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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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VINCENT L. FOWLER,  
Petitioner

v.

STATE OF WASHINGTON,  
Respondent

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*In the Matter of the Personal Restraint Petition of Vincent L. Fowler*  
Division Two of the Court of Appeals No. 51029-4-II

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**PETITION FOR REVIEW**

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## I. IDENTITY OF PETITIONER

Petitioner Vincent L. Fowler, through his attorneys, respectfully asks this Court to review the following Court of Appeals decision.

## II. COURT OF APPEALS DECISION

Mr. Fowler seeks review of the decision in *Matter of Fowler*, \_\_\_ Wn.App.2d \_\_\_, 442 P.3d 647 (*Fowler*) (No. 51029-4-II) (June 11, 2019). On July 10, 2019, the Court denied reconsideration. *See* Appendix.<sup>1</sup>

## III. ISSUES PRESENTED FOR REVIEW

1. Whether Division Two's decision conflicts with this Court's decision in *In re Pers. Restraint of Davis*, 188 Wn.2d 356, 395 P.3d 998 (2017), *abrogated on other grounds in State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018) as to the courts' inherent powers to waive the one-year time limit imposed by RCW 10.73.090?
2. Whether Division Two's decision conflicts with this Court's decisions in *Davis, supra*; *In re Haghghi*, 178 Wn.2d 435, 309 P.3d 459 (2013); *In re Carter*, 172 Wn.2d 917, 263 P.3d 1241 (2011), and *In re Bonds*, 165 Wn.2d 135, 196 P.3d 672 (2008), which hold that equitable tolling is appropriate where justice requires and the aggrieved party exercises due diligence and shows bad faith, deception, or false assurances **by another**, without qualification?
3. Whether Division Two's decision is in conflict with the published decision in *State v. Littlefair*, 112 Wn.App. 749, 51 P.3d 116 (2002), which applied equitable tolling due to mistakes by post conviction counsel, the court, and immigration officials?
4. Whether a significant question of state and/or federal constitutional law is involved where: (1) the Sixth Amendment and Const. art. I, § 22 are co-extensive; (2) the United States Supreme Court holds that where the state "procedural framework ... makes it highly unlikely ... that a

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<sup>1</sup> A copy of: (A) the decision below; (B) the order denying reconsideration; and (C) all pertinent statutes and constitutional provisions are contained in the Appendix.

defendant will have a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct review ... ‘procedural default with not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective,’” *Trevino v. Thaler*, 569 U.S. 413, 429, 133 S.Ct. 1911, 185 L.Ed.2d 1044 (2013) (*quoting Martinez v. Ryan*, 566 U.S. 1, 1332 S.Ct. 1309, 1320, 182 L.Ed.2d (2012); and (3) no Washington case cites to this precedent?

5. Whether our courts’ collective jurisprudence regarding application of RAP 18.8 and equitable tolling to personal restraint petitions is an issue of substantial public importance to be determined by this Court?

#### **IV. STATEMENT OF THE CASE**

Mr. Fowler was convicted after jury trial in Kitsap County Superior Court No. 13-1-00466-4 of two counts of first degree child molestation and one count of first degree rape of a child. The court imposed 162 months at sentencing on January 10, 2014.

Mr. Fowler filed appeals in Division II (No. 45774-1-II) and Division III (No. 33227-6-III). In an unpublished opinion, Division Three affirmed. 189 Wn.App. 1039, 2015 WL 4911843 (August 18, 2015). Mr. Fowler filed a petition for review, which this Court, in part, granted and remanded for resentencing. *State v. Fowler*, 185 Wn.2d 1016, 368 P.3d 170 (2016). The trial court entered its Order Modifying Judgment and Sentence as to such obligations on October 19, 2016.

Mr. Fowler hired John Crowley on September 2, 2015 as post-conviction counsel. Crowley, though, did nothing on the case except take

payment. See Personal Restraint Petition (PRP) filed on October 18, 2017 at 2. Due to misconduct in this and other cases, Crowley was subject to several grievances, and the Washington State Bar Association initiated disciplinary proceedings. Rather than defend against the charges and face punishment, effective September 18, 2017, Crowley permanently retired. Id. at Ex. 2, Resignation Form of John Rodney Crowley. Notably, several of the sustained counts allege that Crowley accepted payment for services without entering into a written fee agreement and without entering the funds into a trust account and then failed to communicate with the client or perform his contractual obligations. *See id.* at Ex. 2, Ex. A at 9-16.

After failing to contact Crowley for several months and with the deadline approaching, Mr. Fowler’s family contacted present counsel and met with John Henry Browne on October 6, 2017. *See* Motion for Extension of Time (Mtn.) filed on January 22, 2018 at 2. Mr. Browne had to relay the unfortunate news about Crowley’s difficulties with the Bar and resignation as Crowley had never contacted the Fowlers. On October 9, 2017—over two years after paying Crowley for nothing—the Fowlers retained present counsel. *See id.*

On October 18, 2017, Mr. Fowler filed a timely “placeholder” PRP requesting additional time to file due to Crowley’s misconduct and because he lacked the case file. In his Request for Relief, Mr. Fowler

specifically wanted “additional time to prepare his petition, which will ... request his relief from confinement—*most likely for ineffective assistance of trial counsel.*” See PRP at 4 (emphasis added).

By Ruling dated November 21, 2017, Commissioner Schmidt granted 60 additional days within which to file a supplemental petition and requested briefing as to why it should waive the one-year statute of limitations established in RCW 10.73.090.

On January 22, 2018, Mr. Fowler filed a Motion for Extension of Time to File Supplemental Petition (Mtn.) on grounds that equitable tolling applied as Crowley had effectively abandoned him at that as a result, RAP 18.8 also applied. He provided additional facts that present counsel: made several futile attempts to contact Crowley; contacted appellate counsel and obtained their files; and contacted trial counsel, who promised he would send his case file, but *never* did so. See Mtn. at 3-4.

Mr. Fowler argued that equitable tolling applied due to Crowley’s “bad faith, deception, or false assurances.”<sup>2</sup> He explicitly noted that the misconduct must be attributed to another, but not necessarily the State.<sup>3</sup>

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<sup>2</sup> *Id.* at 5 (citing *In re Haghghi*, 178 Wn.2d 435, 449, 309 P.3d 459 (2013)).

<sup>3</sup> *Id.* (citing *Bonds, supra*, at 142) (citing *State v. Hoisington*, 123 Wn.App. 138, 94 P.3d 318 (2004) (applying equitable tolling where the court thrice failed to address petitioner's meritorious attack on his guilty plea); *Littlefair, supra* (applying equitable tolling where, due to mistakes by counsel, the court, and the immigration service, petitioner was unaware until after the one-year time limit that he would be deported)).

Mr. Fowler analogized to relief from judgment in the civil realm<sup>4</sup> and also cited to abundant unequivocal federal authority that attorney misconduct and abandonment—as opposed to garden variety neglect—are grounds for application of equitable tolling of the analogous one-year time bar for federal habeas petitions.<sup>5</sup>

Mr. Fowler next argued that RAP 18.8 applied. *Id.* at 10.

On the substantive merits, Mr. Fowler—*consistent with his statement in his initial filing that relief is required “most likely for ineffective assistance of trial counsel”*—contended that trial counsel was, indeed, ineffective by: (1) failing to adequately investigate the case and call an exculpatory witness, leading the state to request and obtain an adverse missing witness instruction; and (2) failing to introduce evidence that the alleged victims had been sexually abused by their own brother, the

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<sup>4</sup> *Id.* at 8-9 (citing *Barr v. MacGugan*, 119 Wn.App. 43, 45-48, 78 P.3d 660 (2003) (accord relief from final civil judgment where “an attorney’s condition effectively deprives a diligent but unknowing client of representation”) (add’l citations omitted))

<sup>5</sup> *Id.* at 5 (citing, e.g., *Maples v. Thomas*, 565 U.S. 266, 132 S.Ct. 912, 923 181 L.Ed.2d 807 (2012) (“Common sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word.”) (quoting *Holland v. Florida*, 560 U.S. 631, 649, 130 S.Ct. 2549, 2568, 177 L.Ed.2d 130 (2010) (Alito, J., concurring); *Gibbs v. Legrand*, 767 F.3d 879, 885 (9th Cir.2014); *Spitsyn v. Moore*, 345 F.3d 796, 798 (9th Cir.2003) (finding, in a Washington case, that equitable tolling applies “where an attorney was retained to prepare and file a petition, failed to do so, and disregarded requests to return the files pertaining to petitioner’s case until well after the date the petition was due”); *Baldayaque v. United States*, 338 F.3d 145 (2d Cir.2003) (equitable tolling proper where counsel failed to file a habeas petition, conducted no legal research, and failed to communicate with the client)).

investigation of which led to the girls accusing Mr. Fowler of similar acts and also led to the criminal conviction of their brother. *See id.* at 11-19.

By Ruling dated January 23, 2018, Commissioner Schmidt granted an extension until March 23, 2018, but subject to the Court's prior order.

Mr. Fowler timely filed his Supplement (Supp.), reiterating his equitable tolling and ineffective assistance claims. He added that (1) he and his family repeatedly tried to contact Crowley, but whose phones were disconnected by August of 2017 and (2) present counsel *did not* receive the case file from trial counsel or Crowley and, instead, had to rely on Public Records Act requests and the good graces of the Kitsap County Prosecutor's Office. *Id.* at 15. Mr. Fowler repeated his legal argument. *See id.* at 17-23.

On the merits, Mr. Fowler: submitted declarations with proposed testimony from three exculpatory witnesses who trial counsel failed to contact; noted that trial counsel generally failed to communicate with him; failed to provide him with discovery; failed to file any pre-trial motions; failed to conduct adequate investigation—leading to an adverse missing witness instruction in regards to a person who should have been an exculpatory witness; and failed to prepare him to testify. He also offered more thorough legal briefing. *See id.* at 7-13, 16, 24-39.

The State timely responded that: pursuant to *Bonds, supra*, Mr. Fowler's petition was untimely due to the lack of *State* involvement and

because he failed to act with diligence; RAP 18.8 did not apply; and trial counsel was effective as supported by a Declaration from trial counsel.

In Reply, Mr. Fowler countered that equitable tolling requires only bad faith, false deception, *or* misconduct *by another* and due diligence. Citing *Hoisington, supra*, and *Littlefair, supra*, both of which *Bonds* cited but did not overrule and have never been overruled, Mr. Fowler highlighted that the case law does not require State misconduct. *Id.* at 8.

Specifically as to *Bonds*, Mr. Fowler stressed that this Court, in a unanimous decision with a two-justice concurrence, subsequently clarified: (1) all justices agreed that equitable tolling is valid; (2) the four-justice *plurality* held that equitable tolling is available only where justice requires, the aggrieved party exercises due diligence, and there is “bad faith, deception, or false assurances’ **by another**”; (3) the two-justice concurrence agreed that equitable tolling was inapplicable, but would have expanded the doctrine beyond the predicates of bad faith, deception, or false assurances; and (4) the three-justice dissent held that equitable tolling was proper on the facts and whenever justice requires. *Id.* at 9-10 (adding emphasis) (*citing Carter, supra*, at 928-29).

Summarizing *Bonds*, *Carter* enunciated that the *plurality* held that equitable tolling was inapplicable “because the petitioner failed to show that his untimely filing was caused by **another’s** bad faith, deception, or

false assurances.”<sup>6</sup> The Court thus “recognize[d] that equitable tolling of the time bar may be available in contexts broader than those recognized by the *Bonds* plurality,” but still “only in the narrowest of circumstances and where justice requires.”<sup>7</sup> More recently, this Court held that the doctrine requires only “the predicates of bad faith, deception, or false assurances”—without any qualification.<sup>8</sup>

Mr. Fowler again analogized to federal precedent and asserted that he fulfilled the relevant considerations regarding diligence: (1) efforts at the earliest possible time to secure post-conviction counsel; (2) lack of funds to hire another attorney; (3) lack of education; (4) incarceration and lack of direct access to other forms of legal assistance; (5) counsel’s false assurances; and (6) counsel’s failure to communicate. See id. at 13-14 (citing *Baldyague, supra*, at 153). Also, without his file, it was “unrealistic to expect [Mr. Fowler] to prepare and file a meaningful petition on his own within the limitations period.”<sup>9</sup>

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<sup>6</sup> *Id.* at 11 (adding emphasis) (quoting *Carter, supra*, at 929) (emphasis added).

<sup>7</sup> *Id.* (quoting *Carter, supra*, at 929).

<sup>8</sup> *Id.* at 10 (quoting *Haghighi, supra*, at 449).

<sup>9</sup> *Id.* at 14-15 (citing *Spitsyn, supra*, at 801-802) (holding that petitioner was reasonable in failing to hire another attorney because he and his mother had counsel and attempted to contact him so that it was “not evident that they should have concluded in time to hire another attorney that [counsel] was going to fail them completely. Non-responsiveness may be unprofessional, but it is hardly unheard of. By the time he gave up on [counsel], or reasonably should have been expected to have given up on him, Spitsyn could have concluded that it was too late to get a new attorney to file a petition on time, **especially since [counsel] still had the files for the case**”) (emphasis added).

On the merits, Mr. Fowler argued that in addition to being ineffective, trial counsel falsely represented to the court that he researched the applicability of the rape shield law. *See id.* at 1-4, 16-25. Mr. Fowler also submitted an Affidavit from expert attorney John Henry Browne in support of his claim of ineffective assistance. *See id.* at Ex. A.

On June 11, 2019, Division Two held that equitable tolling requires “bad faith, deception, or false assurances caused by the opposing party or the court”; “placeholder” petitions are unauthorized; and courts cannot waive statutory limitation periods. *Fowler, supra*, at 651-652.

On July 1, 2019, Mr. Fowler filed a motion for reconsideration asserting that *Fowler*: (1) conflicts with *Davis, supra*, as to the authority of courts to waive statutory limitations periods and (2) conflicts with other published cases from this Court and the appellate courts which do not require state action. Division Two denied the Motion on July 10, 2019.

## V. ARGUMENT

### A. **REVIEW IS WARRANTED PURSUANT TO RAP 13.4(b)(1) BECAUSE *FOWLER* CONFLICTS WITH THE HOLDING IN *DAVIS* THAT COURTS CAN WAIVE OR EXTEND STATUTORY LIMITATIONS PERIODS UNDER RAP 18.8**

As Division Two’s opinion conflicts with the holding in *Davis, supra*, that courts possess inherent authority to waive statutory limitations periods under RAP 18.8, review pursuant to RAP 13.4(b)(1) is warranted.

In *Davis*, one month before the one-year time bar, Davis moved for an extension of time to file his PRP. The Court granted the motion. Although the State objected the day after the Court granted the motion, the objection was placed in the file without action as untimely. Davis then *timely* filed his PRP *six months after the one-year time limit* and “successfully moved for an order specifying that the court had extended the statutory time limitations.” 188 Wn.2d at 362. As the Court held:

... the State has renewed its argument that ‘[t]he statute of limitations set forth in RCW 10.73.090(1) is a mandatory rule that bars appellate consideration of personal restraint petitions filed after the limitations period has passed.’ Resp. to Pers. Restraint Pet. at 5 (*citing [Bonds, supra]; In re Pers. Restraint of Benn*, 134 Wn.2d 868, 952 P.2d 116 (1998)). We do not find that holding in either opinion. The superior court and the Supreme Court in Washington have original jurisdiction to consider habeas challenges. Wash. Const. art. IV, §§ 4, 6. The time limits in RCW 10.73.090-.100 are designed to protect the finality of judgments while permitting consideration of many potentially meritorious collateral challenges. *See In re Pers. Restraint of Coats*, 173 Wash.2d 123, 129-31, 267 P.3d 324 (2011). **We find exercising our inherent power to grant a timely filed motion for extension of time is consistent with this design and reject the State’s argument.**

*Id.* at 362 n.2 (emphasis added).

In *Davis*, then, the Court considered all substantive arguments even though the petitioner failed to raise any claims prior to the one-year time bar. The State knew that Davis was going to file a petition due to his “placeholder” petition and request for an extension of time, but he failed

to raise any issues before expiration of the time limit. This Court nonetheless granted the motion for an extension of time to file. The appellate courts have concurrent inherent powers.<sup>10</sup>

Here, the circumstances are analogous to *Davis*, but at least Mr. Fowler noted in his timely initial pleading that his supplement would “most likely” claim ineffective assistance—and it did.<sup>11</sup> The State thus had notice whereas in *Davis* it did not.

This case, in addition, features egregious conduct by Mr. Fowler’s now resigned in lieu of disbarment prior post-conviction attorney. In *Davis*, the Court appointed *qualified* counsel for Davis’s collateral attack on his death sentence who raised numerous substantive issues. Crowley, by contrast, did nothing—except take the Fowlers’ money, offer false representations, and make empty promises. If the exercise of inherent authority was appropriate in *Davis*, which involved an ordinary request for an extension, here certainly presents an appropriate situation for a Court to exercise its inherent powers to waive the strict one-year time limit.

Division Two, by contrast, held that it lacks “authority to waive statutory limitation periods under RAP 18.8.” *Fowler, supra*, at 651-52 (*citing, e.g., Benn, supra*, at 939). This holding thus directly conflicts with

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<sup>10</sup> See Const. art. IV § 30; RAP 16.3(c); RAP 16.5(a); RCW 2.06.030; RCW 2.28.150.

<sup>11</sup> See *In re Wilson*, 169 Wn.App. 379, 387, 279 P.3d 990 (2012) (ineffective assistance argument raised after the one-year limit not new claim and related to instructional claim).

the pronouncement in *Davis* that courts have inherent authority to waive the same statutory limitation period under RCW 10.73.090 and Const. art. IV, §§ 4, 6. The *Fowler* Court, moreover, relied upon *Benn*, but this Court held in *Davis* that *Benn does not* contain such holding. 188 Wn.2d at 362 n.2. Given this extreme conflict, this Court’s review is warranted.

**B. REVIEW IS WARRANTED PURSUANT TO RAP 13.4(b)(1) BECAUSE *FOWLER* CONFLICTS WITH MANY DECISIONS FROM THIS COURT HOLDING THAT EQUITABLE TOLLING APPLIES WHEN AN UNTIMELY FILING IS CAUSED BY MISCONDUCT OF ANOTHER**

As Division Two’s opinion that equitable tolling requires state or court involvement conflicts with the holdings in *Davis, supra, Haghghi, supra, Carter, supra,* and *Bonds, supra,* that equitable tolling applies where untimeliness is due to bad faith, deception, or false assurances of another, *without qualification,* review under RAP 13.4(b)(1) is warranted.

Division Two held that “Washington courts require bad faith, deception, or false assurances *caused by the opposing party or the court.*” *Fowler, supra,* at 651 (*citing Bonds, supra,* at 141; *Millay v. Cam,* 135 Wn.2d 193, 206, 955 P.2d 791 (1998) (emphasis added)). This standard, however, is absent from any prior jurisprudence by this or any other court.

First, in *Bonds,* itself, the *plurality* highlighted that in a prior case (citation omitted), this Court “suggested a rule, synonymous to the rule in civil cases, which would make equitable tolling available only in instances

where the petitioner missed the filing deadline **due to another's malfeasance**. The Court of Appeals, however, has applied equitable tolling *less sparingly*.” 165 Wn.2d at 142 (emphases added) (citing *Littlefair, supra*) (equitable tolling proper due to inaction by the court); (*Hoisington, supra*) (equitable tolling proper due to “mistakes” by post conviction counsel, the court, *and* immigration officials). The four-person plurality thus held that as Bonds did not show that “bad faith, deception, or false assurances” caused his late filing, equitable tolling was inapt. *Id.* at 143.

The two-person concurrence held that “equitable tolling may apply in circumstances other than where bad faith, deception, or false assurances are present,” but the facts did not warrant application. *Id.* at 144-45.

The three-person dissent cited to the federal standard and then agreed that equitable tolling is, indeed, appropriate when there is “bad faith, deception, or false assurances,” but its application is not limited to such situations. Equitable tolling, rather, “applies generally when justice requires it.” *Id.* (citations omitted).

As noted above and as noted in Mr. Fowler’s Reply and Motion for Reconsideration, the *Carter* Court clarified that the *Bonds plurality* held that equitable tolling was inapplicable “because the petitioner failed to show that his untimely filing was caused by **another’s** bad faith, deception, or false assurances.” 172 Wn.2d at 929 (emphases added). The

Court thus “recognize[d] that equitable tolling of the time bar may be available in contexts broader than those recognized by the *Bonds* plurality,” but “only in the narrowest of circumstances and where justice requires.” *Id.* This is the proper standard and conflicts with Division Two’s decision.<sup>12</sup>

In *Haghighi*, this Court refused to expand the doctrine, holding only that equitable tolling is apt “when justice requires its application and when the predicates of bad faith, deception, or false assurances are met, and where the petitioner has exercised diligence in pursuing his or her rights.” 178 Wn.2d at 435 (*citing Bonds*, 165 Wn.2d at 140-41). There is no limitation on who or what must cause the predicates.<sup>13</sup>

*Davis*, finally, held that *Bonds* did not support the state’s assertion that RCW 10.73.090(1) is a “mandatory rule” barring consideration of untimely filed PRPs after the limitations period had passed. 188 Wn.2d at 362 n.2. Rather, the *Davis* Court held that “RCW 10.73.090-.100 are designed to protect the finality of judgments while permitting consideration of many meritorious collateral challenges” and concluded

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<sup>12</sup> See *State v. Johnson*, 173 Wn.2d 895, 904, 270 P.3d 591 (2012) (“A plurality has little precedential value and is not binding.”) (add’l citation omitted).

<sup>13</sup> In a dissenting opinion, Justice McCloud noted this Court’s inconsistent jurisprudence regarding amendments to PRPs beyond the one-year time limit. 178 Wn.2d at 451 (McClung, J., dissenting in part) (*citing In re Pers. Restraint of Pirtle*, 136 Wn.2d 467, 471 n.1, 965 P.2d 593 (1998) (this Court “expressly stated” it permitted an amendment outside the time limit—even after the implementation of RCW 10.73.090 in 1996); *In re Pers. Restraint of Vandervlugt*, 120 Wn.2d 427, 430–31, 436, 842 P.2d 950 (1992)).

that exercising its “inherent power to grant a timely filed motion for extension of time is consistent with this design ...” *Id.* (citation omitted).

Division Two’s decision thus conflicts with several of this Court’s prior opinions—especially *Carter’s* seemingly definitive analysis—so that review by this Court is appropriate.

**C. REVIEW IS WARRANTED PURSUANT TO RAP 13.4(b)(2) BECAUSE *FOWLER* CONFLICTS WITH THE PUBLISHED APPELLATE DECISION IN *LITTLEFAIR***

As Division Two’s decision that equitable tolling requires State or the court involvement conflicts with *Littlefair’s* holding that mistakes by counsel, the court, and immigration officials are sufficient for application of the doctrine, review by this Court is warranted.

In *Littlefair*, the defendant, a resident alien, pleaded guilty without knowledge that he would be subject to deportation. Defense counsel failed to inquire about his immigration status, failed to advise of the immigration consequences of his guilty plea, and actually struck language on the guilty plea form stating that deportation was possible. 112 Wn.App. at 752. *Littlefair* read and signed the guilty plea form, but he did not “know from his attorneys or any other source that he would be subject to deportation.” *Id.* at 754-55. At the hearing, neither *Littlefair* nor the court initialed the stricken sections, and nobody realized that the deportation provision applied. *Id.* at 755.

Two years later, the Immigration and Naturalization Service (INS) notified Littlefair that he would be deported as a result of his conviction; only then was he finally aware of the immigration consequences. *Id.*

On May 3, 1999, Littlefair moved to withdraw his plea. The trial court held that the motion had to be filed within one year of conviction, October 17, 1996, and denied the motion as untimely. *Id.* at 755-56.

The *Littlefair* Court reviewed prior cases and a noted commentator to support its holding that RCW 10.73.090 is subject to equitable tolling.<sup>14</sup>

The Court then found that tolling was warranted on the merits because the untimeliness was “not due to any fault or omission on [petitioner’s] part; rather, it was due to a series of mistakes by his attorney, the court, and arguably the INS.” *Id.* at 762.<sup>15</sup>

As Division Two’s decision requires bad faith, deception, or false assurances by the state or the court, it conflicts with *Littlefair*, which applied equitable tolling due to mere *mistakes* by several parties—but mainly counsel. Review by this Court is thus warranted.

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<sup>14</sup> *Id.* at 120–21 (quoting Mark A. Wilner, *Justice at the Margins: Equitable Tolling of Washington’s Deadline for Filing Collateral Attacks on Criminal Judgments*, 75 Wash.L.Rev. 675, 695 (2000) (“[T]he state and federal collateral attack filing deadlines are analogous statutes; because Washington law is virtually silent on whether RCW 10.73.090 is subject to equitable tolling, state courts should follow the reasoning of the wealth of federal authority holding that the federal time limit can be equitably tolled.”))

<sup>15</sup> See also *Benyaminov v. City of Bellevue*, 144 Wn.App. 755, 763, 183 P.3d 1127 (2008) (equitable tolling inapt in the absence of evidence of any “‘bad faith, deception, or false assurances’ by the City or anyone else, as the cases require”) (emphasis added).

**D. REVIEW IS WARRANTED PURSUANT TO RAP 13.4(b)(3) BECAUSE *FOWLER* AND THIS COURT’S PRECEDENT AS TO INEFFECTIVE ASSISTANCE OF POST CONVICTION COUNSEL CONFLICTS WITH RECENT UNITED STATES SUPREME COURT DECISIONS**

As the State of Washington’s precedent that there is ineffective assistance of post conviction counsel conflicts with recent United States Supreme Court precedent, review is warranted.

A defendant is entitled to effective assistance of counsel under both the Sixth Amendment and Const. art. I, § 22.<sup>16</sup> Washington, though, does not recognize ineffective assistance of post conviction counsel. *See, e.g., In re Yates*, 183 Wn.2d 572, 577, 353 P.3d 1283 (2015).

While federal courts also *generally* prohibit claims of ineffective assistance of post conviction counsel, the Supreme Court recently held:

[W]here, as here, the state procedural framework, by reason of its design and operation, makes it highly unlikely ... that a defendant will have a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct review ... ‘procedural default with not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.’”

*Trevino, supra*, at 429 (quoting *Martinez, supra*, at 1320).

While certain errors of counsel are apparent on the record and subject to direct appeal, most claims of ineffective assistance are based on

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<sup>16</sup> *State v. Lopez*, 190 Wn.2d 104, 115, 410 P.3d 1117 (2018) (citing, e.g., *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

matters beyond the record and thus must be raised in a personal restraint petition.<sup>17</sup> In addition, the “first opportunity to raise an ineffective assistance of appellate counsel claim is often on collateral review.”<sup>18</sup>

Here, as all of the issues raised by Mr. Fowler in support of his ineffective assistance claim are based on matters beyond the record, his sole recourse was through a PRP. But, due to Crowley’s malfeasance, Mr. Fowler had no counsel or ineffective counsel. Under federal constitutional precedent, then, there is sufficient cause to excuse his failure to comply with the one-year time limit and the appellate court should review his claims on the substantive merits. Review by this Court is thus warranted.

**E. REVIEW IS WARRANTED PURSUANT TO RAP 13.4(b)(4) BECAUSE MR. FOWLER’S PETITION INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THIS COURT**

Given that many inmates are too poor to afford post conviction counsel and submit poorly composed *pro se* pleadings while others—like Mr. Fowler—may be forced to forfeit their claims due to the malfeasance of counsel, application of equitable tolling seems proper when caused *by another*, including counsel, and courts should have recourse to extend statutory time limits in the interests of justice. *Davis* seems to support the longstanding proposition that courts should recognize the finality of

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<sup>17</sup> See, e.g., *State v. McFarland*, 127 Wn.2d 322, 35, 899 P.2d 1251 (1995).

<sup>18</sup> *In re Pers. Restraint of Dalluge*, 152 Wn.2d 772, 787, 100 P.3d 279 (2004).

judgments but nevertheless attempt to address inmates' substantive arguments on the merits rather than dismiss on procedural grounds.<sup>19</sup>

While RCW 10.73.090 has been ruled constitutional, the strict time limit must be viewed in conjunction with the First and Fifth Amendment's historic right of access to the courts; the Fifth and/or Fourteenth Amendments' Due Process and Equal Protection Clauses; the Privileges and Immunities clause of Art. IV, §2; and Const. art. I, §§ 3, 4, 5, 10, and 12.<sup>20</sup> As this Court recounts:

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163, 2 L.Ed. 60 (1803). The people have a right of access to courts; indeed, it is "the bedrock foundation upon which rest all the people's rights and obligations." *John Doe v. Puget Sound Blood Ctr.*, 117 Wash.2d 772, 780, 819 P.2d 370 (1991).

Putman v. Wenatchee Valley Med. Ctr., P.S., 166 Wn.2d 974, 979, 216 P.3d 374 (2009).

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<sup>19</sup> See CONST. art. I, § 32 ("A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government."); RAP 1.2(a) ("These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).").

<sup>20</sup> See *Christopher v. Harbury*, 536 U.S. 403, 415 n.12, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002); *Davis v. Cox*, 183 Wn.2d 269, 289-91, 351 P.3d 862 (2015), *abrogated by Maytown Sand & Gravel, LLC v. Thurston Cty*, 191 Wn.2d 392, 423 P.3d 223 (2018); *Lowy v. PeaceHealth*, 174 Wn.2d 769, 776, 280 P.3d 1078 (2012); *In re Pers. Restraint of Addleman*, 139 Wn.2d 751, 753-54, 991 P.2d 1123 (2000) (recognizing that "inmates have a well-established constitutional right of access to the courts").

RCW 10.70.090 thus impinges upon the fundamental and historic constitutional right of access to the courts by a specific section of the citizenry more in need of judicial protection and review than most. The collective jurisprudence of our courts regarding both the inherent authority of courts to waive statutory time limits and the proper standard for application of equitable tolling thus constitutes an issue of public importance that should be determined by this Court.

**V. CONCLUSION**

For the foregoing reasons, Mr. Fowler respectfully requests that this Court accept review and determine that: (1) courts possess inherent authority to waive RCW 10.73.090's one-year time limit; (2) equitable tolling applies when fault can be attributed to another and, more generally, to exceptional circumstances in the interests of justice and applies here; and (3) remand for consideration on the substantive merits is warranted.

DATED this 9th day of August, 2019.

Respectfully submitted,

/s/ Craig Suffian  
Craig Suffian, WSBA #52697  
Attorney for Vincent L. Fowler

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# APPENDIX

**APPENDIX A**

(Court of Appeals Decision)

June 11, 2019

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

In the Matter of the Personal Restraint  
Petition of

VINCENT L. FOWLER,

Petitioner.

No. 51029-4-II

PUBLISHED OPINION

WORSWICK, J. — Vincent Fowler filed his personal restraint petition (PRP) about five months after the one year period to file his PRP expired. He asserts that the time bar should be equitably tolled because his former counsel failed to communicate with him and subsequently resigned from the Washington State Bar Association (WSBA) in lieu of discipline. We dismiss Fowler’s PRP as untimely.

**FACTS**

Fowler was accused of sexually assaulting two children, and was convicted of two counts of first degree child molestation and one count of first degree rape of a child. The trial court imposed discretionary legal financial obligations (LFOs). Fowler appealed.

On August 18, 2015, Division Three of this court affirmed Fowler’s convictions on direct appeal. *State v. Fowler*, No. 33227-6-III, slip op. at 1 (Wash. Ct. App. Aug. 18, 2015) (unpublished), <http://www.courts.wa.gov/opinions/pdf/332276.unp.pdf>. On September 16, Fowler’s direct appeal counsel filed a petition for review with our Supreme Court. In September, Fowler’s brother Darryl Fowler retained a different attorney, John Crowley, to represent Fowler in additional postconviction matters.

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On March 31, 2016, our Supreme Court granted review “only on the issue of imposition of discretionary legal financial obligations” and remanded to the superior court to “reconsider the imposition” of discretionary LFOs consistent with *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). *State v. Fowler*, 185 Wn.2d 1016, 368 P.3d 170 (2016). On October 19, the superior court entered an order amending Fowler’s judgment and sentence, which amended the imposition of LFOs, and stated that “all other conditions of the Judgment and Sentence remain in effect.” Br. of Resp’t at App. E.

On May 22, 2017, the WSBA filed a complaint against Crowley for numerous violations of the Rules for Enforcement of Lawyer Conduct. On July 18, Crowley resigned in lieu of discipline. On October 9, Fowler retained current counsel.

On October 18, current counsel filed a document he described as a “placeholder” petition in this court. This document did not raise any issues, but instead described Crowley’s nonfeasance on this case and stated, “Given the above, the grounds for relief are yet unclear. More time is required to obtain prior counsel’s file, diagnose issues, conduct investigation, if necessary, and then prepare and file the petition.” Pet. for Review at 4.

On November 21, we issued the following ruling:

Petitioner has filed a “placeholder petition” and requests that this court grant him an extension of time in which to file his complete petition. We consider this as a motion to file a supplemental petition and grant the motion. Petitioner should file his supplemental petition, in which he must address why this court should consider waiving the one-year time bar (RCW 10.73.090) or establish that the issues he raises in his supplemental petition are not subject to the time-bar, within 60 days of the date of this ruling.

Ruling by Commissioner re “Placeholder Petition,” *State v. Fowler*, No. 51029-4-II, at 1 (Wash. Ct. App. Nov. 21, 2017).

On January 23, 2018, this court granted additional time to file a supplemental petition, subject to the conditions of this court's November 21 ruling. Ruling Granting Extension of Time, *State v. Fowler*, No. 51029-4-II, at 1 (Wash. Ct. App. Jan. 23, 2018). On March 26, 2018, current counsel filed a supplemental petition arguing ineffective assistance of counsel.<sup>1</sup>

## ANALYSIS

### I. PRP PRINCIPLES

A PRP is not a substitute for a direct appeal and the availability of collateral relief is limited. *In re Pers. Restraint of Grasso*, 151 Wn.2d 1, 10, 84 P.3d 859 (2004). To be entitled to relief, the petitioner must show either a constitutional error that resulted in actual and substantial prejudice, or a nonconstitutional error that constituted a fundamental defect that inherently results in a complete miscarriage of justice. *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 409, 114 P.3d 607 (2005).

PRPs must be timely filed to warrant our consideration. “No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.” RCW 10.73.090(1).

RCW 10.73.090(3) provides, in part, that “a judgment becomes final on the last of the following dates: (a) The date it is filed with the clerk of the trial court[ or] (b) The

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<sup>1</sup> Fowler argues that trial counsel was ineffective for failing to (1) interview crucial witnesses, (2) prepare Fowler for his testimony, and (3) offer evidence that the victims had been abused by another person. The State's response to Fowler's supplemental petition includes trial counsel's declaration that contradicts Fowler's ineffective assistance of counsel claims.

date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction.”

“[A] judgment becomes final when all litigation on the merits ends.” *In re Pers. Restraint of Sorenson*, 200 Wn. App. 692, 696, 403 P.3d 109 (2017) (quoting *In re Pers. Restraint of Skylstad*, 160 Wn.2d 944, 949, 162 P.3d 413 (2007)). If the judgment in a criminal case is remanded, and the trial court exercises independent judgment on remand, the judgment becomes final after the trial court’s decision on remand. *Sorenson*, 200 Wn. App. at 699-700.

A petitioner may amend an initial petition or file a supplemental brief, and raise new grounds for relief, *so long as the supplemental brief is timely filed* and the new issue is adequately raised. *In re Pers. Restraint of Meredith*, 191 Wn.2d 300, 307, 422 P.3d 458 (2018); *In re Pers. Restraint of Haghighi*, 178 Wn.2d 435, 446, 309 P.3d 459 (2013).

## II. PETITION IS UNTIMELY

The State argues that Fowler’s petition is untimely. Fowler does not dispute that his supplemental petition was filed more than one year after his judgment became final, but he argues that he is entitled to equitable tolling. We agree with the State, and dismiss Fowler’s petition as untimely.

On October 19, 2016, the trial court reconsidered Fowler’s LFOs, and entered an “order amending [judgment and sentence],” which amended the imposition of LFOs. Br. of Resp’t at App. E. Because Fowler did not appeal the LFO decision, his judgment became final on October 19, 2016. *See Sorenson*, 200 Wn. App. at 696.

Fowler filed his initial petition on October 18, 2017. But his initial petition raised no substantive claims. Instead, it stated, “[T]he grounds for relief are yet unclear. More time is

required to obtain prior counsel's file, diagnose issues, conduct investigation, if necessary, and then prepare and file the petition." Pet. for Review at 4. Fowler's one year period to file a petition ended on October 20, 2017. But Fowler did not file a supplemental petition containing any substantive claims until March 26, 2018. Thus, his supplemental petition is untimely unless he can establish that the issues he raised in his supplemental petition are not subject to the one year time bar. *See Meredith*, 191 Wn.2d at 307.

A. *Equitable Tolling*

Fowler argues that the time bar should be equitably tolled based on (1) former counsel's incompetence and false assurances, and (2) current counsel's difficulty in obtaining Fowler's complete file. We disagree that the time bar is tolled.

Equitable tolling "permits a court to allow an action to proceed when justice requires it, even though a statutory time period has elapsed." *In Re Pers. Restraint of Bonds*, 165 Wn.2d 135, 141, 196 P.3d 672 (2008). Because the law already permits a variety of methods for challenging wrongful convictions, equitable tolling has a very narrow application in the PRP context, and only where justice requires. *Haghighi*, 178 Wn.2d at 447-48. "Consistent with the narrowness of the doctrine's applicability, principles of finality, and the multiple avenues available for postconviction relief, we apply the civil standard and require the predicates of bad faith, deception, or false assurances." *Haghighi*, 178 Wn.2d at 448-49. Courts narrowly apply the doctrine of equitable tolling and should not use it with "'garden variety'" claims of neglect. *Haghighi*, 178 Wn.2d at 447-48.

A petitioner who seeks to benefit from the equitable tolling doctrine must demonstrate that she or he diligently pursued her or his rights and that the petition was untimely due to bad

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faith, deception, or false assurances *caused by the opposing party*—here, the State. *See Bonds*, 165 Wn.2d at 141; *Millay v. Cam*, 135 Wn.2d 193, 206, 955 P.2d 791 (1998); *In Re Pers. Restraint of Hoisington*, 99 Wn. App. 423, 430-31, 993 P.2d 296 (2000). To show diligence, a litigant must demonstrate they sought relief promptly upon learning the basis for doing so. *See State v. Littlefair*, 112 Wn. App. 749, 762-63, 51 P.3d 116 (2002). Washington courts have applied equitable tolling to the statutory time limit of PRPs in very few circumstances. *See Haghghi*, 178 Wn.2d at 447-48; *see also Littlefair*, 112 Wn. App. at 762; *Hoisington*, 99 Wn. App. at 431-32.

Fowler relies on federal cases discussing equitable tolling to statutory time limits of habeas petitions. Federal courts apply equitable tolling to statutory time limits of habeas petitions in “extraordinary circumstances.” *Holland v. Florida*, 560 U.S. 631, 649, 130 S. Ct. 2549, 2564, 177 L. Ed. 2d 130 (2010). A petitioner seeking equitable tolling of the federal habeas one year limitation bears the burden of establishing ““(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.”” *Holland*, 560 US at 649 (internal quotation marks omitted) (quoting *Pace v DiGuglielmo*, 544 U.S. 408, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005)).

Federal courts have found the conduct of petitioner’s counsel in some circumstances to constitute extraordinary circumstances for purposes of equitable tolling. *Maples v. Thomas*, 565 U.S. 266, 132 S. Ct. 912, 915, 181 L. Ed. 2d 807 (2012); *Holland*, 560 U.S. at 653-54; *Spitsyn v. Moore*, 345 F.3d 796 (9th Cir. 2003). But the federal cases are distinguishable because the federal standards for equitable tolling of habeas petitions are more lenient. As stated above,

Washington courts require the party asserting equitable tolling to demonstrate, among other things, that the conditions causing the untimely filing were caused by the opposing party.

Here, Fowler retained Crowley on September 2, 2015. Fowler's judgment became final on October 19, 2016, when the superior court entered its order amending the judgment and sentence amending the imposition of discretionary LFOs. The one year period to file a personal restraint petition began on that date.

On May 22, 2017, the WSBA filed a complaint against Fowler's former counsel, Crowley. On July 18, 2017, Crowley resigned. On October 6, Darryl Fowler learned that Crowley had resigned in lieu of discipline. On October 9, Fowler retained current counsel. On October 18, current counsel filed what he referred to as a "placeholder" petition.<sup>2</sup> On October 20, Fowler's period to file a personal restraint petition ended. On March 26, 2018, current counsel filed a supplemental petition.

In a declaration, Fowler says that between September 2015 and October 6, 2017, he spoke with Crowley "on only a couple of occasions," and Crowley told Fowler "that he was working on [Fowler's] case and had all sorts of plans of what he was going to do." Suppl. Br. of

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<sup>2</sup> Because a "placeholder petition" is not authorized under court rules or statutes, this court's November 21, 2017 ruling rejected the characterization of "placeholder petition," and instead considered Fowler's initial petition as a "motion to file a supplemental petition." A petitioner may file an amended petition or supplemental brief and raise new grounds for relief as long as the amended or supplemental filing is timely filed and the issues are adequately raised. *Meredith*, 191 Wn.2d at 307; *Haghighi*, 178 Wn.2d at 446. A petitioner cannot, however, avoid the time bar by filing a "placeholder petition" that fails to adequately raise claims, and then after the deadline, file a supplemental brief that meets the requirements for an acceptable petition. *See Haghighi*, 178 Wn.2d at 446; *see also Meredith*, 191 Wn.2d at 307.

Petitioner at Ex. D. “In about June of 2017, all of [Fowler’s] calls started going to voice mail. In about August of 2017, [Crowley’s] line was disconnected.” Suppl. Br. of Petitioner at Ex. D.

As Fowler acknowledges, our Supreme Court does not employ the federal standard of “extraordinary circumstances.” Rather, Washington courts require bad faith, deception, or false assurances caused by the opposing party or the court. *See Bonds*, 165 Wn.2d at 141; *Millay*, 135 Wn.2d at 206. Although Fowler has alleged the attorney he hired engaged in egregious behavior, he has failed to establish bad faith, deception, or false assurances by the State. Thus, under *Bonds*, we hold that Fowler has not demonstrated that he is entitled to equitable tolling.

B. *Rule of Appellate Procedure (RAP) 18.8*

Fowler contends the time for filing should be extended under RAP 18.8(a) and (b). We disagree.

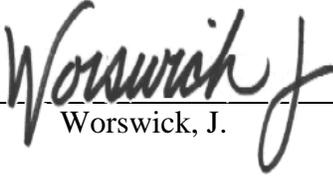
RAP 18.8, which applies to PRPs through RAP 16.17, addresses “[w]aiver of rules and extension and reduction of time.” RAP 18.8 provides that appellate courts may waive or alter any provision of the Rules of Appellate Procedure. RAP 18.8(a). Appellate courts may also extend the time to file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. RAP 18.8(b).

The one year time limit of RCW 10.73.090 is a statutory limitation period. Courts do not have the authority to waive statutory limitation periods, as opposed to time limits set down in court rules. *In Re Pers. Restraint of Benn*, 134 Wn.2d 868, 939, 952 P.2d 116 (1998); *State v. Robinson*, 104 Wn. App. 657, 665, 17 P.3d 653 (2001). The statutory time limit is a mandatory rule that acts as a bar to appellate court consideration of collateral attacks, unless the petitioner

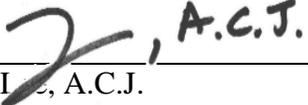
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shows that a statutory exception applies. *Robinson*, 104 Wn. App. at 662. Because we do not have authority to waive statutory limitation periods under RAP 18.8, Fowler's argument fails.

Fowler has failed to establish that the issues he raises in his supplemental petition are not subject to the one year time bar under RCW 10.73.090, .100. Consequently, we dismiss his petition as untimely.

  
Worswick, J.

We concur:

  
I. J., A.C.J.

  
Cruiser, J.

**APPENDIX B**

(Order Denying Motion for Reconsideration)

July 10, 2019

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

In the Matter of the Personal Restraint of

VINCENT L. FOWLER,

Petitioner.

No. 51029-4-II

**ORDER DENYING  
MOTION FOR RECONSIDERATION**

Petitioner filed a motion for reconsideration of the published opinion filed July 11, 2019 in the above entitled matter. After consideration the Court denies petitioner's motion.

Accordingly, it is

**SO ORDERED.**

**PANEL:** Jj. Worswick, Lee, Crusier

**FOR THE COURT:**

  
\_\_\_\_\_  
JUDGE

## **APPENDIX C**

(Relevant Statutes and Constitutional Provisions)

RCW 2.06.030, in relevant part, provides:

The administration and procedures of the court shall be as provided by rules of the supreme court. The court shall be vested with all power and authority, not inconsistent with said rules, necessary to carry into complete execution all of its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law and the Constitution and laws of this state.

RCW 2.28.150 provides:

When jurisdiction is, by the Constitution of this state, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws.

RCW 10.73.090 provides:

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

RCW 10.73.100 provides:

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

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction;  
or

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

U.S. Const. amend. I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself,

nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. VI provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. Art. IV, § 2, cl. 1 provides:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

CONST. art. 1, § 4 provides:

The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

CONST. art. 1, § 5 provides:

Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

CONST. art. 1, § 10 provides:

Justice in all cases shall be administered openly, and without unnecessary delay.

CONST. art. 1, § 12 provides:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

CONST. art. 1, § 22 (Amend. 10), in relevant part, provides:

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process

to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases ...

CONST. art. I, § 32 provides:

A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

CONST. art. IV, § 4 provides:

The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars (\$200) unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state or any judge thereof.

CONST. art. IV, § 6 (Amend. 87) provides:

Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue

papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

CONST. art. IV, § 30 (Amend. 50) provides

(1) *Authorization.* In addition to the courts authorized in section 1 of this article, judicial power is vested in a court of appeals, which shall be established by statute.

(2) *Jurisdiction.* The jurisdiction of the court of appeals shall be as provided by statute or by rules authorized by statute.

(3) *Review of Superior Court.* Superior court actions may be reviewed by the court of appeals or by the supreme court as provided by statute or by rule authorized by statute.

(4) *Judges.* The number, manner of election, compensation, terms of office, removal and retirement of judges of the court of appeals shall be as provided by statute.

(5) *Administration and Procedure.* The administration and procedures of the court of appeals shall be as provided by rules issued by the supreme court.

(6) *Conflicts.* The provisions of this section shall supersede any conflicting provisions in prior sections of this article.

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that on August 9, 2019, I served or caused to be served electronically by filing through the Portal a copy of the foregoing upon all parties and particularly the following counsel of record:

Kitsap County Prosecuting Attorney's Office  
Appellate Unit  
614 Division Street, MS-35  
Port Orchard, WA 98366

And by U.S. Regular Mail, postage prepaid to:

Vincent L. Fowler, DOC #389354  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

DATED this 9th day of August, 2019 at Seattle, Washington.

LAW OFFICES OF JOHN HENRY BROWNE, P.S.

/s/ Craig D. Suffian  
WSBA #52697

**LAW OFFICES OF JOHN HENRY BROWNE, P.S.**

**August 09, 2019 - 1:35 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51029-4  
**Appellate Court Case Title:** Personal Restraint Petition of Vincent L Fowler  
**Superior Court Case Number:** 13-1-00466-4

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