators kicked in, so there’s lights, just no computers,” which are needed to create a record of any court proceeding, said Ith, a former Seattle Times reporter and editor.

Ith returned to the Administration Building, climbed the stairs to his office on the eighth floor, and grabbed his laptop. Planning to work from home for the rest of the day, Ith hopped a bus but didn’t get very far.

By 12:20 p.m., his bus had made it to Fourth Avenue and Union Street, only a few blocks from where his ride started. All the street lights were out, so each intersection was being treated as a four-way stop, he said.

“Well, as your phone call was coming in, all of our lights have come on,” said Paul Sherfey, a spokesman for King County Superior Court.

He said power was out for about 45 minutes, and jurors and others were escorted from the building. “We’re fortunate it occurred during the lunch hour,” Sherfey said.

Alain Tangalan, chef at Flame Cafe across from the courthouse on Third Avenue, said power came back around 12:30 p.m. He said it was a bit difficult to pick back up cooking because people were hungry while the power

was out.

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