THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	) SUPREME COURT
Respondent,	) No. 101441-4
v.	) MOTION FOR
Marx W. Coonrod,	) PETITION FOR
Appellant.	) REVIEW

I. IDENTITY OF MOVING PARTY:

Comes Now Marx W. Coonrod acting Pro Se, incarrcerated at Washington State Penitentiary-Minimum Security Unit, Camp, Walla walla Washington.

II. STATEMENT OF RELIEF SOUGHT:

The Appellant/Petitioner is asking for the issue of the absence of a law library here at Washington State Penitentiary-MSU, Camp, be addressed. That violates the Appellant's right to Due Process under the Fourteenth Amendment, and his right to Petition that violated his constitutional right to court access under the First Amendment, and needs to be addressed.

Appellant's Direct Appeal must be reinstated with new counsel to be appointed that will write all the motions Appellant is asking for, that are needed in the interest of justice, to be able to present the evidence needed on Direct Appeal combined with his PRP, as intended. This must be done to be seen in the most favorable light of the Defendant/Appellant.

Appellant has been denied his right to Appeal by no access to a law library, or meaningful access, for well over 2 years

now. This all started when Covid-19 came into play, and must be addressed, being unable to fight his case on **Appeal.**

III. FACTS RELEVANT TO CASE:

The Appellant argues his right to Appeal any part of this case has been violated because of the issue of denial-of-access to a law library here at WSP-MSU Camp, and the denial of **meaningful access** to the law library at Stafford Creek Corrections Center for well over a year before being moved here. This all started with Covid-19, that shut down everything, and gave **no access** at first then changed to **restricted access.** That then gave us less than 45 minutes per week access.

The Appellant was forced after filing 2 motions for **New Counsel** to continue his Appeal with an Appellant Lawyer that refused to write the motion[s] his Client had asked him to write that were needed in the interest of justice. This same lawyer, Kevin Hochhalter, lied to his Client about the motions asked for him to write, and said the appellant had to write them.

Then when asked for the Trial Exhibits from the start of his representation, that are afforded the appellant, he was **DILATORY** in providing them to his Client/Appellant. And then were not given in **USABLE FORM.**

The Appellant was not given his Attorney/Client File and Discovery as requested, and not afforded Equal Protection that **Padgett** was afforded in the COA Division III.

All the Appellant's motion have been done without the assistance of a law library that is needed, and required under the law on appeal.

IV. LAW AND ARGUMENT:

Meaningful access to justice is our right on appeal. Mere access to the courthouse doors does not by itself assure a proper function of the adversary process, and that a criminal appeal is fundamentally unfair if the State proceeds against an indigent defendant without making certain that the Appellant has access to the raw materials integral to the building of an effective defense. The Courts have often reaffirmed that

fundamental fairness entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system." **Ake v. Oklahoma**, 470 U.S. 78, 84 L.Ed.2d 53, 105 S.Ct. 1087 (1985).

While at Stafford Creek Corrections Center Covid-19 hit that shut d'wn access to the law library all together. Then was changed to **restricted access**, that allowed one, s'metimes two 50 minute sessions, but after walking to the location of the law library, was only 40 to 45 minutes. "Meaningful legal research on most legal problems cannot be done in forty-five minute intervals." **Williams v. Leeke**, 584 F.2d 1336, 1340 (4th Cir. 1978).

Then was moved to WSP-MSU Camp on 12-4-2021, where there is **no law library at all**. This denial-of-access to a law library denies Appellant's **Due Process**, and the essence of the access claim is that official action has and is presently denying the Appellant an opportunity to appeal his case. **Hebbe v. Pliler**, 627 F.3d 338 (CA9 2010). No access to law library during lockdown.

Hebbe alleges that the prison officials violated his constitutional right to court access, grounded in the First Amendment right to petition and the Fourteenth Amendment right to due process, by denying him access to the prison law library while the facility was on lockdown, and that the denial prevented him from filing a brief in support of his appeal of this state court conviction.

Systemic official actions by having no meaningful access at Stafford Creek, and then by moving the Appellant to WSP-MSU Camp on 12-4-2021, where there is no law library, after being told at his Custody Review, Dated 10-25-2021, by counselor Tera L. Flink, and print Date 11-22-2021, and was told he would stay at SCCC under a legal **HOLD**, and would not be transferred to another facility till after his Direct Appeal is complete. This kept the Appellant from being able to fight his case on **Appeal.**

See Exhibits and Declaration.

Pursuant to **RAP Rule 2.1(a)(1)**, Review as a matter of right, called "**Appeal**", and **RAP Rule 2.2(a)(13)**, Final Order After Judgment. Any final order made after judgment that affects a substantial right.

An **Appeal** is a matter of right, and is a substantial right. To be able to fight this case on appeal or even respond to the Supreme Court's asked for "**Petition for Review**" document, the Appellant must have access to a law library in minimum security. This has been denied, and his constitutional right to petition and access the court under the First Amendment, and due process under the Fourteenth Amendment is being **VIOLATED**, and is unable to continue to be forced to fight this case on **Appeal**.

V. CONCLUSION:

The document asked for by The Washington State Supreme Court, Petition for Review, cannot be done without access to a law library that is required for an **Appeal**, and has been for over 2 years. This Denial-of-Access Claim (Issue) started when Covid-19 hit and shut down SCCC's law library and as such Appellant's Direct Appeal. This must be **Reinstated and Restart Direct Appeal from that point.**

RESPECTFULLY SUBMITTED by Marx W. Coonrod, #839750.

Marx W. Coonrod 12-25-2022

SIGNED DATED

Marx W. Coonrod, #839750, Unit 6-A03
Washington State Penitentiary-MSU
1313 N. 13th Ave.
Walla Walla, WA 99362-1065

EXHIBIT LIST

Exhibit #1: Motion To Restart Direct Appeal For Due Process Violations, with Exhibits; Custody Review (Print Date:11-22-21); WSP-MSU Orientation Manual, no law library. [Motion Filed 12-2-2022].

Exhibit #2: COA DIVISION II, Order Calling For An Answer To Motion To Restart Direct Appeal For Due Process Violations. [Filed 12-16-2022].

Exhibit #3: Motion For **STAY** Of Appeal [Dated 11-3-22]. (Misrepresented as a "Motion For Time Extension").

Exhibit #4: Motion To Supplement The Record On Appeal (RAP 9.11(a)(1,2,5,6))(9.10) [Dated 5-18-22].

EXHIBIT #1

Filed
Washington State
Court of Appeals
Division Two

September 27, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MARX WAYNE COONROD, Appellant.	No. 53527-1-II UNPUBLISHED OPINION

MAXA, J. – Marx Coonrod appeals his convictions of three counts of first degree robbery and one count of attempted first degree robbery. The convictions arose from two incidents in which a man entered the same bank with a bandana covering his face and a hoodie over his head and demanded money, and a third incident in which a man approached the bank with a bandana on his face but left when he saw a security guard.

We hold that the trial court did not err in (1) denying Coonrod's request for a lesser included offense jury instruction regarding first and second degree theft and (2) excluding evidence that another person was at the scene during the third incident. We also decline to address the multiple assertions Coonrod makes in his statement of additional grounds (SAG). Accordingly, we affirm Coonrod's convictions.

FACTS

Bank Incidents

On February 1, 2016, a man entered a bank in Vancouver wearing a bandana over his face, sunglasses, a dark beanie style hat, and a hood over his head. The man approached a teller's window and pushed a customer waiting there aside. He then demanded that the teller give him 50s and 100s. The teller gave him money out of her drawer. The man then went to another teller and told her to give him all her 50s and 100s. The teller gave him the money she had in her top drawer. The man took a total of $1,690 from the bank.

The man left the bank and headed in the direction of a closed pizza restaurant next door. Bank employees noticed that he had a distinctive gait, somewhat like a limp. Employees at an insurance office next door saw the man walk toward an alley behind the closed pizza restaurant.

In the subsequent investigation the police located a dark beanie style hat in the alley by the closed pizza restaurant. The hat was dry while the rest of the ground was wet.

On March 16, a man entered the same bank wearing a blue bandana on his face, sunglasses, and a hood over his head. The man went to a teller and told her to give him 50s and 100s. At some point he said "ándale" – "hurry up" in Spanish. The teller handed him money. The man took a total of $4,850.

The man exited the bank heading in the direction of the closed pizza restaurant. Bank employees again noticed a distinctive gait. Bank employees who were present during both the February 1 and March 16 incidents were convinced that the same person was involved in both incidents. An employee at the insurance office observed the man walk to the alley behind the closed pizza restaurant and then observed a person in a white truck with ladder racks drive out from behind the building.

On April 22, a man wearing a bandana over his face and a hoodie walked by the insurance office and toward the bank. An insurance employee stated that the robber was back. A bank employee who had been involved in a prior incident started crying when she saw him. However, the bank had hired a security guard, who would open the locked front door for customers. The man walked up to the bank but did not enter and instead walked back toward the closed pizza restaurant. The man had the same distinctive gait. The man walked to the alley behind the closed restaurant and drove away in a white truck with ladder racks. A bank employee and an insurance office employee both saw the man and thought he was the same person who had taken money from the bank before.

One of the insurance office employees ran outside and took pictures of the man and the white truck. The employee recognized the truck as the same one, parked in the same place, that she had seen after the March 16 robbery.

Investigation

Police submitted the DNA from the beanie hat for testing. The DNA matched Coonrod. Police went to Coonrod's apartment, where an officer observed him leaving. The officer observed that he walked with a distinctive gait and that he got into a white truck with ladder racks.

Police obtained a search warrant for Coonrod's home and truck. They discovered a blue bandana in the home and they found a beanie style hat and sunglasses in the truck. Police obtained cell phone records for Coonrod's phone. The records showed that Coonrod's phone was turned off or not connected to his cellular network at the time of the three incidents.

When officers questioned Coonrod, he admitted going to the bank on April 22 but stated that he decided not to enter after seeing the security guard because he had alcohol on his breath.

Coonrod also acknowledged that it was him and his truck in the photographs taken by the insurance company employee. And Coonrod stated that he walked with a slight limp due to surgery on his hips and screws in his knee.

The State charged Coonrod with three counts of first degree robbery and one count of attempted first degree robbery. Two of the first degree robbery counts were based on the February 1 incident, where the man demanded money from two different tellers.

Trial

At trial, one of the bank employees testified that on February 1 the man walked into the bank and said, "[T]his is not a joke. It's a bank robbery." 2 Report of Proceedings (RP) at 224. He then went to one of the tellers, demanded money, and again stated that it was a bank robbery or a robbery. None of the other bank employees testified that the man said this.

Regarding the March 16 incident, one of the bank employees stated that the man said, "[E]verybody stay where you are" when he first came into the bank. 1 RP at 90. And when he left he again stated the same thing. Another bank employee stated that the man said, "[N]o one move." 2 RP at 306. None of the other bank employees testified that the man made these statements. Another bank employee said that when the man said "ándale" it was "very loud and very scary for everyone in the branch." 2 RP at 243.

Coonrod sought to present evidence that there was another man named Doug Shattuck at the bank on April 22 who also was wearing a hoodie. Shattuck was there using the automated teller machine (ATM). Coonrod represented that bank employees thought that the man they identified as the person who had taken money from the bank before had used the ATM on April 22. Coonrod argued that the evidence was needed to discredit the testimony of bank employees

who identified Coonrod as the man in the previous incidents. The trial court granted the State's motion in limine to exclude this evidence based on relevance.

At the end of the trial, Coonrod requested that the jury be instructed on the lesser included offenses of first degree theft and second degree theft. The trial court denied his request, concluding that theft was not a lesser included offense to first degree robbery.

The jury found Coonrod guilty as charged. Coonrod appeals his convictions.

ANALYSIS

A. LESSER INCLUDED OFFENSE INSTRUCTION – THEFT

Coonrod argues that the trial court erred in denying his request for a lesser included offense instruction regarding first degree and second degree theft. We disagree.

1. Legal Principles

RCW 10.61.006 provides a defendant with a statutory right to a lesser included offense instruction. *State v. Condon*, 182 Wn.2d 307, 316, 343 P.3d 357 (2015). A lesser included offense instruction must be given when two prongs are satisfied "(1) each of the elements of the lesser offense is a necessary element of the offense charged (legal prong) and (2) evidence in the case supports an inference that the lesser crime was committed (factual prong)." *State v. Coryell*, 197 Wn.2d 397, 400, 483 P.3d 98 (2021) (citing *State v. Workman*, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978)).

The party requesting the lesser included offense instruction is entitled to the instruction, only if both prongs of the *Workman* test are satisfied. *Condon*, 182 Wn.2d at 316. We review the legal prong of this test de novo, and we review the factual prong for an abuse of discretion. *Id.* at 315-16.

2. Factual Prong

We do not need to address the legal prong of the *Workman* test because we conclude that the factual prong is not satisfied under the facts of this case.

Under the factual prong, "[a] jury must be allowed to consider a lesser included offense if the evidence, when viewed in the light most favorable to the defendant, raises an inference that the defendant committed the lesser crime instead of the greater crime." *State v. Henderson*, 182 Wn.2d 734, 736, 344 P.3d 1207 (2015). But "the evidence must affirmatively establish the defendant's theory of the case – it is not enough that the jury might disbelieve the evidence pointing to guilt." *State v. Fernandez-Medina*, 141 Wn.2d 448, 456, 6 P.3d 1150 (2000). To give the instruction, there must be enough evidence that a jury could rationally convict the defendant of the lesser offense and acquit the defendant of the greater offense. *Id.*

The issue here is whether a jury could find that Coonrod did *not* threaten the use of immediate force, violence, or fear of injury to obtain or retain possession of the bank's money or to prevent or overcome resistance to the taking. "[A] theft does not rise to the level of a robbery because it involves no use or threat of force to effectuate the same outcome: taking another person's property." *State v. Farnsworth*, 185 Wn.2d 768, 779, 374 P.3d 1152 (2016).

RCW 9A.04.110(28) defines "threat" as "to communicate, directly or indirectly the intent" to take a certain action. The test for an indirect threat of force is an objective one: whether " 'an ordinary person in the victim's position could reasonably infer a threat of bodily harm from the defendant's acts.' " *Farnsworth*, 185 Wn.2d at 776 (quoting *State v. Witherspoon*, 180 Wn.2d 875, 884, 329 P.3d 888 (2014)).

In *Farnsworth*, the Supreme Court found persuasive the reasoning in *State v. Collinsworth*, 90 Wn. App. 546, 551, 966 P.2d 905 (1997), where the court stated that

"demanding money from a teller communicated an implied threat because it was 'objectively reasonable' for a bank teller to fear harm in the circumstances, even though no explicit threat was made." *Farnsworth*, 185 Wn.2d at 777 (quoting *Collinsworth*, 90 Wn. App. at 551). " 'No matter how calmly expressed, an unequivocal demand for the immediate surrender of the bank's money, unsupported by even the pretext of any lawful entitlement to the funds, is fraught with the implicit threat to use force." *Farnsworth*, 185 Wn.2d at 777 (quoting *Collinsworth*, 90 Wn. App. at 553).

However, the court in *Farnsworth* rejected the notion that "any unlawful demand for money at a bank would constitute robbery." 185 Wn.2d at 779. "In every such case, the circumstances will be unique and context-dependent, causing courts to determine whether the evidence supports an objective finding of a threat under our *Witherspoon* standard." *Id.*

Here, on both February 1 and March 16 Coonrod entered the bank with a bandana covering his face and a hoodie over his head and demanded money to which he had no lawful entitlement. Under *Farnsworth*, this evidence certainly was sufficient to find that there was an implied threat of force. *See* 185 Wn.2d at 777. We need not decide whether this evidence, standing alone, would *require* a jury to find an implied threat of force because here there was additional evidence of an implied threat of force.

One witness testified that on February 1, Coonrod twice stated that a bank robbery was occurring. In addition, Coonrod pushed a customer out of the way before demanding money from a teller. Given these statements in the context of entering the bank with a bandana covering his face, pushing aside a customer, and demanding money, a jury could not have found that Coonrod did not impliedly threaten force.

Regarding March 16, witnesses stated that Coonrod twice stated "[E]verybody stay where you are" and "[N]o one move." 1 RP at 90; 2 RP at 306. In addition, several witnesses testified that Coonrod said "ándale" when demanding money. One witness testified that this statement was loud and scary. Again, a jury could not have found that Coonrod did not impliedly threaten force given the fact that Coonrod made these statements with a bandana covering his face and a hoodie over his head while demanding money.

Coonrod emphasizes that other witnesses did not mention that he made the statements referenced above on February 1 and March 16. He claims that viewing the evidence in the light most favorable to him, a jury could find that he did not actually make these statements. However, there is no affirmative evidence that Coonrod did not make these statements. As noted above, "it is not enough that the jury might disbelieve the evidence pointing to guilt." *Fernandez Medina*, 141 Wn.2d at 456.

We conclude that Coonrod fails to establish the factual prong of the *Workman* test. Accordingly, we hold that the trial court did not abuse its discretion in denying Coonrod's request for a lesser included offense instruction of first degree and second degree theft.

B. EXCLUSION OF DEFENSE EVIDENCE

Coonrod argues that the trial court erred by excluding evidence of Doug Shattuck's presence at the bank on April 22. We disagree.

Under ER 401, evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Irrelevant evidence is not admissible. ER 402. We review a trial court's evidentiary rulings for an abuse of discretion. *State v. Slater*, 197 Wn.2d 660, 667, 486 P.3d 873 (2021).

Here, Coonrod wanted to present evidence that Shattuck used the bank's ATM on April 22 while wearing a hoodie. Coonrod claimed that bank employees thought that the man who previously had taken money from the bank had used the ATM on April 22. He apparently wanted to argue that bank employees mistakenly identified Shattuck as the robber.

However, to obtain appellate review of the exclusion of evidence, a party must have provided an offer of proof in the trial court. *State v. Wang*, 5 Wn. App. 2d 12, 26, 424 P.3d 1251 (2018). The offer of proof should "inform the trial court of the specific nature of the offered evidence so the court can judge its admissibility." *State v. Burnam*, 4 Wn. App. 2d 368, 377, 421 P.3d 977 (2018).

In the trial court, Coonrod failed to identify any bank employee who mistakenly identified Shattuck as the man who had previously taken money from the bank. Without such an offer of proof, we cannot review whether the trial court properly concluded that the mere fact that Shattuck was present on April 22 was irrelevant.

Accordingly, we hold that the trial court did not abuse its discretion in excluding evidence regarding Shattuck's presence at the bank on April 22.[1]

C. SAG CLAIMS

In his SAG and amended SAG, Coonrod asserts a time for trial violation, misconduct by multiple individuals, ineffective assistance of counsel, witness perjury, and evidentiary error. We decline to consider these assertions.

[1] Coonrod makes a one sentence statement in his opening brief that he had a constitutional right to present this evidence. But he does not identify this constitutional claim in his assignments of error or present argument regarding the claim. An alleged constitutional violation requires more than just a passing reference. *See State v. Wright*, 19 Wn. App. 2d 37, 54-55, 493 P.3d 1220 (2021), *rev. denied*, 199 Wn.2d 1001 (2022). Therefore, we decline to address this claim.

1. SAG Appendix

Initially, Coonrod has attached numerous documents to his SAGs. RAP 10.3(a)(8) provides, "An appendix may not include materials not contained in the record on review." Accordingly, we will not consider documents not included in the appellate record.

2. Unexplained Claims

Coonrod makes a number of assertions, claims, and allegations in his 50-page SAG and amended SAG. However, he does not sufficiently explain some of these claims and allegations. Under RAP 10.10(c), we will not consider a SAG "if it does not inform the court of the nature and occurrence of alleged errors." Therefore, we will not address those assertions for which we cannot discern the nature of the claimed errors.

3. Matters Outside the Appellate Record

On direct appeal, we may consider only facts contained in our record. *State v. Estes*, 188 Wn.2d 450, 467, 395 P.3d 1045 (2017). A personal restraint petition (PRP) is the proper avenue for addressing arguments based on facts outside of the record. *Id*.

a. Time for Trial Violation

Coonrod asserts that his right to a speedy trial was violated. CrR 3.3 governs a defendant's right to be brought to trial in a timely manner. CrR 3.3(b)(1)(i) provides that a defendant who is detained in jail must be brought to trial within 60 days of arraignment. But CrR 3.3(e) provides that certain time periods are excluded in computing the time for trial. CrR 3.3(e)(3) states that these excludable time periods include continuances the court grants under CrR 3.3(f), and CrR 3.3(e)(8) excludes "[u]navoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties."

Here, the State filed charges in April 2016. We have no record of when Coonrod was arraigned, but we assume it was shortly thereafter. We have no record of the continuance requests between the 2016 arraignment and February 2019. Our record shows both defense counsel and the State requested a continuance on February 7, 2019 and then defense counsel requested another continuance on March 21, 2019 to prepare for trial. In granting the March 21 continuance, the trial court noted that Coonrod had gone through six prior attorneys. Trial then commenced on April 15, 2019.

We recognize that three years is a significant time between arraignment and trial. However, that time may have included periods excluded from the time to trial calculations under CrR 3.3(e)(3) and CrR 3.3(e)(8). Our record does not show the reasons the trial court continued the trial date. Therefore, Coonrod's time to trial claim relies on facts not contained in the appellate record and we decline to address this claim.

b. Prosecutorial/Governmental/Judicial Misconduct

Coonrod asserts that he was denied a fair trial based on misconduct by the police, the prosecutor, the trial court, and correction officers. He dedicates numerous pages of his SAG and amended SAG to allege that evidence was concealed, witnesses were not disclosed, documents were wrongly taken while he was incarcerated, and evidence was not properly collected and stored. Once again, these claims are not supported by our record. Therefore, we decline to address these claims.

c. Ineffective Assistance of Counsel

Coonrod asserts that he received ineffective assistance of counsel on a number of grounds, including that defense counsel did not return discovery materials taken from him by corrections officers, conspired with the judge and prosecutor against him, and failed to conduct a

reasonable investigation into his case. But we do not have an adequate record to determine whether defense counsel's performance was deficient. Therefore, we decline to address these claims.

4. Alleged Witness Perjury

Coonrod asserts in his SAG and amended SAG that various witnesses committed perjury at trial.

We do not address issues of witness credibility on appeal and instead defer to the jury's measure of witness credibility and resolution of conflicting testimony. *State v. Thorgerson*, 172 Wn.2d 438, 443, 258 P.3d 43 (2011). "Whether a witness testifies truthfully is an issue entirely within the province of the trier of fact." *Id.* Because the jury had a full opportunity to consider each witness's testimony, we decline to address these claims.

5. Evidentiary Ruling

Coonrod asserts that the trial court erred by excluding evidence of Shattuck's presence at the bank on April 22. RAP 10.10(a) states that the defendant may file a SAG "to identify and discuss those matters related to the decision under review that the defendant believes have not been adequately addressed by the brief filed by the defendant's counsel." This claim was adequately addressed by appellate counsel, and we have analyzed this issue above. Therefore, we decline to address this issue further.

CONCLUSION

We affirm Coonrod's convictions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

WORSWICK, P.J.

PRICE, J.

Department of Corrections
WASHINGTON STATE

LEGAL COPY/INDIGENT POSTAGE/SCANNING REQUEST

Only one document per request.

Mark W. Coonrod	839750	6-A03	12-2-22
Requestor full name	DOC number	Unit/cell	Date

Requestors must allow 5 business days to schedule the request in advance of any known deadlines. Debt incurred for copies or indigent postage will be recovered per DOC 200.000 Trust Accounts for Incarcerated Individuals.

PHOTOCOPY REQUEST

Blank pages will not be copied • All copies eligible to create a debt will be mailed out immediately

Legal pleadings and exhibits being submitted to the court and opposing party in a case regarding one of the following (select one).

☒ Current conviction ☒ Conditions of confinement ☐ Challenge to sentence ☐ Child dependency

Case number: COA #53527-1-II Date of verifiable deadline _____

Copies need to be mailed to:

- ☐ Court, including copies of bench or judge's copies if required by the rules: _____
- ☐ Counsel listed on the Judgment & Sentence (J & S) for appeals: _____
- ☐ Opposing party(ies): _____

Other: ☐ Ombuds - Up to 5 pages (not to be processed as legal mail). By making this request, you are hereby waiving confidentiality for the purposes of photocopying and sending to Office of the Corrections Ombuds (OCO).

A photocopy of the following, which requires available funds (select one of the following and identify):

- ☐ Working legal documents/letters to legal entities for active cases: _____
- ☐ Letters to legal entities per DOC 450.100 Mail for Individuals in Prison: _____
- ☐ Legal documents/papers or materials (e.g., family law documents, legal name change/tort claim documents): _____

Number of pages: _____ x Number of copies: _____ = Total pages: _____ x $0.20 = Total cost: $_____

---------- **Employee use only** ----------

☐ Requestor is on indigent list ☐ Copies are eligible to create debt

Requestor has: ☐ Insufficient funds ☐ Attached DOC 06-075 Request to Transfer Funds

☐ Sufficient funds ☐ Attached DOC 02-003 Postage Transfer

Copies made by: _____ Date copies made: _____

Date copies sent, if required: _____

INDIGENT POSTAGE REQUEST

This applies to postage needed by a requestor on the indigent list for one of the following (select one):

- ☐ BAR Association for attorney complaints
- ☐ Office of the Corrections Ombuds
- ☐ Indeterminate Sentence Review Board
- ☐ Prison Rape Elimination Act (PREA) Coordinator
- ☐ Department of Enterprise Services/Office of Financial Management for tort claims
- ☐ Court or opposing attorney/party (only in cases related to the offender's terms of confinement, conditions of sentencing, or child dependency)

SCANNING REQUEST

Scanning is only applicable for courts requiring electronic filing per participation with the Department in an electronic filing program. Scanning will not incur a fee. Case number: COA #53527-1-II

Court: Washington State Supreme Court Number of pages: 14

Scanning completed by: CC3 Date scanned: 12-2-22 Page count: _____

CERTIFICATE OF SERVICE

I certify that on today's date: 12-2-2022 .

I, Marx W. Coonrod, Appellant/Petitioner, E-Filed Motion To Restart Direct Appeal For Due Process Violations, delivered an electronic version of the Motion, using the Court's filing portal, to the Court of Appeals Division II, and The Supreme Court of The State of Washington, through the Court's on line filing system.

Marx W. Coonrod, #839750, Unit 6-A03.
Washington State Penitentiary-MSU
1313 N. 13th Ave.
Walla Walla, WA. 99362-1065

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Walla Walla, Washington on: 12-2-2022 .

Marx W. Coonrod — SIGNED

12-2-2022 — DATED

Marx W. Coonrod, #839750
Appellant.

IN THE WASHINGTON STATE
SUPREME COURT

State of Washington,	) COA NO. 53527-1-II
Respondent,	) Motion To Restart
V.	) Direct Appeal For
Marx W. Coonrod,	) Due Process
Appellant/Petitioner.	) Violations

I. IDENTITY OF MOVING PARTY:

Comes Now Marx W. Coonrod acting Pro Se, incarcerated at Washington State Penitentiary-Minimum Security Unit, Camp, Walla Walla Washington.

II. STATEMENT OF RELIEF SOUGHT:

1). The Appellant/Petitioner in the above cause, requests and moves this court to restart Appellant's Direct Appeal for Due Process Violation[s].

2). Too appoint new Appellate Counsel to address issues of Admissibility of Trial Exhibits, that have merit, and write all the motions needed for a thorough Direct Appeal, that Kevin Hochhalter refused to write, and told the Appellant he had to write them; Motion for Evidentiary Hearing, Motion to Expand the Record under **RAP 9.11** (Newly discovered Evidence), and a Motion to Preserve Evidence, and Motion for Franks Hearing.

3). For an **ORDER** to be issued for Appellant to be moved to a Minimum Security Facility, with a law library, to be able to file legal work with the use of a law library, in order to prevent a gross miscarriage of justice.

4). To allow the Appellant/Petitioner to combine the Direct Appeal with his PRP, as stated were his intentions before being moved to WSP-MSU, Camp on 12-4-21, were there is no law library that **VIOLATES DUE PROCESS RIGHT TO APPEAL.**

5). To be Afforded the Attorney/Client File and Discovery as Padgett has been afforded by COA Division III, under Equal Protection, and the Trial Exhibits in usable form, that also has been denied the Appellant.

III. FACTS RELEVANT TO CASE:

1). Appellant/Petitioner stated the fact of the desire to **COMBINE** his PRP with his Direct Appeal before being moved to WSP-MSU, Camp on 12-4-21, where there is no law library.

2). Appellant asked for New Appellate Counsel to be appointed twice for ineffective assistance, and was Denied.

3). Appellate counsel, Kevin Hochhalter, was **Purposely Dilatory** in producing the Trial Exhibits that were asked for from the beginning of his representation, and then were not in usable form. He also told the Appellant, Mr. Coonrod he had to write the motion for him to be given more money to copy and send the Trial Exhibits. Then the COA denied Trial Exhibits be given to the Appellant in **usable form**, and no law library or time left.

4). The State is withholding Exculpatory and Extrinsic Evidence in the form of a 9-1-1 phone call made from the Umpqua Bank on 4-22-16, an attempted bank robbery, by bank employee **"Kian"**, that gives the description of the **Actual Suspect**, and being withheld even after Public Disclosure Requests. Also **trail cam pictures** from Coonrod's apartments that the state said **do not exist**, but are in police reports as being down loaded by Detectives. Then **the Prosecutor, KNOWINGLY** in **Bad Faith**, misrepresenting witnesses testimonies of bank employees testifying about the **Actual Suspect**, Doug Shattuck, as being the Defendant, Mr. Coonrod and now Appellant/Petitioner. With police interviews to prove that fact, as Exhibits.

5). Appellant/Petitioner asked Appellate Counsel to write the Motion[s] needed for Appeal; Motion for Evidentiary Hearing, RAP 9.11 Motion to Expand the Record on Review for Newly Discovered

Evidence, Motion to Preserve Evidence, and Motion for Franks Hearing for Admissability of Evidence taken on Search Warrant. Mr. Hochhalter told Appellant he would have to write the RAP 9.11 Motion himself, and would not write the other motions Mr. Coonrod had asked him to do. Then Appellant submitted his RAP 9.11 Motion to Expand the Record for Newly Discovered Evidence on Appeal dated 5-18-22, to combine his PRP with the Direct Appeal, but was told he had Appellate Counsel that had to present the motion, so the Motion was placed in the file.

6). Appellant was also denied the Attorney/Client File and Discovery by COA Division II, that was Afforded Mr. Padgett by Division III, that would deny Appellant **Equal Protection.**

7). Appellant was Denied his Motion To STAY Appeal, and was "Misrepresented", and was said to be a Motion to Extend Time. The Motion was to **STOP** any further Appeal Process.

8). The prison officials have violated Appellant's constitutional right to court access, grounded in the First Amendment right to petition and the Fourteenth Amendment right to due process, by denying him access to a prison law library by moving him to WSP-MSU, Camp, where there is no law library.

IV. LAW AND ARGUMENT:

Meaningful access to justice is our right on appeal. Mere access to the courthouse doors does not by itself assure a proper function of the adversary process, and that a criminal appeal is fundamentally unfair if the State proceeds against an indigent defendant without making certain that the Appellant has access to the raw materials integral to the building of an effective defense. The Courts have often reaffirmed that **fundamental fairness** entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system." Ake v. Oklahoma, 470 U.S. 78, 84 L.Ed.2d 53, 105 S.Ct. 1087 (1985).

Systemic official actions by moving the Appellant from Stafford Creek Corrections Center to WSP-MSU Camp on 12-4-21, where there is no law library, after being told at his Custody

Review by counselor Tera L. Flink, dated 10-25-2021, and was told he would stay at SCCC under a legal HOLD, and would not be transferred to another facility till after his Direct Appeal is complete. See Exhibit #1, Custody Review Offender Version, page three of three, under **Comments**. "Retain at SCCC. Transfer to a suitable MI2 facility once his active direct appeal is complete."

Pursuant to RAP Rule 2.1(a)(1) Review as a matter of right, called "Appeal", and RAP Rule 2.2(a)(13) Final Order After Judgment. Any final order made after judgement that affects a substantial right.

An Appeal is a matter of right, and is a substantial right. To be able to fight this case on appeal the Appellant must be afforded access to a law library while in minimum security. Having no access to a law library in minimum security denies the Appellant's First Amendment right to petition and constitutional right to access the court that denies the Appellant to due process under the Fourteenth Amendment.

In this denial-of-access to a law library that denies Appellant **Due Process**, and the essence of the access claim is that official action has and is presently denying the Appellant an opportunity to appeal his case. The object of this Motion To Restart Direct Appeal Process, for the denial-of-access to a law library, Discovery, and Exhibits in usable form is justification for recognizing that claim, and to place the Appellant back in a Minimum Security Facility with access to a law library that will afford him the opportunity to pursue the appeal process once the frustrating condition has been rectified.
See **Hebbe v. Pliler**, 627 F.3d 338 (CA9 2010). No access to law library during lockdown.

Hebbe alleges that the prison officials violated his constitutional right to court access, grounded in the First Amendment right to petition and the Fourteenth Amendment right to due process, by denying him access to the prison law library while the facility was on lockdown, and that the denial

prevented him from filing a brief in support of his appeal of this state court conviction.

V. CONCLUSION:

The Appellant, Mr. Coonrod, respectfully asks this Court to approve this Motion To Restart Direct Appeal For Due Process Violation[s], and having an Appellate lawyer that lied to the Appellant by telling him he had to write the Motion To Supplement The Record On Appeal (RAP 9.11(a)(1,2,5.6))(9.10), (See Exhibit #3 of Appellant's Motion To Supplement The Record On Appeal dated 5-18-22), and the **Purposely Dilatory action** in producing the Trial Exhibits that were asked for from the beginning of his representation, and then were not in usable form. Mr. Hochhalter was Ineffective Assistance of Counsel, and Appellant had asked twice through motions to replace his appellant lawyer for not addressing all the issues that had merit on appeal and write the other motions that are needed for a thorough appeal process, but he refused, and told the Appellant, "You better get a good Appellate lawyer if you want to win on appeal", because he said Mr. Coonrod had disrespected him.

Appellant is asking for new counsel to be appointed, to write and submit the motions needed and asked for from Mr. Hochhalter, but was refused by him. And for an **Order** to be issued for him to be moved to a minimum security facility with a law library, to be able to combine his PRP with the direct appeal as stated before being moved to WSP-MSU Camp from SCCC on 12-4-21.

To be afforded the Attorney/Client File and Discovery, or at least have an Evidentiary Hearing to show what was sent to Appellant as that File and Discovery that had no Police Reports from all the robberies, and nothing on the attempted robbery on 4-22-16.

To be given the Public Disclosure Requests that have been asked for several times but denied. And to be given the Trial Exhibits in usable form.

There is no way for the Appellant to be expected to do legal work on appeal with no access to a law library in Minimum Security here at WSP-MSU Camp. See exhibit #2.

RESPECTFULLY SUBMITTED on this 2nd day of December, 2022.

Marx W. Coonrod — 12-2-2022

SIGNED — DATED

Marx W. Coonrod, #839750. Unit 6-A03.
Washington State Penitentiary-MSU
1313 N. 13th Ave.
Walla Walla, WA. 99362-1065

EXHIBIT LIST

Exhibit #1: Custody Review Offender Version.

Exhibit #2: Washington State Penitentiary, Orientation Manual, Sep. 2019. No updated manual.

EXHIBIT #1

Custody Review Offender Version.

State of Washington
Department of Corrections

Custody Review
Offender Version

Printed By: Window, Allison M
Print Date: 11/22/2021

Assigned Counselor: Flink, Tera L

Inmate: COONROD, Marx Wayne (839750)

Gender: Male	DOB: 05/11/1956	Age: 65	Category: Regular Inmate	Body Status: Active Inmate
RLC: LOW			Custody Level: Minimum 3 - Long Term Minimum	Location: SCCC — H4 / H4042L
ERD: 11/26/2025				CC/CCO: Flink, Tera L

Purpose of Review

Purpose Of Review	Date Initiated
Plan Change	10/25/2021
Multi-Disciplinary Team Custody Promotion	10/25/2021

Program Needs

Education

GED/HSD:	Date Obtained:	Location:	Verified?
HSD	06/06/1974	Out Of State	

Offender Needs (Needs Assessment Tool)

Program Narrative

Narrative:

Has No Loss Of GCT To Restore. No Restoration Pathway Is Required. ***See Case Plan***

Education/Employment Needs

Education/Employment Need
Needs Vocational Training Program Of 6-12 Months
Needs Part Time Prison Work Assignment

Programs

Program Name	Program Date	Program Status
CUSTODIAN I	02/24/2021	Dropped

Custody Score

Current Custody

Current Custody Score: 10

Minimum 2 - Camp

Infraction Behavior

Infraction Behavior Score: 20

Program Behavior

Program Behavior Score: 12

Month	Year	Points	Non-Award Reason
May	2021	2	
June	2021	2	
July	2021	2	
August	2021	2	
September	2021	2	
October	2021	2	

Detainers

Detainer Score: 10

	Felony	ICE
Current	No	No
Potential	No	No

Escape History

Escape History Score: 15

DOC

Escape Description	Month	Year

Calculated Custody

Custody Score: 67

Calculated Custody: Minimum

Expectations

Condition

Expectation	Frequency	Due Date	Complete

LFO (Legal Financial Obligations)

Cause	Amount
071001573	$22,883.24
161009468	$154,227.43
Total:	$177,110.67

Targeted Custody

Targeted Date	Targeted Custody	Targeted Placement	Inmate Preferred Location

Disciplines

Discipline	Other Discipline	Staff

Discipline	Other Discipline	Staff
Custody		Golphenee, Jolie M
Intelligence / Investigations		Wayman, Michael K

Comments/Recommendations

Submit/Review Date	Name	Comments	Concur
10/25/2021	Flink, Tera L	(Offender) Met with Coonrod to go over his facility plan. He has signed his classification hearing notice and has decided to WAIVE his right to attend stating they understands the expectations and agrees with the recommendations. (Counselor) Coonrod entered DOC custody on 11/26/2025 and is serving a 171 month sentence out of Clark County for Robbery1 x3 and Attempted Robbery 1. He has an ERD of 11/26/2025 and has remained serious infraction free this incarceration He is currently working His Supervisor and unit officer Golphenee states that he is not an issue. Discussed form 17-087 Questionnaire. Recommendation: Promote to MI2 Custody with a (POL) Policy override less than 6 years left until ERD in compliance with 300.380 revision dated 10/21/2021 and retain at SCCC. Transfer to a suitable MI2 facility once his active direct appeal is complete.	
10/26/2021	Grubb, Christopher P	(FRMT) CUS Grubb, CC2 Flink, CO Golphenee, I&I Wayman, Sup. Dominoski contacted. Due to policy change Coonrod is now eligible for lower levels of custody. Concur with Recommendations: Promote to MI2 custody with a POL override, transfer to a appropriate MI2 facility. No holds documented.	Yes
10/27/2021	Evans, Shane L	Support promotion to MI2 with (POL) Policy Override and transfer to suitable MI2 facility. II is no under 6 years to ERD and now camp eligible.	Yes

Assigned Custody

Calculated Custody:	Assigned Custody:	Override Reason:	Override Narrative:
Minimum	Minimum 2 - Camp	Policy	II Is Under 6 Years To ERD With Pending Policy Change For Camp Eligibility
	Classification Status:	**Completion Date:**	**Custody Assigned By:**
	In-Effect	10/27/2021	Shane Evans, Correctional Program Manager

DOC: 839750 **Name:** COONROD, Marx Wayne

EXHIBIT #2

Washington State Penitentiary, Orientation Manual, Sep. 2019. No updated manual.

Incarcerated Individuals who are indigent, may order limited hygiene items and their account with be debited. Incarcerated Individuals arriving from WCC-Receiving will have access to their chain bags where the hygiene issued at WCC should have been packed. We are no longer authorized to provide emergency hygiene products.

Store orders are delivered to your housing unit. A copy of any original order request that could not be processed will be returned to Correctional Industries Commissary with the explanation. Do not order special order items more than once; after an appliance has been engraved, it cannot be returned. All special items are routed through the WSP Property Room. Watch the call Sheet.

Upon receipt of your store order, you should inspect it in the presence of staff, so any discrepancies can be noted on the original receipt that is returned to the Inmate Store. Orders not inspected at the time of receipt will not be adjusted if discrepancies are noted after signing for the order.

Legal Access

There are two Law Libraries at the facility. The Incarcerated Individuals housed in the West Complex Close Custody units (D, E, F & G) utilize the Law Library in the West Complex H Building Education area. The Incarcerated Individuals housed in the Close Custody (BAR) units, utilize the South Complex Law Library, located above the South Complex Shift Office area. Incarcerated Individuals housed in the South Complex Medium Security Units (Victor & William) also utilize Law Library in the South Complex. Incarcerated Individuals are required to be on the callout to access the Legal Library area. Any East Complex Incarcerated Individuals requesting law library access may request access through their counselor, but will be temporarily transferred to either the West or South Complex during the needed period.

Legal Copies are available in the Law Library. Incarcerated Individuals will need to submit WSP Form #20-590 Legal Copy/Mail Request form, which is available in the living units. Incarcerated individuals will need a disbursement for both the copies and the postage to send out the legal copies at the time they are made. Legal mail be logged and processed out to the Mailroom at the facility.

Priority Scheduling may be granted by submitting DOC Form # 02-247 Law Library request for Priority Scheduling Deadline, which is also available in the living unit. Incarcerated Individuals must have a verifiable deadline, within 45 days with court approval, for Priority Scheduling. Once approved, the Incarcerated Individuals will be placed on the callout for all sessions for the unit/quad in which they live. These callouts are Mandatory and missing the callouts may result in an infraction.

Incarcerated Individuals may obtain Notary service if needed, in the Law Library when staff are present. However, there are several other staff at the facility that can also provide this service. You can ask your counselor in the unit if you are unable to attend a session in the Law Library.

The Law Librarian and Clerks will not provide legal advice or assistance. They are there to assist you in searching for materials and checking out material during the Law Library session. These materials cannot leave the Law Library and are marked accordingly. Only loose legal paperwork is allowed in the law library. No personal papers, storage folders/envelopes, books or materials are allowed. In the event that you are obtaining legal copies and mailing them out while in session, you are allowed to bring your empty pre-franked

EXHIBIT #2

FILED
12/16/2022
Court of Appeals
Division II
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MARX WAYNE COONROD,

Appellant.

No. 53527-1-II

ORDER CALLING FOR AN ANSWER TO MOTION TO RESTART DIRECT APPEAL FOR DUE PROCESS VIOLATIONS

On December 5, 2022 appellant Marx Wayne Coonrod moved this court to restart his direct appeal for due process violations. The court requests that respondent file an answer to the motion within 14 days of the date of this order. Accordingly, it is so

SO ORDERED.

PANEL: Jj. Worswick, Maxa, Price

FOR THE COURT:

Maxa, J.

MAXA, J.

EXHIBIT #3

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

State of Washington,	) NO. 53527-1-II
Respondent,	)
V.	) Motion For STAY
Marx W. Coonrod	) of Appeal
Appellant/Petitioner.	)

COMES NOW, Marx W. Coonrod, the Appellant/Petitioner in the above cause, requests and moves this court for a **STAY** to be placed on Appellant's Appeal pursuant to **RAP18.8(b)(c)**, to be able to file any and all further legal work needed on this cause, in order to prevent a gross miscarriage of justice.

Appellant/Petitioner is acting Pro Se in this matter. He is currently incarcerated at Washington State Penitentiary-MSU Camp, where there is **NO** access at all to a law library. He is also unfamiliar with the law and the procedures. Appellant/Petitioner requests that his Appeal be placed on **STAY** status until the time he is moved to a **Minimum Security Unit** that gives him access to a **law library**, to be able to prepare and/or complete his Appeal process from this point,

Pursuant to **RAP Rule 2.1(a)(1)** Review as a matter of right, called "**Appeal**", and **RAP Rule 2.2(a)(13)** Final Order After Judgment. Any final order made after judgment that affects a substantial right.

An Appeal is a matter of right, and is a substantial right. To be able to fight this case on appeal the Appellant must be given access to a law library while in minimum security. Having no access to a law library denies him the right to Due Process, and denying him his Attorney/Client File and Discovery, then the trial exhibits in usable form denies Appellant access to the courts and resources on collateral attack.

Meaningful access to justice is our right on appeal. Mere access to the courthouse doors does not by itself assure a proper function of the adversary process, and that a criminal appeal is fundamentally unfair if the State proceeds against an indigent defendant without making certain that the Appellant has access to the raw materials integral to the building of an effective defense. The Courts have often reaffirmed that fundamental fairness entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system." **Ake v. Oklahoma**, 470 U.S. 78, 84 L.Ed.2d 53, 105 S.Ct. 1087 (1985).

Systemic official actions by moving the Appellant to WSP-MSU Camp, where there is no law library, after being told he had a hold placed on him (legal hold), and would not be moved from Stafford Creek Corrections Center till after his Direct Appeal was done. See exhibit #1 Custody Review page 3 of 3, under **Comments** (Flink, tera L). "Retain at SCCC. Transfer to a suitable MI2 facility once his active direct appeal is complete."

in the denial-of-access to a law library that denies Due Process, and the essence of the access claim is that official action is presently denying Appellant an opportunity to appeal his case. The object of this Motion to STAY, Restart Appeal Process for the denial-of-access to a law library, and the justification for recognizing that claim, is to place the Appellant back in a Minimum Security Facility with access to a law library where he is in a position to pursue the appeal process once the frustrating condition has been rectified.

See **Hebbe v. Pliler**, 627 F.3d 338 (CA9 2010). NO access to law library during lockdown.

Hebbe alleges that the prison officials violated his constitutional right to court access, grounded in the First Amendment right to petition and the Fourteenth Amendment right to due process, by denying him access to the prison law library while the facility was on lockdown, and that the denial prevented him from filing a brief in support of his appeal of this state court conviction.

I was told I needed to file a Motion for Reconsideration to the court of appeals by Nov. 7 20022, and a Petition for Review to the Supreme Court in the same time frame to appeal the ruling on the direct appeal of cause #53527-1-II.

There is no way for the Appellant to do so with no access to a law library in Minimum Security here at WSP Camp. See exhibit #2.

RESPECTFULLY SUBMITTED on this 4th day of November, 2022.

Mark W. Cockrell — 11-3-2022

SIGNED — DATED

Marx W. Coonrod, #839750, Unit 6-A03.
Washington State Penitentiary-MSU
1313 N. 13th Ave.
Walla Walla, WA. 99362-1065

EXHIBIT #4

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. Marx W. Coonrod, Appellant.	) COA NO. 53527-1-II) NO. 16-1-00946-8) MOTION TO SUPPLEMENT) THE RECORD ON APPEAL) (RAP 9.11(a)(1,2,5,6))(9.10)

I. IDENTITY OF MOVING PARTY:

Comes Now Marx W. Coonrod acting Pro Se, incarcerated at Washington State Penitentiary-Minimum Security Unit, Camp, Walla Walla Washington.

II. STATEMENT OF RELIEF SOUGHT:

The Appellant, Marx W. Coonrod, requests an **Order** from this Court allowing it to supplement the record under RAP 9.11(a)(1,2,5,6) for the purpose of the **"search of the truth"**, and the **"facts in question"**. RAP 9.10 to supplement the record.

1). To introduce the original color pictures and videos, and be given to the Appellant on Appeal, that were taken from inside the Umpqua Bank on 4-22-16 of the Attempted Bank Robbery.

2). Be given the video from Vern Fonk Ins. of the 4-22-16 Attempted Bank Robbery.

3). Also the **First 911 phone call**, made from the Umpqua Bank on 4-22-16 by bank employee **"Kian", with Transcripts**, that gives the description of the suspect and what he is wearing.

4). To produce all the trail cam pictures taken of Mr. Coonrod's apartments by Jim Carter's and Elizabeth R. Leonard's trail cam devices pointed toward the sidewalk and Coonrod's parking spaces, having time and dates, from 2-1-16 through 4-22-16.

5). Add Mr. Coonrod's witness list filed, and written objections, that were also filed with the court, to the record.

6). The **"Video", (one)**, not two, taken from Gas Towne USA of the actual truck used in the robbery on 3-16-16 and recorded on a cell phone by VPD on 3-17-16. Gas Towne USA's owner could testify if records are not good enough.

III. FACTS RELEVANT TO CASE:

The Defendant/Appellant argues the record is not sufficiently complete to permit a decision on the merits of the issues presented in trial. In the interest of justice additional evidence is required to present the true facts of the case and

veracity, and to have been given a **Fair Trial** or an appeal.

Here, the main issues raised are the Exhibits used in trial and their **Admissibility**, and whether the State's motion to suppress all of Doug Shattuck's evidence allowed the Defendant to be given a fair trial and present a defence, and under **Napue** the misrepresentation of the witnesses testimony from the bank being the Defendant, Marx W. Coonrod, in trial. This would be Prosecutorial Misconduct that is improper and prejudicial, and under the **"Open Door Rule"**, the pictures and videos must be admissible evidence, along with the 911 phone call made from the Umpqua Bank by Kian a bank employee that describes the suspect. This has been withheld and denied the Defendant/Appellant by the State, and falls under a **"Brady Violation"** by the State. The State's Motion in limine to suppress **"Other Suspect Information"** of Doug Shattuck therefore deprived the Defendant his **"Right to Present a Defence"** and prejudiced the jury and denied him his right to a **Fair Trial.** The record contains only the court's incomplete facts of the case.

On appeal, Mr. Coonrod argues the motion in limine to suppress Doug Shattuck's evidence or mention his name by the Prosecutor, and then **Knowingly** use all the witnesses testimonies from the bank that said, "That's the same guy as before! He has the same distinct walk and the same build, and is dressed the same", and presents their testimonies as being Mr. Coonrod. This would be a **Napue Error** and Prosecutorial Misconduct, and under the **Open Door Rule** needs an Evidentiary Hearing to show that the pictures from the bank and the video from Vern Fonk Ins., coupled with the first 911 phone call from the bank made by empoyee Kian, that describes what the actual suspect of the Attempted robbery had on, which was a **blue hoodie and blue jeans**, not the green hoodie and **"Distinct Camo Pants"** that Mr. Coonrod had on. This is Exculpatory Evidence that has been withheld and falls under a **Brady Violation.** This needs to be shown, that prohibited the veracity and Concealed Exculpatory Evidence from the jury, and adding documentation which is **"Significant to the case"** that was denied the defendant through numorous Public Disclosure Requests that are **"Brady Material"**, to aid this Court in making an informed ruling on the merits that is not sufficient to allow appellate review in the interest of justice.

IV. LAW AND ARGUMENT:

Under RAP 9.11 **Additional Evidence On Review** (a) **Remedy Limited.** The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

(b) **Where Taken.** The appellate court will ordinarily direct the trial court to take additional evidence and find the facts based on that evidence.

RAP 9.10 CORRECTING OR SUPPLEMENTING RECORD.
"[I]f the record is not sufficiently complete to permit a decision on the merits of the issue presented for review, the appellate court may... allow or direct the supplementation... of... the report of proceedings."

This is needed to add Mr. Coonrod's **witness list**, and **written objections**, that were filed with the trial court but are not on the record. Also COA objections E-Filed 5-16-22.

V. CONCLUSION:
The Appellant, Mr. Coonrod, respectfully asks this Court to approve the Motion to Supplement the Record on Appeal under RAP 9.11 (a)(1,2,5,6)(b), and be given and afforded to add this additional evidence to the Record, that is necessary to properly evaluate claims raised, and was requested through Public Disclosure Requests that have been denied, and other extrinsic evidence to be added, that was not used in trial court for the veracity. That shows IAC through lack of investigation, to present.

In the alternative, the Appellant requests this Court **Order** the trial court to conduct an Evidentiary Hearing to determine the veracity through bank photos and videos, and the Vern Fonk Ins. Video from 4-22-16 Attempted Bank Robbery, also the first 911 phone call made from the Umpqua Bank by employee **"Kian"** of the Attempted Robbery, to determine if the testimonies of the witnesses were about the defendant, Mr. Coonrod, as presented in trial, or if this was **Prosecutorial Misconduct** and a **Napue Error** for the misrepresentation, with **Brady Violations** that violated the Defendant's Right to **Due Process**, coupled with Defendant's Trial Attorney's **Ineffective Assistance of Counsel** that denied the Defendant his **Right to a Fair Trial** under **Cronic and Strickland.**

The Sixth and Fourteenth Amendments to the United States Constitution, and artical 1, section 22 of the Washington Constitution guarantee a criminal defendant the right to a fair trial. U.S. Const, amend. VI, XIV; Wash. Const. art. 1, sec. 22; In re Glasmann, 175 Wn.2d 696, 703, 286 P.3d 673 (2012).

Prosecutorial misconduct may deprive a defendant of this right. In re Glasmann, 175 Wn.2d at 703-04.

To succeed on a prosecutorial misconduct claim, the defendant bears the burden of establishing the prosecutor's conduct was both improper and prejudicial. State v. Stenson, 132 Wn.2d 668, 718-19, 940 P.2d 1239 (1997). When a defendant fails to object in the trial court to a prosecutor's statements or actions, he waives his right to raise a challenge on appeal **unless** the remark or action was so flagrant and ill intentioned that it evinced "an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury."

The Evidentiary Hearing will show the errors and also meet the heightened burden of proving **Flagrant Ill Intentioned Conduct** that could not be remedied by a curative instruction. Stenson, 132 Wn.2d at 719.

A bell once wrung cannot be unwrung!

Mark W. Coonrod 5-18-2022

CERTIFICATE OF SERVICE

I certify that on today's date: 12-27-2022 .

I, Marx W. Coonrod, Appellant/Petitioner, E-Filed Motion For Petition For Review to The Supreme Court State of Washington that delivered an electronic version of the Motion, and DECLARATION of Appellant, using the Court's filing portal, through the Court's on line filing system.

Marx W. Coonrod, #839750, Unit 6-A03.
Washington State Penitentiary-MSU
1313 N. 13th Ave.
Walla Walla, WA. 99362-1065

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Walla Walla, Washington on: 12-25-2022 .

Marx W. Coonrod — SIGNED

12-25-2022 — DATED

Marx W. Coonrod, #839750
Appellant.

DECLARATION

I, Marx W. Coonrod, hereby declare under Penalty of Perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge and belief. Sworn to: RCW 9A.72.085, And To: 28 U.S.C. § 1746.

I am the Defendant/Appellant/Petitioner in the above referenced case, incarcerated at Washington State Penitentiary -MSU Camp.

1). Due to Covid restricted access to the law library, that was denied altogether at first, then changed to restricted access well over two years ago while at Stafford Creek Corrections Center that Covid-19 pandemic limited access to, most of the time, one, sometimes two, 50-minute session per week to complete the necessary legal research to support my motions, while still on Direct Appeal, that are needed in the interest of justice. Courts have held that "meaningful legal research on most legal problems cannot be done in forty-five minute intervals." **Williams v. Leeke**, 584 F.2d 1336, 1340 (4th Cir. 1978). The 50-minute-per-week law library access that ended up to be only 40 minutes after walking time at Stafford Creek.

2). Appellant was told he was being placed on a legal hold and would not be moved until his direct appeal was completed before being moved to a MI2 facility (camp). This Custody Review was used as an Exhibit several times to show what was done, and moved shortly after the Review on 12-4-2021.

3). Then was moved to Washington State Penitentiary-MSU Camp where there is **no law library at all.** This denial-of-access to a law library, denies Appellant **Due Process**, and the essence of the access claim is that official action has and is presently denying the Appellant an opportunity to appeal his case. **Hebbe v. Pliler**, 627 F.3d 338 (CA9 2010). No access to law library during lockdown.

4). Appellant has been denied his Attorney/Client File and Discovery afforded **Padgett** by COA Division III, and his Trial Exhibits in usable form to use on appeal in this case.

5). Appellant/Petitioner asked his Appellant Attorney, Kevin Hochhalter to write several motions for him, and was told he would not do them. He also said the Appellant had to write his own **RAP 9.11 Motion To Supplement The Record On Appeal** for newly discovered evidence. At that point Appellant filed a motion for new counsel and was **DENIED**. Appellant was forced to keep the Appellant Attorney that was Ineffective Assistance of Counsel even after a second motion for new counsel with the motions being asked for.

Meaningful access to justice is our **right on appeal.** Mere access to the courthouse doors does not by itself assure a proper function of the adversary process, and that a criminal appeal is fundamentally unfair if the State proceeds against an indigent defendant without making certain that the Appellant has access to the raw materials integral to the building of an effective defense. The Courts have often reaffirmed that **fundamental fairness** entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system." **Ake v. Oklahoma**, 470 U.S. 78, 84 L.Ed.2d 53 105 S.Ct. 1087 (1985).

These issue[s] have prevented Appellant/Petitioner from his **"Appeal"** process. And as such has been denied his **right to an Appeal.**

An Appeal is a matter of right. Having no access to a law library here in minimum security camp denies the Appellant's First Amendment right to petition and constitutional right to access the court, and denies the Appellant to due process under the Fourteenth Amendment.

Appellant/Petitioner has tried to address these issue[s] through Motions but has been afforded no relief from said issue[s], even after showing Exhibits of the Custody Review and the **HOLD** for the completion of Direct Appeal legal work to be done before being moved from Stafford Creek. Then being moved here to WSP-MSU camp where there is no law library, and asking Appellate Attorney to write the motion[s] to address the issues

but would not do the motions and even told the Appellant he had to write his own **RAP 9.11 motion** that is Ineffective Assistance of Counsel.

These are **compelling circumstances** coupled with the Appellant having to have three colonoscopies in this short amount of time. The last on 12-21-2022, that take him away for two days at a time, and other medical trips for counciltations.

These have been ongoing issue[s] that the Appellant/Petitioner has brought up several times trying to be afforded relief through different ways in motion form and not having access to a law library for help. He is acting Pro Se in this matter, and is currently incarcerated at Washington State Penitentiary-MSU Camp, where tere is NO access at all to a law library. He is also unfamiliar with the law and procedures. These motions have been denied time after time, and had asked Appellate Counsel to write the motions needed, but was denied, and was told he would have to write them himself. Then the COA told the Appellant he had counsel that had to write the motion **(RAP 9.11)** and would place the motion he wrote in his file.

The Appellant had asked the COA twice for new counsel but was denied and forced to continue with Ineffective Assistance of Counsel after counsel refused to write several motions that were needed. One was the issue of no access to a law library, the RAP 9.11 Motion to Supplement the Record on Appeal for newly discovered Evidence, Evidentiary Hearing, Motion to Preserve Evidence, and others he refused to do that are needed in the interest of justice.

The Motion to **STAY APPEAL** was misrepresented by both the COA and the Supreme Court as being a Motion to Extend Time. That is why the Motion to Restart Direct Appeal for Due Process Violation[s] had to be wrote. This motion is now being asked by the COA that the State respond to the motion within 14 days. This is the first favorable response that actually addresses this issue of no law library being a Due Process Violation. Filed 12-16-2022.

The Appellant had told the courts he intended to combine his Direct Appeal with his PRP that is viewed in the most

favorable light of the Appellant, but due to dilatory actions of his court appointed appellate attorney, and lies that he told his Client/Appellant about the RAP 9.11 Motion, by telling the appellant he had to be the one to write the motion, not him. But when the Appellant submitted the RAP 9.11 motion to combine his PRP with his direct appeal the COA denied the motion and said he had counsel that had to submit the motion for him and would place the motion in his file. See Exhibits with motion.

RESPECTFULLY SUBMITTED by Marx W. Coonrod, #839750.

Mark W. Coonrod — SIGNED

12-25-2022 — DATED

INMATE

December 28, 2022 - 1:15 PM

Transmittal Information

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Appellate Court Case Title:	State of Washington v. Marx Wayne Coonrod
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