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SUPREME COURT  
STATE OF WASHINGTON  
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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent

v.

SHANE A. JONES, Petitioner

SUPREME COURT NO. 92213-6

COURT OF APPEALS, DIVISION III NO. 32182-7-0-III

KLICKITAT COUNTY SUPERIOR COURT NO. 02-1-00146-9

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

David Quesnel, WSBA #38579  
Prosecuting Attorney

Erika George, WSBA #43871  
Deputy Prosecuting Attorney

Klickitat County Prosecuting Attorney  
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509-773-5838



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## I. STATEMENT OF THE CASE

Shane A. Jones pleaded guilty in 2003 to two counts of Rape of a Child in the First Degree, one count occurring in 1995 and the other in 1998. The pre-sentence investigation report indicates that officers began investigating these incidents starting in May of 2002. The investigation consisted of speaking with witnesses and included statements by Jones admitting to the abuse. The acts described in the investigation involved Jones receiving oral and manual stimulation from his then 6 year old step daughter; and receiving oral stimulation from and giving oral stimulation to his then 2 year old nephew. There was no physical, biological evidence introduced or referenced in Jones's case.

In 2013, Jones filed a motion for DNA testing of "all of the physical evidence collected" in the case. The trial court denied the motion because Jones pleaded guilty to the charges and because he had not shown that DNA evidence would demonstrate his innocence on a more probable than not basis.

Jones appealed that decision to deny his motion for DNA testing, arguing that the trial court should have evaluated the likelihood of innocence based on a presumed favorable test result. The Court of Appeals held that the record did not reflect that the trial court applied the favorable

presumption, but that the failure to apply the presumption does not constitute error. *Unpublished Opinion* at 5. The Court found that applying the presumption “serves no purpose when law enforcement never collected any physical or biological evidence in the case.” *Id.*

The Court of Appeals held that the appellant could not satisfy the procedural requirements of RCW 10.73.170(2)(a) because there was no testing that was conducted. When there was no testing that was conducted, the State could not fail to meet acceptable scientific standards, and the State did not possess any evidence that was untested due to insufficient technology. *Id.* at 5-6. There is no DNA evidence to test and no prejudice demonstrated by the Appellant, and it would be a waste of resources to remand for entry of more thorough findings that the trial court applied the favorable presumption. “An appellate court need not remand for a futile exercise.” *Id.* at 6

## II. ARGUMENT

Rule of Appellate Procedure (“RAP”) 13.4(b) governs the considerations for accepting a Washington State Supreme Court petition for review. These considerations include appellate court decisions that are in conflict with another decision of an appellate court or the Washington State

Supreme Court. They also include appellate court decisions that involve a question of constitutional law or an issue of substantial public interest.

This Court should deny the petition for review because none of these considerations are present. The Court of Appeals decision in Jones's case does not conflict with another Court of Appeals or Supreme Court decision and the case does not involve a constitutional law question or issue of substantial public interest.

A. The Court of Appeals decision in this case does not involve a conflict with another decision of the Court of Appeals or Supreme Court.

The appellant argues that the Court of Appeals decision is directly in conflict with *State v. Crumpton*, 181 Wn.2d 252, 332 P. 3d 448 (2014). However, this is inconsistent with what the Court of Appeals held. The Court of Appeals agreed with the holding in *Crumpton*, that the trial court should have evaluated the likelihood of innocence based on a presumed favorable test. The Court of Appeals went on to rule that the fact that the lower court did not properly apply the presumption was not an error, due only to the fact that there is no DNA evidence that was collected. There is no DNA evidence to test.

Further, the Court of Appeals held that it would be impossible for the Appellant to meet the procedural requirements of RCW 10.73.170(2)(a),

again because there was no DNA collected in the case against the appellant. The appellant's identity was not at issue. There would be no evidence to run a DNA test against.

**B. There is no significant constitutional law question or issue of substantial public interest.**

Jones has put forth no argument that his case presents a constitutional law question or issue involving a substantial public interest. As this decision regards DNA testing, there is no constitutional questions of law at issue, and this Court should not accept review on that basis.

**C. CONCLUSION**

This Court accepts review of Court of Appeals decisions that conflict with another decision of the Court of Appeals or Supreme Court. It also accepts review of cases involving questions of constitutional law or issues involving a substantial interest to the public. Because none of these considerations are present, this Court should deny the petition for discretionary review.

Dated this 23<sup>rd</sup> day of September, 2015.

Respectfully Submitted,



Erika George, WSBA #43871  
Deputy Prosecuting Attorney  
Klickitat County Prosecuting Attorney

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

**STATE OF WASHINGTON**  
**Respondent,**  
**vs.**  
**STEVEN LEE SMITH,**  
**Petitioner**

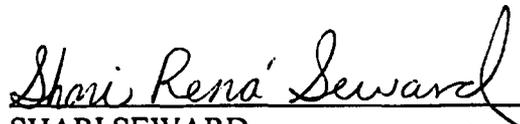
**SUPREME COURT NO: 91253-0**  
**DECLARATION OF MAILING**

I, Shari Seward, declare that on September 24, 2015, I deposited in the United States mails by certified mail, proper postage affixed, a copy of the Respondent's Answer to Petition for Review to:

**Shane A. Jones**  
**DOC No. 802250**  
**Airway Heights Corrections Center**  
**P.O. Box 1899**  
**Airway Heights, WA 99001-1899**

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

DATED this 24<sup>th</sup> day of September, 2015.

  
SHARI SEWARD  
Legal Assistant III

**OFFICE RECEPTIONIST, CLERK**

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**To:** Shari Seward  
**Cc:** Erika George  
**Subject:** RE: Respondent's Answer to Petition for Review: State v. Shane A. Jones

Received on 09-24-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Shari Seward [mailto:sharis@klickitatcounty.org]  
**Sent:** Thursday, September 24, 2015 8:43 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Erika George <erikag@klickitatcounty.org>  
**Subject:** Respondent's Answer to Petition for Review: State v. Shane A. Jones

Good Morning:

Case Name: **State of Washington v. Shane A. Jones**  
Case Number: **92213-6**

**Erika George, WSBA No. 43871**  
**Deputy Prosecuting Attorney**

E-mail: [erikag@klickitatcounty.org](mailto:erikag@klickitatcounty.org)  
Phone No. **509-773-5838**

Attached you will find a copy of the Respondent's Answer to Petition for Review for the case name and number above. Declaration of Service is attached to the petition. If you have any questions, please let me know.

Thank you for your assistance in this matter.

Regards,

Shari Seward  
Legal Assistant III

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*Shari R. Seward*

Legal Assistant III  
Klickitat County Prosecuting Attorney's Office  
Klickitat County Courthouse  
205 S. Columbus Avenue, MS-CH-18  
Goldendale, WA 98620-9829  
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