NO. 92285-3

SUPREME COURT OF THE STATE OF WASHINGTON
(COURT OF APPEALS, DIVISION II, NO. 45479-3-II)

JOYCE SMITH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF JAMES W. SMITH, IZETTA DILLINGHAM, AS LIMITED GUARDIAN AD LITEM FOR THE MINOR CHILDREN JA'MARI SMITH, JANAJA SMITH AND JAMAE SMITH; AND SHAREE DAMMELL, AS LIMITED GUARDUAN AD LITEM FOR THE MINOR CHILD SHALYSE SMITH,

Appellants,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondents.

PETITION FOR REVIEW BY SUPREME COURT (REVISED)

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Appendix 1:	Published Opinion Washington State Court of Appeals: No. 45479-3 (August 26 , 2015)
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I. IDENTITY OF PETITIONER, CITATION TO COURT OF APPEALS DECISION AND INTRODUCTION

Joyce M. Smith, personal representative for the Estate of James Smith, Izetta Dillingham, LGAL for decedent's children Ja'Mari Smith, Janaja Smith and Jamae Smith; and Sharee Dammel, LGAL for child Shalyse Smith, Petitioners, file this Petition for review of *State of Washington, Department of Corrections of the decision in Smith, et al v. State of Washington*, Court of Appeals No. 45479-3-II (August 26, 2015).

This Court ruled in *Taggart v. State*, 118 Wn.2d 195, 223, 822 P.3d 243 (1992) that "a parole officer takes charge of the parolees he or she supervises despite the lack of a custodial or **continuous** relationship" (emphasis added). The Court of Appeals' decision holds that an offender terminates supervision simply by missing an appointment. This decision contradicts and undermines *Taggart* and its numerous progeny, and carves a hole in the State's duty to supervise, which will leave the public unprotected from the dangerous propensities of offenders who refuse to submit to supervision. The decision relieves DOC of its duty to supervise challenging, violent offenders by executing a "secretary's warrant" when the offender misses an appointment.

Contrary to the Court's reasoning, the "take charge" relationship that creates the duty to supervise flows from the judgment and sentence,

statutes, and Department of Corrections' ("DOC") own policies and procedures. All of these remained in full force and effect after this offender missed absconded. Moreover, DOC failed to use reasonable care in the supervision of the murderer, Goolsby, even while he was on "active supervision." The State had issued policies and procedures to assist and empower Community Corrections Officers in their efforts to re-establish contact and control over an absconding offender. The "take charge" relationship "continued" even though DOC chose not to do much to find Goolsby and negligently executed the warrant by failing to check to find Goolsby's last known address, instead issuing a Secretary's Warrant.

This Court should accept review and reverse the Court of Appeals and the Trial Court. This Court should also consolidate this case with the review of Husted v. DOC, Washington State Court of Appeals No. 45479-3 (March 16, 2015), which was dismissed by the same trial judge (Pierce County Judge Susan Serko) within weeks of each other.

II. ISSUES PRESENTED FOR REVIEW

When DOC issues a warrant because an offender misses an appointment, does the "take charge" relationship/duty to supervise end?

III. STATEMENT OF THE CASE

The lives of the Plaintiffs forever changed on August 5, 2009, when felon Antwone Goolsby ("Goolsby") gunned down and murdered

James Smith in Tacoma less than 8 months after his release from prison. CP 214, 265-269 271-272, 377-383, 385-389, 564-566, 568-577. On this date, Goolsby drove to Tacoma and confronted James Smith for allegedly saying something disrespectful to his former girlfriend and shot him multiple times, killing him. CP 537-550. He was convicted of this murder on May 11, 2012. CP 552-562.

Goolsby was listed and known as a "violent, high impact offender. CP 391-394, 410-416. The grossly negligent supervised offender, Antwone Goolsby, had a criminal history of rape of a 12 year-old girl (forced rape at gunpoint), unlawful possession of a firearm, robbery, harassment, failure to register as a sex offender and delivery/selling of cocaine. CP 342-344, 366, 368, 370-375, 396, 398, 400-404, 433-446, 537-550, 568-779. Goolsby was sentenced to community custody and was to be supervised as a prisoner in the community for 18 to 36 months with the conditions that included work at DOC approved employment, not to consume controlled substances, no gun possession, no unlawful possession of drugs, residential and living arrangements subject to prior approval of DOC. CP 368, 537-550, 564-566. The crime that landed Goolsby into prison and community custody involved a robbery in the first degree. CP 537-550. Goolsby agreed to the conditions of release and CCO Lang was his supervising Community Corrections Officer (CCO). CP 433-446.

Almost a year prior to Goolsby's release, his Community Corrections Officer (CCO), Judith Lang began working with the Risk Management Team to plan for Goolsby's release and transition from

Monroe to the community. CP 718-719. On July 23, 2008, CCO Lang wrote that "Goolsby's demeanor and behavior were not suitable to be released in the community." CP 720. As early as July, 2008, Goolsby could not provide an address of where he was living (six months prior to his release) and CCO Lang knew before he was released that this was a major concern and warning sign. CP 720. Before his release, CCO Lang was also concerned that he had a strong affiliation with the notorious Compton Crips. CP 720-721. CCO Lang made special note that she was concerned that Goolsby "did not have a good release plan or a reason to refrain from his historic criminal behaviors." CP 721. Lang noted that Goolsby would not assimilate well into the community, based on his criminal history and behaviors while incarcerated. CP 721-723. On October 27, 2008, DOC and CCO Lang had concerns about him living at a DOC approved location. CP 230, 363-364, 406. Goolsby made his intent to abscond from DOC supervision altogether known before his prison release and wanted to move in with family in Arizona, Compton, California or to Pierce County, without an address. CP 230, 448-494.

DOC informed Goolsby that he would be released homeless if he could not produce a good address where he would live once released. CP 227-228. Although CCO Lang knew that Goolsby had no housing at least 6 months before he was released from prison, she made no progress in this regard from July 2008 until his release in January 2009. CP 723-724. Lang testified "the biggest issue is trying to find housing, for especially sex offenders, Mr. Goolsby." CP 725. Lang listed her concerns of

Goolsby being a high-risk offender releasing as homeless. CP 727.

If an offender did not have an approved address, DOC required them to live in a qualified shelter. CP 728. When told that he had to live in a shelter because he had not approved address, Goolsby was argumentative with Lang the entire trip from Monroe to Seattle, refusing to listen to Lang. CP 728, 731. Lang knew that when she picked him up he needed mental health medications and had not had medications for a month. CP 729. CCO Lang confirmed that Goolsby was required to sign in and give his address to King County Sheriff's once a week because he was homeless and was required to register weekly as a Level 3, high-risk sex offender. CP 730. Goolsby signed all of the supervision conditions on January 21, 2009, with Lang and there was certainly a take-charge relationship. CP 731. Goolsby stated he could not stay out of drug areas or abandon his gang affiliations. CP 731-732. On January 21, 2009, when CCO Lang ordered Goolsby that he was expected to stay in an approved shelter, he laughed, stating "you expect me to live in a shelter?" CP 733.

From this first day of release, after Goolsby signed the supervision conditions, CCO Lang gave him $40 and dropped him off at a shelter and she never once supervised him in the community after that date. CP 734. Goolsby did not stay at a shelter that day or any other day. CP 735. CCO Lang picked Goolsby up from his prison release at Monroe on January 21, 2009. CP 726-727, 227-228. From the first day of his release, Goolsby was argumentative on the ride from Monroe to Seattle and again said he wanted to go to California or Pierce County and refused to listen to CCO

Lang. *Id.* When Goolsby was told to stay out of drug areas, he stated "everywhere is a drug area" and he stated that there were too many "Bloods" in Seattle, being that he was a Crip. *Id.* Goolsby was told he had to stay at a homeless shelter in Seattle and he replied, "You expect me to live in a shelter?" *Id.* Lang then gave Goolsby $40 dollars after arriving in Seattle and then showed him the door. CP 227-228.

DOC acknowledged Goolsby had an "I will do what I want to do" attitude related to where he would live once out of prison. *Id.* Prior to his release, January 15, 2009, Goolsby's CCO, Judith Lang, documented Goolsby as a "high risk offender" releasing homeless and she was already "skeptical about this offender's motivation for change." CP 227-228.

From this day, January 21, 2009, until the day of the murder on August 5, 2009, Judith Lang never saw Goolsby in the community and never enforced the condition that he live at a DOC approved address- she never knew where he lived. *Id.*, CP 334-340. He never even stayed the night at any shelter. CP 227-228.

Goolsby was a sex offender and was required to register every week because he had not address, and he was also had mental health issues and needed medications. *Id.*, CP 331-332, 600-620. Goolsby only registered once, the day he was released from prison, with his address listed as the address he had before prison in Tacoma, not a current or real address. CP 346-356. On January 21, 2009, Goolsby's address was homeless. CP 328. By early February, Goolsby stopped reporting daily as required, and did not take the required UAs. CP 739. The next time that

CCO Lang heard anything from Goolsby was when he was arrested just a few days later on January 26, 2009. CP 226. Goolsby tested positive for marijuana use on this date. CP 274-276. On February 17, 2009, Goolsby had a violated his community custody and was found guilty of failing to have a DOC approved residence and employment, failure to report and using illegal drugs. CP 225, 297-301, 303, 318-322, 324-326, 408. This was conclusive evidence that Goolsby intended to live his life as usual as a highly violent criminal with no accountability. On this same date, Goolsby was ordered to come into the DOC office and provide the address of where he was living or he would be detained. Id, CP 312-316.

Two days later, the police in the community again contacted Goolsby. CP 226-227. King County Police arrested Goolsby again on February 20, 2009. CP 741.

When CCO Lang did talk to Goolsby in the DOC office, he was being volatile in his speech, complained about not being able to live in Tacoma or Tacoma, could not provide proof that he registered as a sex offender, and did not provide an address of where he was living, just stating he was "staying in a motel." CP 224. Even though DOC professed that they would detain Goolsby if he could not provide an address, they did not. *Id.* As testified by DOC expert Stough:

> This is a case where the actual "community supervision" was non-existent for this violent, murderous gang member and the DOC provided a complete absence of care of the major conditions of supervision, which included field supervision, ensuring that the offender was at an approved

> address, ensuring that the offender was on his mental health medications and ensuring that the offender went to treatment for his addiction to illegal drugs. The complete failure to supervise this offender in the community by CCO Lang led directly to this offender absconding and related to DOC eventually obtaining a Secretary's Warrant, they grossly violated their own policies in this regard, enabling this offender to escape supervision. The most important aspects of community supervision of a violent offender include the community correctional officer conducting field (community supervision) of an offender and enforcing the condition that the offender is living at a location approved by the DOC. Attached to this declaration is a true and correct copy of the Minimum contacts standard of DOC policy 380.200, which required CCO Lang to have two out of office or field contacts with Goolsby per month. **CCO Lang never had one field contact with Goolsby in 8 months**. In this case, the community correction officer never supervised Mr. Goolsby in the community, not one time, and Mr. Goolsby never lived at a DOC approved location.

CP 143-144.

Although Goolsby was required to attend narcotics Anonyms three times a week, he only went a couple times during his entire supervision. CP 223. Lang knew that Goolsby was not in community service and did not have a job, violating his conditions. CP 743. On March 2, 2009, CCO Lang only knew that Goolsby was living at a motel, she never went to see any of these motels or whether Goolsby was there. CP 222. On March 3, 2009, CCO Lang noted that Goolsby she did not know where Goolsby was living. CP 418-422. On March 6, 2009, Seattle police went to check the Airline Motel, they walked in on Goolsby in the hotel with another violent sex offender on supervision who ran to the toilet and attempted to flush

crack cocaine down the toilet. CP 221, 286-289, 291, 303, 305-306. On March 12, 2009, CCO Lang learned that Goolsby was prostituting girls at the motel and affiliating with drug users. *Id.*, CP 220, 260, 748. On March 23, 2009, DOC found guilty of associating with a drug seller, gang members, and possession of cocaine. CP 219,293-295. On this date, his address was listed as "homeless in Seattle." CP 276. On March 27, 2009, when CCO Lang asked Goolsby where he lived, he was evasive. CP 218. CCO Lang again gave an empty warning that if Goolsby could not provide an approved DOC address where he lived that he would go back to jail. *Id.*, 278-282. CCO Lang admitted in writing that this was a "High need and needs extra attention. *Id.* By April 2, 2009, CCO noted that Goolsby had failed to start chemical dependency treatment. CP 217. On April 10, 2009, CCO Lang found out that Goolsby was not staying at the shelter he was supposed to stay and represented he was staying and she warned Goolsby "one last time" and given another false warning that he would be arrested and detained if he did not stay at the shelter or approved residence. CP 216. This was the last time DOC had contact with Goolsby before the murder in August. *Id.* On April 21, 2009, DOC placed a warrant out for Goolsby arrest. *Id.*

CCO Lang's testimony conclusively proves gross negligence:

Q. Other than the date you transported Mr. Goolsby from Monroe Prison, did you ever see Mr. Goolsby in the field one time?

A. I can't recall.

Q. Based on the chronological notes that we've been going

through for the past 90 minutes, so you see anywhere in those chronological notes that you made where you saw Mr. Goolsby in the field one time?

A. No.

Q. Based on the chronological notes that we've been going through, do you see anywhere in the chronological notes that you ever attempted to make a field contact with Mr. Goolsby?

A. Not from the notes, no. (CP 759-760).

Q. You never saw the offender in the field from 1/21/09 (prison release) to 8/5/09 (James Smith murder), correct?

A. Correct. (CP 765).

Q. Did Mr. Goolsby ever provide you with an address?

A. The physical address, no. (CP 761.)

Q. From the time that Mr. Goolsby left Monroe and you picked him up till the time of his involvement in this homicide on 8/5/2009, did Mr. Goolsby ever had a DOC-approved housing?

A. It was not approved by us, no. (CP 763.)

Q. Based on your chronological notes, was Mr. Goolsby ever on mental health medications?

A. Not to my knowledge. (CP 763).

CCO Lang only saw Goolsby two other occasions, in her office, after his release. (CP 765). His UA was only taken two times and was positive for illegal drugs. CP 766. Lang was aware that Goolsby was still active as a Compton Crip while under her supervision. CP 765-766. Lang also knew that Goolsby was associating with other offenders, drug dealers and gang members, using illegal drugs, selling drugs and prostituting girls

while under her supervision. CP 766. Goolsby never went to narcotics anonymous. CP 776. DOC were grossly negligent and violated policy with regard to the Secretary's Warrant as well, according to expert Stough:

> The fact that DOC eventually initiated a bench warrant 5 months after repeated her knowledge that Goolsby was engaging in his historic criminal lifestyle of gangs, drugs, had no address does not absolve DOC's responsibility to apprehend and supervise this offender, especially since DOC was grossly negligent in initiating and prosecuting the warrant and the fact that his CCO Judith Lang never once conducted a field visit did not release them from their obligation to supervise, monitor, locate, investigate, and discover Goolsby's whereabouts or his activities. Instead, the DOC gave final warning after final warning, but failed to enforce the conditions in the first place.
>
> In other words, DOC's failure to act on the clear red flags and warnings that Mr. Goolsby was not complying with the terms of his release, along with the complete absence of his community correctional officer to conduct a single field visit, to make sure he was living where he was supposed to, to get him into consistent drug treatment, to ensure he was on his medications, etc., directly led to him absconding supervision.
>
> On a more probable than not basis, the scientific evidence (Research, studies) as discussed in the recent NCR Report demonstrates that adequate and proper parole/probation supervision has been shown by research to significantly reduce recidivism and increase desistance from criminal behavior when supervision is adequate and when it is linked to appropriate treatments.

CP 156-158.

> Defendants also argue that once they issue a Secretary's Warrant on an offender that their obligation to supervise the offender is over. This is absolutely wrong. Defendants

> provided a very cursory declaration of James Harm related to the Community Response Unit. Mr. Harm disingenuously fails to explain the purpose and job of the Community Response Unit (CRU), which is governed by DOC policy 370.380, a true and correct copy of the policy attached to my declaration as Exhibit 4 (CP 184-187).
>
> Pursuant to a Secretary's Warrant, once an offender absconds, CCO Lang was to make a reasonable attempt to locate the offender within 72 hours of learning of the absconding, then complete the Secretary's Warrant, then within the same 72 hours of attempting to locate the offender Lang was to email the warrant to DOC Headquarters Warrant Desk. The Warrant was then to be entered within 72 hours of receipt and then issued. Then CCO Lang was to serve the warrant personally or through law enforcement. In this case, the Secretary's Warrant was issued for Goolsby on April 21, 2009, yet CCO Lang made any attempt to locate the offender within 72 hours or ever, the warrant was not requested until May 7, 2009, 17 days after absconding, there was never any attempt by Lang or anyone at DOC to serve the warrant, even though Lang knew the name of the motel that Goolsby lived at and frequented and had access to look at all motel registration information for Seattle motels, the CRU was not notified of Goolsby's warrant until June 11, 2009 and there is no evidence that anyone from DOC ever communicated with, worked with or cooperated with law enforcement to serve the warrant or apprehend Goolsby. In other words, CCO Lang and the DOC completely "dropped the ball" here also.

CP 161-162.

The Court of Appeals affirmed in its opinion filed on August 26, 2015. See Appendix 1 ("Opinion"). The Court ruled that (Opinion, p.5):

> Initially, DOC owed a duty to supervise Gooslby; however that duty ended when Goolsby absconded supervision and DOC issued a warrant for his arrest.

The Court found that DOC is not liable for its alleged inaction after Goolsby absconded. (Opinion. P.5):

> DOC is not liable for its alleged inaction after Goolsby absconded because its duty to supervise him ended. As for DOC's alleged negligent supervision before Goolsby absconded, we conclude that the Estate failed to establish a prima facie case of proximate cause.

IV. ARGUMENT

Petitioner brings this motion pursuant to RAP 13.4(b). The decision of the Court of Appeals conflicts with decisions of this Court and other decisions of the Court of Appeals. This court should grant review and reverse.

A. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH *TAGGART V. STATE*, 118 WN.2D 195, 219-222, 822 P.2D 243 (1992), AND ITS PROGENY.

This Court ruled in 1992 that the relationship between a parole officer and the parolees he or she supervises creates a duty to exercise reasonable care to control the parolee to protect anyone who might reasonably be endangered by the parolee's dangerous propensities. *Taggart v. State,* 118 Wn.2d 195, 219-222, 822 P.2d 243 (1992).

The relationship between a parole officer and a parolee constitutes a "special relationship" under the Restatement of Torts (Second) § 315 (1965.) The relationship gives rise to a duty to protect the public from harm that the parolee might cause. *Taggart*, 118 Wn.2d at 219. The Court explained, at 220, as follows:

> When a parolee's criminal history and progress during parole show that the parolee is likely to cause bodily harm to others if not controlled, the parole officer is under a duty to exercise reasonable care to control the parolee and prevent him or her from doing such harm.

Various aspects of the relationship between DOC and an offender under supervision give rise to the "take charge" relationship that gives rise to a duty to supervise offenders to protect the public from their dangerous propensities. The statute that authorizes and empowers supervision establishes the "take charge" relationship. *Taggart v. State* 118 Wn.2d 195, 219-220, 822 P.2d 243 (1992); *Joyce v. State*, 155 Wn.2d 306, 317, 119 P.3d 825 (2005); *Couch v. State*, 113 Wn. App 556, 565, 54 P.3d 197 (2002). The terms of the judgment and sentence can create the relationship. *Bishop v. Miche,* 137 Wn.2d 518, 528, 973 P. 2d 465 (1999);" *Joyce* 155 Wn.2d at 318; *Bordon v. State,* 122 Wn. App 227, 236, 95 P.3d 764 (2004). The supervising agency's rules and regulations governing supervision can create the take charge relationship as well. *Bishop*, 137 Wn.2d at 528.

The Court of Appeals, Division Two and Division One, recently considered whether DOC continues to owe a duty to supervise an offender after the offender absconds and DOC issues a warrant for his arrest. *Smith v. DOC*, No. 45479–3–II, decided on August 26, 2015, Opinion p. 5-6, and in *Husted v. State*, 187 Wn. App. 579, 348 P.3d 776, 778 (2015).

The Court of Appeals held that "Initially DOC owed a duty to supervise Goolsby however that duty ended when Goolsby absconded supervision and DOC issued a warrant for his arrest." Opinion, p.5.

This holding flies in the face of *Taggart's* formulation of the "continuing relationship" (*Taggart,* 118 Wn.2d at 219):

> We hold that the relationship between a parole officer and the parolees he or she supervises creates a similar duty for the officers. As a preliminary matter, we note that a duty will be imposed under § 315 only upon a showing of a "definite, established and continuing relationship between the defendant and the third party." *Honcoop v. State,* 111 Wash. 2d 182, 193, 759 P.2d 1188 (1988). Under RCW 72.04A.080, parolees "shall be subject to the supervision of the department of corrections, and the probation and parole officers of the department shall be charged with the preparation of progress reports of parolees and to give guidance and supervision to such parolees within the conditions of a parolee's release from custody." RCW 72.04A.080. This statute is sufficient to establish that parole officers have a "definite, established and continuing relationship" with their parolees.

The *Taggart* Court rejected the State's argument that a duty to supervise required a full custodial relationship. The Court of Appeals,

Divisions One and Two, incorrectly ruled that the "definite, established and continuing relationship" required to impose a duty to supervise only arose if the offender maintained some contact with his CCO. It inaccurately cited *Taggart's* formulation of the take charge relationship as dependent upon such ongoing contact, citing to *Taggart* at p. 219 (Opinion, p. 9):

> The flaw in the argument made by Husted and Pina is that it conflates two distinct concepts discussed in *Taggart*: "[Custody or [a] continuous relationship," which is not required to establish a take charge relationship, and a "definite, established and continuing relationship", which is. *Taggart*. 118 Wn.2d at 219-23.
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> ***
>
> But *Taggart* also tells us that a take charge relationship entails ongoing contact between the parole officer and the parolee because the relationship must be a "direct, established and continuing" one. *Id.* at 219. It is the continuing nature of the relationship that allows the parole officer to exercise control.

This Court in *Taggart* made no such ruling in the passage cited. In reality, the Court ruled that the **statute** empowering supervision created the "definite, established and continuing relationship" which gave rise to the duty to supervise (*Taggart*, 118 Wn.2d at 219, emphasis added).

Likewise, as the Court of Appeals acknowledged, at a minimum RCW 9.94A.700 sufficed to create the take charge relationship that gave rise to DOC's duty to supervise Goolsby. Opinion, p.5. Nonetheless, the

Court undermined *Taggart by* declaring that the continuous relationship, and the resulting duty to supervise, will switch off and on with the offender's inclination to cooperate. The Court offered no explanation of how this statutorily generated relationship evaporated when Goolsby avoided supervision. This aspect of the Court's decision directly conflicts with *Taggart's* holding that the duty to supervise does not require "continuous supervision..." [1]

One simply cannot reconcile the Court of Appeals' parsing of *Taggart* with this Court's years of jurisprudence affirming the government's duty to supervise offenders based upon the "take charge" relationship. *See, e.g., Bishop v. Miche,* 137 Wn.2d 518, 973 P.2d 465 (1999) *Hertog v. City of Seattle,* 138 Wn.2d 265, 979 P.2d 400 (1999); and *Joyce v. State,* 155 Wn.2d 306, 119 P.3d 825 (2005). Notwithstanding this line of authority, the Court of Appeals dissected the "continuing relationship" into discrete parts never approved or contemplated by any decision of this Court. The "continuing" relationship results from the factors that give rise to the duty to supervise (statute, judgment and

[1] This Court in *Taggart,* at 223, specifically rejected out-of-state authority the State submitted to support its continuous relationship argument: "In addition, we recognize that the Washington statute empowering parole officers to supervise parolees contemplates neither a custodial relationship, such as the Maryland court required in *Lamb,* nor continuous supervision, such as the Virginia court demanded in *Fox.* In *Tarasoff* and *Lipari,* however, which we followed in *Petersen,* the defendant therapists had neither custodial nor continuous relationships with their patients."

sentence, DOC Policies), not the offender's inclination to cooperate. *Taggart* at 219. An offender's lack of cooperation does not end DOC's supervision efforts. Furthermore, the decision of the Court of Appeals will encourage offenders to refuse to submit to supervision.[2]

Beyond this, offenders who abscond pose the greatest threat to public safety. The danger from this approach is manifest. The facts of this case illustrate the peril. Because DOC stopped supervising violent offender Antwane Goolsby he enjoyed the freedom to plan and participate in the murder of James Smith. The decision of the Court of Appeals irreconcilably conflicts with *Taggart*. This Court should grant review pursuant to RAP 13.4(b)(1) and reverse.

B. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH *JOYCE V STATE*, 155 WN.2D 306, 119 P.3D 825 (2005).

Joyce v State, 155 Wn.2d 306, 119 P.3d 825 (2005), involved an offender under supervision who caused an automobile collision that killed the plaintiff's wife. The offender had failed to report to DOC for supervision for seven months in one instance, and for three months prior to the criminal act that was at issue in that case. *Joyce*, 155 Wn.2d at 313-314, 320. Despite the lack of reporting and lack of contact between the

[2] "We conclude that parole officers have a duty to protect others from reasonably foreseeable dangers engendered by parolees' dangerous propensities." *Taggart,* at 224.

offender in *Joyce* and DOC for three months prior to the criminal act, this Court still recognized that a duty existed as a result of the conditions imposed in the offender's judgment and sentence. *Joyce*, 155 Wn.2d at 315. The offender's decisions to periodically break contact did not switch the duty off and on.

In the case at bench, the Court of Appeals contradicted *Joyce* when it acknowledged that the State had a duty to supervise Goolsby, but still concluded that duty disappeared because Goolsby avoided supervision. Opinion, pp. 5-6, 10-13. *Joyce* tells us that "[o]nce the duty exists, the question remains whether the injury was reasonably foreseeable." *Joyce*, 155 Wn.2d at 315. DOC issued that warrant pursuant to Policy DOC 350.750, which empowers and compels DOC workers to take numerous actions to apprehend an absconded offender. Even a casual perusal of the policy shows that DOC itself did not contemplate that absconding and issuance of a warrant ended the duty to supervise. The decision of the Court of Appeals thus irreconcilably conflicts with *Joyce* as well. This Court should grant review pursuant to RAP 13.4(b)(1) and reverse.

C. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH *BORDON V. STATE*, 122 WN.APP. 227, 95 P.3D 764 (2004)

Bordon v. State, 122 Wn. App. 227, 95 P.3d 764 (2004), involved an offender sentenced to four months of confinement and 12 months of

community supervision for the crime of eluding. Upon release from jail the offender failed twice to report to his DOC supervisor. DOC never received a copy of the judgment and sentence for the eluding conviction and therefore did not supervise the offender for that conviction. The offender killed the plaintiff's decedent in an automobile collision while driving drunk. The plaintiff sued DOC for failing to supervise the offender.

After a plaintiff's verdict, DOC appealed. It argued to the Court of Appeals that it owed no duty to supervise for the eluding conviction "because it did not know about the eluding charge, [and] the "take charge" relationship described in *Taggart* did not exist ..." *Bordon,* at 236.

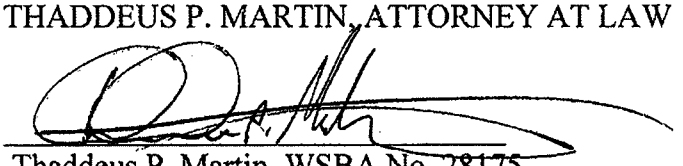
The Court of Appeals rejected this argument. DOC owed a duty to supervise for the eluding conviction because the CCO should have known about the conviction for numerous reasons, and because RCW 9.94A.120(13) mandated DOC's supervision. *Bordon*, at 236-238. The Court of Appeals' reasoning in *Bordon* and this case irreconcilably clash. This Court should grant review pursuant to RAP 13.4(b)(2) and reverse.

V. CONCLUSION

This Court has repeatedly rebuffed efforts to water down *Taggart* and its progeny. The Court should do the same in this case, and grant review and reverse the Court of Appeals and the Trial Court.

Respectfully submitted this 30th day of September, 2015

THADDEUS P. MARTIN, ATTORNEY AT LAW



Thaddeus P. Martin, WSBA No. 28175
Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I AM NOT A PARTY TO THIS ACTION AND THAT I PLACED FOR SERVICE OF THE FOREGOING DOCUMENT ON THE FOLLOWING PARTIES IN THE FOLLOWING MANNER(S):

Garth Ahearn Attorney General's Office 1250 Pacific Ave, Ste 105 Tacoma, WA 98401

[XXX] by causing a full, true, and correct copy thereof to be E-MAILED, on the date set forth below followed by hand delivery.

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

Executed at Lakewood, Washington on the 30th day of September, 2015.

Kara Denny

Kara Denny, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Kara Denny
Subject: RE: 92285-3 Estate of James Smith v. DOC

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From: Kara Denny [mailto:kara@thadlaw.com]
Sent: Thursday, October 01, 2015 1:56 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: 92285-3 Estate of James Smith v. DOC

Please find attached the Revised Petition for Review for the above referenced matter.

Thank you,
Kara

KARA DENNY, LEGAL ASSISTANT
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