

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY _____

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

IN RE PERSONAL RESTRAINT PETITION OF:

JAMES CURTIS ROWLEY,

PETITIONER.

PERSONAL RESTRAINT PETITION

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A. STATUS OF PETITIONER

James C. Rowley (hereinafter "Rowley") challenges his child molestation first degree conviction and his subsequent persistent offender finding (Mason County Case No. 08-1-00002-8). This is Rowley's first collateral attack on this judgment. He is currently incarcerated at the Washington State Penitentiary in Walla Walla, Washington serving a life sentence.

B. FACTS

1. Procedural History

On January 3, 2008, James Rowley was charged by Information with one count of child molestation in the first degree. Several days later, Ronald Sergi was appointed to represent Mr. Rowley. The case was tried to a jury. A guilty verdict was returned on June 5, 2008.

At sentencing on July 14, 2008, the court found that Rowley's criminal history included a prior conviction for child molestation in the first degree. As a result, the court concluded that Rowley was a persistent offender under the "Two Strikes" law and sentenced him to a mandatory life sentence. A copy of the *Judgment* is attached as Appendix A.

Rowley appealed. This Court affirmed in an order granting a motion on the merits and dismissing the appeal on June 18, 2009. After a motion to modify was denied, this Court issued the mandate on November 5, 2009. This *Personal Restraint Petition* timely follows.

2. Facts of the Crime

On direct appeal, this Court described the facts as follows:

The victim was 10-year-old A.K.R., Rowley's niece. She testified that she was asleep on the couch in her grandmother's basement on New Year's Eve. Rowley came down and pulled down her pajamas and touché her "private" and her "butt." She went immediately to tell her parent. A.K.R.'s parents testified that she told them the same thing, noting that she was crying and hysterical when she came to their bedroom.

Several other people talked to A.K.R., including Detectives Luther Pittman and Shellee Stratton, Dr. Joseph Hoffman, and nurse Nancy Young. The detectives both testified that they determined A.K.R. could tell the difference between the truth and a lie, that she knew lies were bad, and that she agreed to tell the truth. Dr. Hoffman and nurse Young testified that their physical examinations of A.K.R. were normal, and in their experience, that was consistent with the disclosures that A.K.R. had made. In closing, the prosecutor reminded the jury about the detectives' testimony and said that A.K.R. had committed to "telling only about things that happened."

3. Courtroom Closure

During *voir dire*, the Court questioned seventeen jurors in a private setting—the judge's chambers. RP (5/30/2008) 1-40

attached as Appendix B. After this privately questioning, eleven jurors were dismissed for cause. *Id.*

Prior to the start of jury selection, the trial judge *sua sponte* announced: “My preference, as you all know, is to allow the jurors to come back individually into chambers.” (RP (5/29/08) 129. Defense counsel stated “no sir,” when asked if he had a problem with this procedure. *Id.*

The next day, the judge told jurors that “occasionally a question may be asked that makes a juror uncomfortable insofar as responding out here in the open court.” RP (5/30/08) 2. The court continued: “In that situation, it may be available to you to say could we take this question up in the privacy of chambers.” *Id.*

The court then asked if either attorney objected. Neither did. *Id.* He then asked if any member of the public objected. Apparently, no one responded affirmatively. *Id.* The judge then explained that a “Division III” ruling required him to ask the question. *Id.* (“...that to not ask that question of the general public and of the individuals may violate, first of all, the individual’s rights to an open and public trial, and also may violate the rights of the public to participate and be present during the process of a trial...”). *Id.* at 2-3. The trial court continued:

“So, there having been no objection, if I ask a question of you, or if either of the attorneys ask a question of you and you’re uncomfortable responding out here in the open courtroom, just say judge, do you mind if we step back in chambers and take up that question.”

Id. at 3.

As mentioned previously seventeen jurors were questioned privately about a range of topics, and eleven were excused. *Id.* at 3-39.

4. Sentencing

When Rowley was sentenced, the State introduced a document showing that Rowley had been previously convicted of first-degree child molestation. RP 427. The Court then found that Rowley was a persistent offender, under the “two-strikes” provision. RP 428; Appendix A. The court subsequently sentenced Rowley to life without parole. RP 430. Obviously, Rowley’s maximum sentence was dramatically increased as a result of the trial court’s finding.

In addition, the persistent offender finding resulted in a mandatory minimum sentence of life without parole.

C. ARGUMENT

1. MR. ROWLEY'S RIGHT TO AN OPEN AND PUBLIC TRIAL WAS VIOLATED WHEN THE TRIAL COURT CONDUCTED A SIGNIFICANT PORTION OF VOIR DIRE IN A CLOSED COURTROOM WITHOUT FIRST CONDUCTING AN ADEQUATE *BONE-CLUB* HEARING.
2. TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO ADVISE MR. ROWLEY THAT HE HAD A RIGHT TO OBJECT TO THE PRIVATE QUESTIONING OF JURORS. IF ROWLEY HAD BEEN PROPERLY INFORMED, HE WOULD NOT HAVE AGREED TO WAIVE THIS FUNDAMENTAL RIGHT.
3. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THE IMPROPER CLOSURE OF THE COURTROOM ON DIRECT APPEAL.

Introduction to Claims 1-3

There are five separate factors which *all* must be identified, considered and weighed during a *Bone-Club* hearing. In this case, prior to closing the courtroom, the trial court *at best* only considered two of those five factors. Just as importantly, the trial court did not resist closure. To the contrary, the trial court's comments indicated that it was his routine practice to close the courtroom for part of jury selection and encouraged jurors to seek closure. Because the hearing in this case fell far short of what was required, the courtroom closure was improper and reversal is required.

Rowley did not waive the closed courtroom claim. Although the court asked counsel if he objected, the trial court never asked Mr. Rowley his position on the matter. Further, trial counsel did not

explain to Rowley that his right to an open trial was a fundamental right; did not explain the relevant considerations accompanying waiver; and did not ask him if he wished to waive that constitutional right. If Rowley had been informed by counsel and if the Court had inquired whether Rowley wished to waive his right to a public trial, he would not have waived this right. *See* Declarations of Sergi and Rowley attached as Appendix B and C respectively.

1. Violation of the Right to an Open and Public Trial

Mr. Rowley's constitutional right to an open and public trial was violated. Because this is a structural error, reversal is mandated. Rowley raises this claim in three alternative ways. First, Rowley claims a straight-forward violation of his constitutional right to an open and public trial. Second, he claims ineffective assistance of counsel based on his attorney's failure to explain that Rowley had a right to object to closure. If Rowley had been adequately advised, he would have objected to the closure. Finally, because the issue should have been raised on direct appeal, Rowley raises this as a violation of the right to effective assistance of appellate counsel.

The Constitutional Rights to an Open and Public Trial

The right to a public trial is protected by both the federal and the Washington state constitutions. *See* U.S. CONST. AMEND. VI ("In all criminal prosecutions, the accused shall enjoy the right to a

speedy and public trial.”); WASH. CONST., ART. 1, § 22 (“In criminal prosecutions the accused shall have the right. . . to have a speedy public trial.”); WASH. CONST., ART. 1, § 10 (“Justice in all cases shall be administered openly.”). This right includes the right to open jury selection. *In re Orange*, 152 Wn.2d 795, 804, 100 P.3d 291 (2005), citing *Press-Enter Co. v. Superior Court*, 464 U.S. 501, 505, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984).

Washington Courts have scrupulously protected the accused’s and the public’s right to open public criminal proceedings. *State v. Easterling*, 157 Wn.2d 167, 181, 137 P.3d 825 (2006) (state constitution requires open and public trials); *State v. Brightman*, 155 Wn.2d 506, 514, 122 P.3d 150 (2005) (closing courtroom during *voir dire* without first conducting full hearing violated defendant’s public trial rights); *In re Restraint of Orange*, 152 Wn.2d 795, 812, 100 P.3d 291 (2004) (reversing a conviction where the court was closed during *voir dire* and holding that the process of juror selection is a matter of importance, not simply to the adversaries but to the criminal justice system); *State v. Bone-Club*, 128 Wn.2d 254, 256, 906 P.2d 325 (1995) (reversible error to close the courtroom during a suppression motion); *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36, 640 P.2d 716 (1982) (setting forth guidelines that must be followed prior to closing a courtroom or sealing documents).

For this reason, “protection of this basic constitutional right clearly calls for a trial court to *resist* a closure motion *except under the most unusual circumstances.*” *Orange*, 152 Wn.2d at 805, *citing State v. Bone-Club*, 128 Wn.2d 254, 259, 906 P.2d 325 (1995) (emphasis in original).

For that reason, this Court has developed a test which must be applied whenever closure is contemplated. The *Bone-Club* requirements are:

1. The proponent of closure. . . must make some showing [of a compelling interest], and where that need is based on a right other than an accused’s right to a fair trial, the proponent must show a “serious and imminent threat” to that right;
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure;
3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests;
4. The court must weigh the competing interests of the proponent of the closure and the public;
5. The order must be no broader in its application or duration than necessary to serve its purpose;

~~*Easterling*, at 175, n.5; *Bone-Club*, at 258-259. see also *Seattle*~~

Times Co. v. Ishikawa, 97 Wn.2d 30, 36-39, 640 P.2d 716 (1982)

(setting forth five part analysis under the Washington State Constitution article I, section 10).

As the test itself demonstrates, it must be conducted *before* closing the courtroom. For example, it is impossible to weigh the reasons given by a member of the press or public opposed to closure, if the trial court fails to expressly invite comment on the matter.

After conducting a full hearing, the trial court must then make findings. The constitutional presumption of openness may be overcome only by “an overriding interest *based on findings* that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.” *Orange*, 152 Wn.2d at 806 (emphasis added) (quoting *Waller v. Georgia*, 467 U.S. 39, 45, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984)). These requirements are necessary to protect both the accused’s right to a public trial *and* the public’s right to opening proceedings. *Easterling*, at 175.

The process of jury selection is included, not excepted, from this rule. *Brightman, supra; Orange, supra*. As the United States Supreme Court stated in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 505, 104 S. Ct. 819, 78 L.Ed.2d 629 (1984), “(t)he process of juror selection is itself a matter of importance, not simply to the adversaries but to the criminal justice system.”

Rowley now examines the trial court's comments in light of the five-part *Bone-Club* test.

There Was No Serious and Imminent Threat to a Compelling Right Articulated

The trial judge *sua sponte* announced, apparently according to his standard practice, that he would close the courtroom so that jurors who felt uncomfortable answering certain questions could do so privately. At no point did Mr. Rowley argue that private questioning was necessary in order to protect his right to a fair trial.

As a result, the proper inquiry is whether the record shows a "serious and imminent threat" to the privacy rights of jurors and whether that privacy right is compelling. The record falls far short of what is required to show a serious and imminent threat to juror privacy. Instead, the trial court set the threshold showing far too low. All that was required in order for the courtroom to be close was a juror's unspecified claim that answering a particular question would make him/her uncomfortable.

Rowley certainly acknowledges that, given the nature of the trial, some questions posed to prospective jurors may have given rise to legitimate privacy interests of those persons. However, the minimal showing required by the judge in this case makes it impossible (for the trial court or for this court) to balance the privacy

interests of such a prospective juror against the need for openness of the process.

Just as importantly, while juror privacy may be one appropriate consideration in weighing a decision to close, it is not a factor that justifies the failure to conduct a *Bone-Club* hearing. *State v. Duckett*, 141 Wash. App. 797, 808, 173 P.2d 948 (2007) (“In this case only a limited portion of voir dire was held outside the courtroom, but this does not excuse the failure to engage in a *Bone-Club* analysis.”). The closure here was deliberate, and the questioning of the prospective jurors concerned their ability to serve; this cannot be characterized as ministerial in nature or trivial in result. *See Easterling*, 157 Wn.2d at 181.

Opportunity to Object

The trial court complied with this requirement of the *Bone-Club* test. The public was given an opportunity to object. So, was counsel. However, Mr. Rowley was not.

If given an opportunity to voice his position, Rowley would *not* have waived this constitutional right.

The *Strode* court noted:

The right to a public trial is set forth in the same provision as the right to a trial by jury, and it is difficult to discern any reason for affording it less protection than we afford the right to a jury trial. It seems reasonable, therefore, that the right to a public trial can be waived only in a knowing, voluntary, and

intelligent manner. See *City of Bellevue v. Acrey*, 103 Wash.2d 203, 207-08, 691 P.2d 957 (1984) (waiver of the jury trial right must be affirmative and unequivocal). A waiver of that right must be voluntary, knowing, and intelligent. *State v. Forza*, 70 Wash.2d 69, 422 P.2d 475 (1966). Additionally, a court must indulge every reasonable presumption against waiver of fundamental rights. *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942).

167 Wn.2d at 229, n.3.

Waivers of fundamental rights are disfavored, *Hodges v. Easton*, 106 U.S. 408, 412 (1882), and must be knowing, intelligent and voluntary, *Johnson v. Zerbst*, 304 U.S. 458, 469 (1938); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

The waiver of the right to a 12-person jury is constitutionally valid “on a showing of either (1) a personal statement from the defendant expressly agreeing to the waiver, or (2) an indication that the trial judge or defense counsel has discussed the issue with the defendant prior to the attorney's own waiver” on behalf of the defendant. *Stegall*, 124 Wn.2d at 729.

In *Stegall*, our Supreme Court extended the rule announced in *Wicke* to the waiver of the right to a 12-person jury. 124 Wn.2d at 728-29. In *Stegall*, the issue of waiving the right to a 12-person jury suddenly arose during jury selection and appeared to be partially attributed to defense counsel's “own desire to avoid the embarrassment of proceeding with jury selection with a broken

zipper on his fly.” *Stegall*, 124 Wn.2d at 731. The court observed that the record was devoid of any personal expression by the defendant or any other indication that his attorney had discussed the waiver with him prior to orally stipulating to proceed with fewer than 12 jurors. *Stegall*, 124 Wn.2d at 731.

Declaring the right to a 12-person jury to be an “integral part of a felony defendant's right to jury trial” under article I, section 21, the court held that the waiver of the right to a 12-person jury could be sufficiently demonstrated only upon a showing of a personal statement by the defendant or “an indication that the trial judge or defense counsel... discussed the issue with the defendant prior to the attorney's own waiver.” *Stegall*, 124 Wn.2d at 728-29.

In this case, there is absolutely no showing in the record to support Rowley’s waiver of his right to a public and open trial. As a result, this Court cannot find a voluntary and intelligent waiver. Further, the declarations attached to this petition firmly establish that Rowley did not waive this right—and would not have waived it if given an opportunity to decide.

Least Restrictive Means

The trial court did not consider any alternative to closure. Instead, the trial court announced that closure of *voir dire* was his preference.

In upholding exclusion of the public at juror *voir dire* in the *Waller* case, the Supreme Court of Georgia concluded, despite explicit statements to the contrary in a previous United States Supreme Court decision, that trial courts need not consider alternatives to closure absent an opposing party's proffer of some alternatives. The United States Supreme Court was explicit in *Press-Enterprise I*: "Even with findings adequate to support closure, the trial court's orders denying access to *voir dire* testimony failed to consider whether alternatives were available to protect the interests of the prospective jurors that the trial court's orders sought to guard. Absent consideration of alternatives to closure, the trial court could not constitutionally close the *voir dire*." 464 U.S. at 511. In *Press-Enterprise I*, for instance, neither the defendant nor the prosecution requested an open courtroom during juror *voir dire* proceedings; in fact, both specifically argued in favor of keeping the transcript of the proceedings confidential. *Id.*, at 503-504. The Court, nonetheless, found it was error to close the courtroom. *Id.*, at 513.

There is no place in the record where the trial court in this case considered less restrictive alternatives to closure. As a result, it is impossible for this court to do so. Instead, reversal is required.

Weighing of Competing Interests

It is impossible for this Court to evaluate the trial court's weighing of interests because the trial court conducted such a cursory and incomplete hearing and did not seek articulation of any of the interests. Once again, this merits reversal.

No Broader In Scope Than Necessary

The trial court's comments suggest that the court sought to broadest closure possible. However, once again, because the court failed to conduct an adequate hearing this Court cannot review this factor.

The Issue Was Not Waived

The *Strode* court also rejected the State's argument that Strode invited or waived his right to challenge the closure when he acquiesced to the private questioning of jurors. "However, the public trial right is considered an issue of such constitutional magnitude that it may be raised for the first time on appeal." *Strode, supra*. See also *Easterling*, 157 Wn.2d at 173 n.2; *Brightman*, 155 Wn.2d at 514; *Orange*, 152 Wn.2d at 800; *Bone-Club*, 128 Wn.2d at 257. Thus, it is well established that a "defendant's failure to lodge a contemporaneous objection at trial [does] not effect a waiver." *Brightman*, 155 Wn.2d at 517 (citing *Bone-Club*, 128 Wn.2d at 257).

Because the trial court must act to protect the rights of both a defendant and the public to open proceedings, “the defendant's failure to lodge a contemporaneous objection at trial [does] not effect a waiver of the public trial right.” *Brightman*, 155 Wash.2d at 517.

Violation of the Right to an Open Trial is a Structural Error

“Prejudice is necessarily presumed where a violation of the public trial right occurs.” *Easterling*, 157 Wash.2d at 181. “The denial of the constitutional right to a public trial is one of the limited classes of fundamental rights not subject to harmless error analysis.” *Id.* The remedy is reversal and a new trial. *Id.* at 174.

As the Supreme Court recognized in *Orange* and confirmed in *Easterling*, the guaranty of a public trial under our constitution has never been subject to a *de minimis* exception. *Orange*, 152 Wn.2d at 812-14; *Easterling*, 157 Wn.2d at 180-81.

2. Trial Counsel was Ineffective Because He Failed to Inform Rowley That Private Voir Dire Violated His Right to an Open and Public Trial. If Counsel Had Properly Informed Rowley, He Would Not Have Waived this Right.

The Sixth Amendment guarantees the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To prevail on a claim of

ineffective assistance of counsel, a petitioner must show that: (1) counsel's performance was deficient (*i.e.*, counsel made errors “so serious that counsel was not functioning as the ‘counsel’ guaranteed by the Sixth Amendment”); and (2) the deficient performance prejudiced the petitioner (*i.e.*, “counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable”). *Id.* at 687-690.

It is relatively easy to establish prejudice: trial counsel failed to inform Rowley that the trial court was seeking to waive Rowley’s right to an open and public trial. As counsel’s declaration admits, he failed to discuss this important matter with Rowley at all. This clearly constitutes deficient performance.

Because counsel’s deficient performance resulted in the unauthorized forfeiture of a fundamental constitutional right, prejudice is measured—not by whether there is a reasonable likelihood of a different trial outcome, but whether there is a reasonable likelihood that Rowley would not have allowed the right to be waived, if given proper advice. For example, if a defendant is not told of his right to appeal, a claim of ineffectiveness need only show that he would have exercised that right, not that he would have prevailed on appeal.

As a result, Rowley has made a prima facie claim of ineffective assistance of trial counsel.

3. Ineffective Assistance of Appellate Counsel

The Supreme Court's decision in *Orange* controls on this point:

Thus, had Orange's appellate counsel raised the constitutional violation on appeal, the remedy for the presumptively prejudicial error would have been, as in *Bone-Club*, remand for a new trial. Consequently, we agree with Orange that the failure of his appellate counsel to raise the issue on appeal was both deficient and prejudicial and therefore constituted ineffective assistance of counsel. See *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995) (citing *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (applying the two-prong test in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984))). The failure to raise the courtroom closure issue was not the product of "strategic" or "tactical" thinking, and it deprived Orange of the opportunity to have the constitutional error deemed per se prejudicial on direct appeal. 127 Wn.2d at 336, 899 P.2d 1251. The remedy for counsel's failure to raise on appeal the violation of Orange's public trial right is remand for a new trial.

152 Wn.2d at 814.

As a result, this Court can reach reversal one of three ways: the violation of the right to an open and public trial, or ineffective assistance of trial and/or appellate counsel. In all three instances, reversal and remand for a new trial is required.

4. ROWLEY WAS DENIED HIS SIXTH AMENDMENT RIGHT TO A JURY TRIAL WHEN THE SENTENCING COURT FOUND A PRIOR CONVICTION RAISING THE MAXIMUM SENTENCE AUTHORIZED BY THE JURY VERDICT.

In *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), Justice Stevens, writing the controlling plurality opinion joined in by Justices Ginsburg and Souter, held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Id.* at 490. In doing so, he expressly let stand the Court's decision in *Almendarez-Torres*, “[e]ven though it is arguable that [it] was incorrectly decided,” and that it was inconsistent with the main underlying principle of its decision. *Id.* at 489.

Justice Thomas, for himself and Justice Scalia, joined the opinion of the Court but wrote separately to explain his view that “the Constitution requires a broader rule than the Court adopts.” *Id.* at 498. The broader rule espoused by Justices Thomas and Scalia is the same principle underlying Justice Stevens's holding without the exception allowing *Almendarez-Torres* to stand. “[T]his traditional understanding—that a ‘crime’ includes every fact that is by law a basis for imposing or increasing punishment—continued well into the 20th-century, at least until the middle of the century Today's

decision, far from being a sharp break with the past, marks nothing more than a return to the status quo ante—the status quo that reflected the original meaning of the Fifth and Sixth Amendments.” *Id.* at 517.

The logical or rational disconnect between the holding in *Almendarez-Torres* and the basic underlying principles of *Apprendi* and subsequent cases were clear in the Justices' opinions and cannot be denied. As late as 2005, Justice Thomas repeated his view that *Almendarez-Torres* “has been eroded by this Court's subsequent Sixth Amendment jurisprudence, and a majority of the Court now recognizes that *Almendarez-Torres* was wrongly decided.” *Shepard v. United States*, 544 U.S. 13, 27, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005).

Indeed, no justice has ever argued that the two decisions are based on intrinsically compatible rationales or that they can be reconciled logically in any principled way. Justice Stevens recently indicated, in the context of denying certiorari, that he continued to see the two decisions as being in conflict but that he might vote to uphold *Almendarez-Torres* based on the doctrine of *stare decisis*. *Rangel-Reyes v. United States*, --- U.S. ----, 126 S.Ct. 2873, 2874, 165 L.Ed.2d 910 (2006). Justice Thomas, on the same subject, argued forcefully that *Almendarez-Torres* should be overruled: “The Court's duty to resolve this matter is particularly compelling,

because we are the only court authorized to do so. *See State Oil Co. v. Khan*, 522 U.S. 3, 20, 118 S.Ct. 275, 139 L.Ed.2d 199 (1997) (“[I]t is this Court's prerogative alone to overrule one of its precedents.”).

In this case, Rowley's maximum sentence was increased based on the fact of a prior conviction. Thus, he is serving a sentence that has been repeatedly recognized as unconstitutional—as soon as the law correctly interprets the Constitution.

As a result, Rowley raises this issue in order to preserve it.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should reverse and remand for a new trial and/or a new sentencing hearing.

In the alternative, this Court should remand this case for an evidentiary hearing.

DATED this 2nd day of November, 2010.

/s/ B. Renee Alsept
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APPENDIX A

OK

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JUL 14 2008
PAT SWARTOS, Clerk of the
Superior Court of Mason Co. Wash

Superior Court of Washington
County of Mason

State of Washington, Plaintiff,

vs.

JAMES C. ROWLEY,
Defendant.

SID: WA13018039
If no SID, use DOB: 11/02/1960

No. 08-1-00002-8

Felony Judgment and Sentence (FJS) 08-9-732-3

- Prison RCW 9.94A.712 Prison Confinement
- Jail One Year or Less RCW 9.94A.712 Prison Confinement
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court **Finds:**

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon
 guilty plea jury-verdict bench trial on JUNE 5, 2008:

Count	Crime	RCW	Date of Crime
1.	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	01/01/2008

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1.

The jury returned a special verdict or the court made a special finding with regard to the following:

- The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.
- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____ RCW 9.94A._____.
- The offense was predatory as to Count _____ RCW 9.94A.836.
The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.

Felony Judgment and Sentence (FJS)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

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- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- The defendant acted with sexual motivation in committing the offense in Count _____. RCW 9.94A.835.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The defendant used a firearm in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- The defendant used a deadly weapon other than a firearm in committing the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- Count _____, Violation of the Uniform Controlled Substances Act (VUCSA), RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant committed vehicular homicide vehicular assault proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- The defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- The crime(s) charged in Count _____ involve(s) domestic violence. RCW 10.99.020.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 Criminal History (RCW 9.94A.525):

	<i>Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County & State)</i>	<i>Date of Crime</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>
1	CHILD MOLESTATION IN THE FIRST DEGREE	06/06/1997	Snohomish County Superior Court	01/31/95	A	Class A
2	RAPE IN THE THIRD DEGREE	06/05/1991	King County Superior Court		A	Class C
3						

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570): **CHILD MOLESTATION IN THE FIRST DEGREE**, Snohomish County Superior Court Cause No. 97-1-00597-8 (disposition/sentencing date 06/06/1997).
- The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements *	Total Standard Range (including enhancements)	Maximum Term
1.	Persistent Offender	X	LIFE WITHOUT POSSIBILITY OF EARLY RELEASE	N/A	LIFE WITHOUT POSSIBILITY OF EARLY RELEASE	LIFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are attached as follows: _____

2.4 Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

within below the standard range for Count(s) _____.

above the standard range for Count(s) _____.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

III. Judgment

3.1 The defendant is **Guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The defendant is found **Not Guilty** of Counts _____

The court **Dismisses** Counts _____

IV. Sentence and Order

Felony Judgment and Sentence (FJS)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

Page 3 of 10

It is Ordered:

4.1a The defendant shall pay to the clerk of this court:

JASS CODE

RTN/RJN \$ _____ Restitution to: _____

RTN/RJN \$ _____ Restitution to: _____

\$ _____ Restitution to: _____
(Name and Address—address may be withheld and provided confidentially to Clerk of the Court's office.)

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ _____ Domestic Violence assessment RCW 10.99.080

CRC \$ 2611.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC

Witness costs \$ 533.50 WFR

Sheriff service fees \$ 1297.50 SFR/SFS/SFW/WRF

Jury demand fee \$ 250.00 JFR

Extradition costs \$ _____ EXT

Other \$ 247.50 - defense investigator costs

PUB \$ 1674.00* Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCD NTF/SAD/SDI \$ _____ Drug enforcement fund of _____ RCW 9.94A.760

CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 160.00 Felony DNA collection fee [] not imposed due to hardship RCW 43.43.7541

RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ 4855.00 Total RCW 9.94A.760

4802.00

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing: ** unbilled fees/costs reserved*

[] shall be set by the prosecutor.

is scheduled for _____

[] Restitution Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

Name of other defendant Cause Number (Victim's name) (Amount-\$)

RJN

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 50 per month commencing 60 days from date of release. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of \$50 per day, unless another rate is specified here: _____ (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 **DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 **No Contact:** The defendant shall not have contact with A.K.R. (dob 04/18/1998) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **Other:** _____

4.5 **Persistent Offender.** The court found the defendant to be a Persistent Offender. RCW 9.94A.570.

Count _____ is a most serious offense and the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

Count 1 is a crime listed in RCW 9.94A.030(33)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was 16 years of age or older when the offender committed the offense), child

molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was 18 years of age or older when the offender committed the offense), or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(33)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(33)(b)(i) or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in RCW 9.94A.030(33)(b)(i).

The defendant's prior convictions are included in the offender score as listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030(33), RCW 9.94A.525.

Confinement. RCW 9.94A.570. The court sentences the defendant to the following term of total confinement in the custody of the Department of Corrections:

Life without the possibility of early release on Count 1
months on Count _____

Actual number of months of total confinement ordered is: life without the possibility of early release.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

4.6 Other: _____

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your

offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Restitution Hearing.

I waive any right to be present at any restitution hearing (sign initials): _____.

5.5 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

5.6 Firearms. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

Cross off or delete if not applicable:

5.7 Sex and Kidnapping Offender Registration. RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

2. Offenders Who Leave the State and Return: If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

4. Additional Requirements Upon Moving to Another State: If you move to another state, or if

you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

5.8 Count _____ is a felony in the commission of which you used a motor vehicle. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

5.10 Other: _____

Done in Open Court and in the presence of the defendant this date: July 14, 2008

[Signature]
Judge/Print Name: **JAMES B. SAWYER II**
[Signature]
Defendant

[Signature]
Deputy Prosecuting Attorney
WSBA No. 27730
Print Name: Rebecca Jones Garcia

[Signature] 19670
Attorney for Defendant
WSBA No. *[Signature]*
Print Name:

[Signature]
Print Name:

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.
Defendant's signature: *[Signature]*

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: _____

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: _____

Clerk of the Court of said county and state, by: _____ Deputy Clerk

Identification of the Defendant

SID No. _____ Date of Birth _____
 (If no SID take fingerprint card for State Patrol)

FBI No. _____ Local ID No. _____

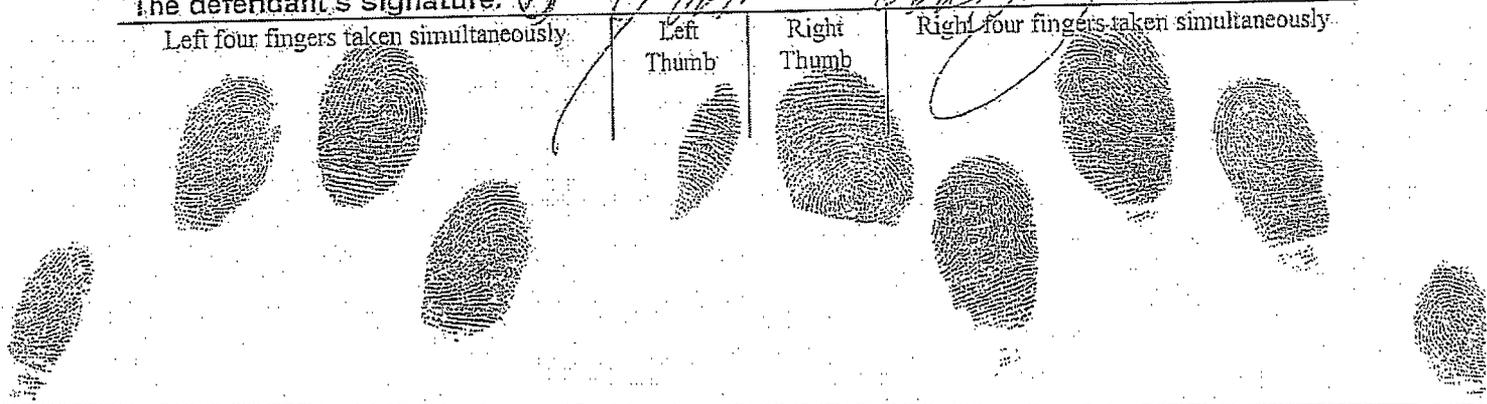
PCN No. _____ Other _____

Alias name, DOB: _____

Race: Asian/Pacific Islander Black/African-American Caucasian Hispanic Male
 Native American Other: _____ Non-Hispanic Female

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.
 Clerk of the Court, Deputy Clerk, Shawn K. Doso Dated: 7-14-08

The defendant's signature: [Signature]



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

STATE OF WASHINGTON,)
Plaintiff,) NO. 08-1-00002-8
)
vs.) WARRANT OF COMMITMENT
) (WC)
JAMES C. ROWLEY,)
)
Defendant.)
_____)

THE STATE OF WASHINGTON

TO: The Sheriff of Mason County.

The defendant: X has been convicted in the Superior Court of the State of Washington of the crime(s) of:

COUNT I: CHILD MOLESTATION IN THE FIRST DEGREE

and the Court has ordered that the defendant be punished by serving the determined sentence of:

LIFE WITHOUT POSSIBILITY OF EARLY RELEASE JAIL/PRISON on Count No. I

PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions:

work crew home detention

work release day reporting

_____ (Days) (Months) of partial confinement in the County **JAIL**

_____ (Days) (Months) of total confinement in the county **JAIL**

_____ Days confinement converted to _____ hours community service

DEFENDANT shall receive credit for time served prior to this date:

To be calculated by the staff of the Mason County Jail

In the amount of _____ Days.

YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence

The DEFENDANT is committed for up to (30) days evaluation at the Western State Hospital or Eastern State Hospital to determine amenability to sexual offender treatment.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections pending delivery to the proper officers of the Secretary of the Department of the Department of Social and Health Services.

YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED to receive the defendant for evaluation as ordered in the Judgment and Sentence.

DONE IN OPEN COURT THIS 14th DAY OF July, 2008

JAMES B. SAWYER II

Judge of the Superior Court

PAT SWARTOS

Clerk of the Superior Court

Sharon K. Jogo
By: Deputy Clerk

cc: Prosecuting Attorney
Defendant's Lawyer
Defendant
Jail
Institutions (3)

APPENDIX B

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

<i>In re Personal Restraint Petition of</i>)	No. _____
)	
JAMES C. ROWLEY,)	DECLARATION OF
)	RONALD E. SERGI
Petitioner.)	
)	
)	

I, Ronald E. Sergi, declare:

1. I am the attorney who represented Mr. Rowley at the trial that is the subject of this Personal Restraint Petition.
2. When jury selection began, the judge asked jurors if any of them wanted to answer any questions in private. Several jurors answered "yes." Those jurors were later questioned privately, by which I mean that no members of the press or public were allowed to be present.
3. At the time of Rowley's trial, this was a common practice in this court. As a result, I did not object. At that time, I did not consider that private questioning might implicate the right to an open and public trial.
4. I did not explain to Mr. Rowley that private questioning implicated his right to an open and public trial. Therefore, he could not have knowingly, intelligently, and voluntarily waived his right to an open and public trial because he was not aware that conducting a portion of *voir dire* in a private setting was contrary to that right.

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

10/27/12 Olympia, WA
Date and Place

R. Sergi
Ronald E. Sergi WSBA No. 19670
Attorney at Law

APPENDIX C

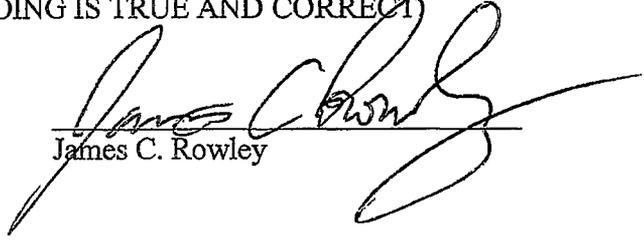
DECLARATION OF JAMES ROWLEY

I, James Rowley, declare:

1. I am the petitioner in this Personal Restraint Petition.
 2. At no point from the time I was arrested until long after the trial did anyone—judge, prosecutor, or my defense attorney—explain to me my right to a public and open trial.
 3. Before jury selection started, the judge told my attorney that he intended to ask jurors if they wanted to answer some questions privately.
 4. I recall that my attorney did not object.
 5. I was not asked if I objected.
 6. I did not think I had a right to object. Instead, I thought it was a question just for my attorney.
 7. I did not waive and did not authorize my attorney to waive my right to an open and public trial by permitting jurors to answer certain questions privately.
 8. My trial attorney simply made those decisions without discussing them with me at all.
 9. If my rights had been explained to me and if I had been asked, I would not have waived my right to an open and public trial.
-

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

11/2/10 W.S.P. Walla Walla, WA
Date and Place


James C. Rowley

APPENDIX D

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

STATE OF WASHINGTON,)
)
Plaintiff,) NO. 08-1-00002-8
)
v.) NO. 38016-1-II
)
JAMES CURTIS ROWLEY,) VOLUME XI
)
Defendant.)
)
_____)

VERBATIM REPORT OF PROCEEDINGS

FROM CHILD HEARSAY HEARING OF
MAY 29, 2008

Sheri K. Escalante
Court Approved Transcriber
Mason County Superior Court
P.O. Box X
Shelton, WA 98584
(360)427-9670 Ext. 206

1 THE COURT: Well we'll have to see how that plays
2 out. But once again, it's not going to be mentioned without a
3 hearing outside of the presence of the jury. Do we all agree
4 on that?

5 MR. SERGI: Yes.

6 MS. JONES GARCIA: Yes.

7 THE COURT: So with respect to that, that State's
8 motion in limine is granted. We'll deal with the other
9 motions in limine -- I'm assuming that they are not so long
10 that we can't get them taken care at the time the jurors are
11 being brought in at 1:00 tomorrow?

12 MS. JONES GARCIA: No.

13 THE COURT: We might as well deal with it right
14 now; 30/30/20 and 20. Is that an appropriate length of
15 time --

16 MR. SERGI: It should be.

17 THE COURT: -- for voir dire?

18 MS. JONES GARCIA: It is, your Honor. And again, I
19 will ask, and I'll bring the questions, and the -- the way
20 we've done it --

21 THE COURT: The general questions.

22 MS. JONES GARCIA: The general questioning that
23 goes in to a lot of the things that I would like in the sexual
24 assault questionnaire that we addressed.

25

1 THE COURT: And I appreciate that. You know my
2 propensity when you don't agree with it, but that's all right.
3 And I think that we've been effective by using the general
4 questions and having the opportunity to allow potential jurors
5 to come back into chambers.

6 Again, my preference as you all know is to allow the jurors
7 to come back individually into chambers. We all know that we
8 have a Division III case that deals with that issue. Does
9 defense have any objection to that procedure being utilized?

10 MR. SERGI: No, sir.

11 THE COURT: And with respect to that, I will also
12 make a general inquiry of those people in the courtroom at the
13 time that we begin voir dire tomorrow, asking if there's
14 anybody that has an objection to that procedure being
15 utilized. Okay, anything further? Anything that we can
16 accomplish yet this morning?

17 MS. JONES GARCIA: No, I don't believe so, your
18 Honor. I'll have -- again, we've gone over the general
19 questions that are a little more detailed than you'd ask in a
20 different question that -- that we'll just -- can ask between
21 Mr. Sergi and myself.

22 THE COURT: The sooner you can get that information
23 to counsel and myself the better off we are as far as being on
24 time tomorrow. Mr. Rowley, you'd indicated to your counsel
25

1 earlier in my presence that you do have your civilian clothing
2 available?

3 MR. JAMES ROWLEY: Yes, sir.

4 THE COURT: Very good. And so for the jail's
5 purposes, if you could let the powers that be know, that what
6 we will be anticipating is getting going right at 1:00
7 tomorrow with jury selection. That means he needs to be in
8 civilian clothing and up there. That would be most
9 appreciated. Okay.

10 And there was some concern -- actually I thought Carolyn
11 was very astute in an observation she made this morning. And
12 that was she came in and she said you know, I don't want to
13 get in trouble but I've been thinking. And I was wondering if
14 we needed to be concerned about his being exposed to this jury
15 panel because we've got a jury panel that's being selected
16 upstairs right now. There was some concern about that because
17 of the movement. However we've gone to the jury clerk and she
18 assures us that we will have a totally new panel tomorrow.
19 And as indicated, I'm going to be asking for 55, I think is
20 what I told her. Okay.

21 MS. JONES GARCIA: Okay.

22 THE COURT: Anything further?

23 MS. JONES GARCIA: I don't think so, your Honor.
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THE COURT: Have a good day. We will see you all first of all for readiness hearings tomorrow morning and then trial tomorrow afternoon.

MS. JONES GARCIA: Thank you.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF MASON

STATE OF WASHINGTON,)
Plaintiff,) NO. 08-1-00002-8
v.) NO. 38016-1-II
JAMES CURTIS ROWLEY,)
Defendant.)

EXCERPT OF VERBATIM REPORT OF PROCEEDINGS

PORTIONS OF VOIR DIRE EXAMINATION
MAY 30, 2008
JAMES B. SAWYER, II, JUDGE
MASON COUNTY SUPERIOR COURT

Counsel:
Rebecca L. Jones Garcia, Deputy Prosecuting Attorney
Ronald E. Sergi, Attorney for Defendant

Sheri K. Escalante
Official Court Recorder
Mason County Superior Court
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Shelton, WA 98584
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Excerpts of voir dire
examination heard on May 30,
2008.

THE COURT: We will not ask you questions intending to embarrass you. We are not trying to pry into your private affairs. However, occasionally a question may be asked that makes a juror uncomfortable insofar as responding out here in the open court. In that situation, it may be available to you to say could we take this question up in the privacy of chambers. And with that in mind, yesterday I asked if there was any objection to that process by either of the parties, is that correct?

MS. JONES GARCIA: Yes, your Honor.

THE COURT: And there was no objection, is that correct?

MS. JONES GARCIA: It is.

MR. SERGI: No, sir.

THE COURT: Does any member of the public object to that procedure being utilized in this jury selection process today? Okay, people look at me too and say what are you talking about; why are you asking that question. Well, Division III of the Court of Appeals over in Spokane ruled ~~that to not ask that question of the general public and of the~~ individuals may violate, first of all, the individual's rights to an open and public trial, and also may violate the rights of the public to participate in and be present during the

1 process of a trial by taking the time to step back into
2 chambers, giving a little bit of privacy to an individual when
3 they're giving an answer that might be uncomfortable for them.

4 So what I'm doing, the way I'm handling that myself is I
5 simply ask this question. If there is an objection, then we
6 figure out what we're going to do about it when the objection
7 is imposed. Otherwise we then can use that process. So,
8 there having been no objection, if I ask a question of you, or
9 if either of the attorneys ask a question of you and you're
10 uncomfortable responding out here in the open courtroom, just
11 say judge, do you mind if we step back into chambers and take
12 up that question. What we'll do is we'll take a couple of
13 microphones. And by the way, let me explain that to you.

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(End of excerpt)

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THE COURT: Okay. With that, what we're going to do is the attorneys and I are going to step back, along with the defendant into chambers. And we're going to ask you to come back one at a time and we're going to allow you to explain your responses where you've said that you don't think you can be fair and impartial.

Now, you folks in this courtroom while we're dealing with this matter back there, you're welcome to stand up, move

1 around. We'll get some windows open for you. And Jim, you
2 might as well turn those ceiling fans on to get a little bit
3 of air moving. And you can escape to the restroom as well.
4 But you need to stay quiet out here because these mics stay
5 live. They won't amplify you back there, and we won't be
6 amplified out here. But what your noise will do is it will
7 cover my recording. So be quiet. You're welcome to move
8 around. We'll go back and we'll step back first with juror
9 number 7, Ms. Ray. If you'd come back with us please.

10 It has four bars, that's good. And your name is Ella Ray?

11 JUROR NO. 7: Correct.

12 THE COURT: And Ms. Ray, you've indicated that you
13 had personal experience and you just didn't think that you
14 could be fair and impartial. If you'd explain that.

15 JUROR NO. 7: My first husband, he sexually
16 assaulted my children, myself. And he was put in jail, he got
17 out, and then he sexually assaulted my grand daughter. And I
18 have worked with battered and abused children. I've took
19 them -- taken them into my home.

20 THE COURT: Uh huh.

21 JUROR NO. 7: No, I --

22 THE COURT: Just could not be fair and impartial is
23 what you're saying.

24 JUROR NO. 7: No, I could not.
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THE COURT: Okay. Any objection to Ms. Ray being excused?

MS. JONES GARCIA: No, your Honor.

MR. SERGI: No. Thank you, mam.

THE COURT: Really appreciate your candor. I know it's hard to make disclosures of that nature and deal with it. It drags up old memories, but it's so important that people be willing to say so. And so thank you. You can give me the mic.

JUROR NO. 7: My second husband was a police officer and (inaudible)

THE COURT: You can give the card to the Bailiff, and you're out of here for today. Give a call back over the weekend to see if we'll be needing you again. Thanks a lot.

JUROR NO. 7: Okay.

THE COURT: Appreciate it. Juror number 10, Robert Cory. Juror number 10.

COURT CLERK: Juror number 10.

THE COURT: Come on in, sir. Have a seat.

JUROR NO. 10: Thank you.

THE COURT: You have to tell me what Star Light Air is.

JUROR NO. 10: Star Light Air, I'm a corporate pilot right now, your Honor.

THE COURT: Okay.

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JUROR NO. 10: In fact I was -- one, I was wondering about how long this was going to go because I'll be out of town a week from Sunday for a week. But anyways, I'm here for other reasons than that, your Honor.

THE COURT: Okay, go ahead and explain, sir.

JUROR NO. 10: Well first of all, I -- I retired from the State Patrol after 25 years as a trooper. And the main reason I raised my -- my card was my stepdaughter had a bad experience when she was a child. It was long before I knew her. But over the years I've become very bitter about this particular event. And so I thought to myself, could I be fair about this thing, you know, irregardless of what the individual was -- or who the individual was. I thought could I be fair about this thing because of my impact that I've had from that.

THE COURT: Uh huh.

JUROR NO. 10: Had this been a traffic accident or something else, I could probably run the -- run the middle of the road. But I'm -- I'd probably be looking for a reason to find the person wrong.

THE COURT: So you'd be leaning --

~~JUROR NO. 10: Because I'm pretty bitter about~~
the --

THE COURT: You'd be leaning to the State's side, just because of that experience?

1 JUROR NO. 10: I would. I think I would. I --
2 I'm -- I'm not going to lie. I think I would. And I thought,
3 you know, I'd be available for any other trial perhaps, but
4 this one I'm pretty bitter about. And I -- I'm -- I'm afraid
5 that I'd be looking for a reason.

6 THE COURT: Well, and that's exactly what we want
7 you all to be doing. We want you to look inside and be
8 self-critical. And appreciate that very much. Any objection
9 of Mr. Cory being excused?

10 MS. JONES GARCIA: (Inaudible)

11 MR. SERGI: (Inaudible)

12 JUROR NO. 10: I'm available for --

13 THE COURT: Okay. Give a call over the weekend and
14 see if you'll be needed again, okay? Thanks a lot.

15 MR. SERGI: Thank you, sir.

16 THE COURT: Juror number 15 please.

17 COURT CLERK: Number 15.

18 THE COURT: Come on in. You get the seat. You get
19 the microphone.

20 JUROR NO. 15: Okay.

21 THE COURT: And you are Ms. Ramsfield, is that
22 correct?

23 JUROR NO. 15: That is correct.

24 THE COURT: And you'd indicated you didn't think
25 you could be fair and impartial. And if you'd just explain.

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JUROR NO. 15: Well, usually I can be. But -- and I think I can be. But as I sit there and think about it, I -- I don't know. About 16 years ago my niece was molested by her stepfather.

THE COURT: Uh huh.

JUROR NO. 15: And I don't know. I mean I have sat on jury's before and I've always been able to be fair and impartial. And due to the nature of my work, I -- you know, I have to do that on a regular basis. So --

THE COURT: All right. And you're the only person in this room that knows what your heart's saying.

JUROR NO. 15: Uh huh.

THE COURT: So you need to think about the job that you're going to get if you're seated on this jury. And that is you're going to be asked, after listening carefully to all of the evidence in the case, taking the law as given to you by the Court and making a decision in this case based on the evidence and the law, and not on what happened to your niece at some time in the past.

JUROR NO. 15: Uh huh.

THE COURT: All right. And you're the one that can tell us. Can you do that? Or would it be something that you just can't (inaudible)

JUROR NO. 15: I think I could do that.

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THE COURT: Okay. Do either counsel wish to
(inaudible)

MS. JONES GARCIA: No, your Honor.

MR. SERGI: How close were you to your niece?

JUROR NO. 15: How close was I?

MR. SERGI: Uh huh.

JUROR NO. 15: Well, it's my sister's daughter.
And we had children approximately the same age. And we all
lived in Shelton, they grew up together. And so, you know,
we're a relatively close family.

MR. SERGI: How old was the little girl when it
occurred?

JUROR NO. 15: She was probably 11 or 12.

MR. SERGI: Now the alleged victim that you're
going to hear testimony from if you remain on this jury is 10
years old. Is -- is that going to cause any -- for lack of a
better word -- flashbacks, or any -- any thing that might
cause you to not be fair and impartial?

JUROR NO. 15: I don't think so. I didn't know.
It wasn't a rape situation, it was a molestation. And I
didn't hear the details. I helped to take care of my sister's
other children during the period of time. So --

THE COURT: So that having been said, you still
feel that you can set it aside, you can make a decision?

1 JUROR NO. 15: Yes. I just wanted to honestly tell
2 you what that was about. So --

3 THE COURT: No, no. What you're doing is exactly
4 what we want people to do.

5 JUROR NO. 15: Okay.

6 THE COURT: We very much appreciate your being
7 open. Like I said, more information is better than not enough
8 information.

9 JUROR NO. 15: Uh huh. Yeah, and as I sat there I
10 just thought, you know, I probably should join everyone else
11 back here.

12 THE COURT: I really appreciate your bringing it to
13 our attention. You get to go back and find a chair. And I'll
14 take the mic from you.

15 JUROR NO. 15: Thank you.

16 THE COURT: Thank you very much. Juror number 23,
17 I think it is.

18 COURT CLERK: Number 23.

19 THE COURT: I don't have 16 circled. Come on in,
20 Mr. Rasmussen. Are you Russell Rasmussen?

21 JUROR NO. 23: Yes, I'm Russell Rasmussen.

22 THE COURT: Have a seat please. If you don't mind,
23 I'm standing just because I sit way too much. You'd indicated
24 that you thought that there was something that would affect
25 your ability to be fair and impartial in the case.

1 JUROR NO. 23: Yes, your Honor. Explain?
2 THE COURT: Go ahead. Yes, please.
3 JUROR NO. 23: My boy was convicted of rape and
4 murder.
5 THE COURT: Your boy was convicted?
6 JUROR NO. 23: Yes.
7 THE COURT: Okay. And of course if you're a juror
8 here, you're going to have to sit and listen to testimony.
9 And you feel that that would affect your ability to be fair
10 and impartial?
11 JUROR NO. 23: Yes.
12 THE COURT: Any objection to Mr. Rasmussen being
13 excused?
14 MS. JONES GARCIA: No.
15 MR. SERGI: No, thank you.
16 THE COURT: Sorry for the experience. You're
17 excused at this time, sir. Give us a call back over the
18 weekend and see if you'll be needed. Okay, have a good day.
19 Number 1, okay. Okay, let's ask 1 to come back then.
20 COURT CLERK: Number 1.
21 THE COURT: Come on in, Mr. Kraft. Go ahead and
22 have a seat. I'll give you the microphone. You asked to come
23 back and explain to us.
24 JUROR NO. 1: Yeah. I think in thinking back I
25 should have raised my -- my number in one of your questions --

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THE COURT: Okay.

JUROR NO. 1: -- of whether I'd had a similar experience or anything like that.

THE COURT: Okay.

JUROR NO. 1: When I was about 14 years old I lived in a trailer park. And I had consensual sex with our landlord who was in her 30's at the time. I didn't feel that -- at the time that -- that I was forced into it or anything like that. Nothing ever came of it. It was --

THE COURT: Okay.

JUROR NO. 1: -- never brought up. And I don't believe it would affect --

THE COURT: Okay.

JUROR NO. 1: -- my being impartial, but I wanted to make sure you knew.

THE COURT: Very much appreciate that. You're doing exactly what we hope people will do and that is give us all the information so we can make a reasonable decision. So thank you, Mr. Kraft.

JUROR NO. 1: Thank you.

THE COURT: Any (inaudible)

MS. JONES GARCIA: No.

THE COURT: Thanks for bringing that to our attention. Okay. So then juror number 25 please.

COURT CLERK: 25.

1 THE COURT: Have a chair. And you're Bonnie Orr.
2 JUROR NO. 25: Yes, I am.
3 THE COURT: And you had indicated in a couple of
4 different places that you felt that you couldn't be fair and
5 impartial.
6 JUROR NO. 25: Yeah.
7 THE COURT: Could you just explain that please?
8 JUROR NO. 25: Correct. I was molested when I was
9 10 years old. And I also have been a mental health therapist,
10 and I've worked for 30 years with victims of abuse. And so at
11 this point, this is the one place I can't be.
12 THE COURT: Just wouldn't work.
13 JUROR NO. 25: Just wouldn't work.
14 THE COURT: Any objection to Ms. Orr being excused?
15 MS. JONES GARCIA: No, your Honor.
16 MR. SERGI: No, sir. Thank you, mam.
17 THE COURT: Appreciate your candor. Give us a call
18 over the weekend and see if you'll be needed again please.
19 JUROR NO. 25: Be happy to.
20 THE COURT: Thank you very much. Okay, juror
21 number 28 please.
22 COURT CLERK: 28.
23 THE COURT: That cane's not doing you any good
24 upside down like that.
25 JUROR NO. 28: Well, I know, judge.

1 THE COURT: Go ahead and have a chair right there.

2 JUROR NO. 28: I don't really need it. Just --

3 just my --

4 THE COURT: You get the microphone.

5 JUROR NO. 28: -- my security.

6 THE COURT: Dorothy Jeffries.

7 JUROR NO. 28: Yes.

8 THE COURT: And you'd indicated that you felt you
9 might be unable to be fair and impartial. And if you'd just
10 explain. Or you indicated special training.

11 JUROR NO. 28: Yeah. Well, in the '70's I worked
12 for DSHS. I was working in protective services. And I had to
13 go to court myself sometimes representing minors, children.
14 So that's -- that's where I'm coming from on that one.

15 THE COURT: Do you feel that it would affect your
16 ability to be fair and impartial?

17 JUROR NO. 28: I don't know. I don't know. I
18 don't think so. I'm pretty old now. Pretty well got a -- I
19 don't know because, you know, you can see all different sides.

20 THE COURT: Okay. If you're selected as a juror,
21 your job is going to be to listen to the evidence and decide
22 this case based upon the evidence in the case --

23 JUROR NO. 28: In the case, I understand.

24 THE COURT: -- and the law as given to you by the
25 Court, not on what happened back there in the '70's.

1 JUROR NO. 28: In the '70's.
2 THE COURT: Right?
3 JUROR NO. 28: And I -- I -- I realize -- I -- I --
4 I think I could do it, yes.
5 THE COURT: Okay. Do you feel that you can assure
6 us that you'd be able to do that?
7 JUROR NO. 28: Yes.
8 THE COURT: Okay. Do either counsel wish to cross?
9 MR. SERGI: I -- I -- what was your role at DSHS?
10 JUROR NO. 28: Well, among other things, you know,
11 you go through the -- the system. At that time I was in
12 protective services, Child Protective Services and -- and
13 Family Services. And well, we did adoptions, placed children
14 in to foster care.
15 MR. SERGI: So you were working throughout -- as
16 you said --
17 JUROR NO. 28: Yes.
18 MR. SERGI: Not (unintelligible)
19 JUROR NO. 28: Yes, yes.
20 MR. SERGI: -- DSHS?
21 JUROR NO. 28: Yes. And you -- you saw the
22 different sides of all (inaudible) But it was rather dramatic
23 sometimes. I acted a couple of times as a vic's friend.
24 MR. SERGI: Well thank you very much, mam.
25 JUROR NO. 28: Okay.

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THE COURT: Thank you. And you can go out and resume your seat. We'll be back out there momentarily. Juror number 33 would be next please.

COURT CLERK: 33.

THE COURT: Come on in and have a seat.

JUROR NO. 33: Hello, hello.

MR. SERGI: Hello.

MS. JONES GARCIA: Hi.

THE COURT: Corinne Koski.

JUROR NO. 33: Yes.

THE COURT: There's some Koski's in Westbrook --

JUROR NO. 33: No.

THE COURT: -- Minnesota?

JUROR NO. 33: No. I can tell you that right now.

THE COURT: I used to bail hay for a Koski in that area, yes.

JUROR NO. 33: (Unintelligible)

THE COURT: You indicated that you felt you might not be able to be fair and impartial. And if you'd explain please.

JUROR NO. 33: I was (inaudible)

THE COURT: Okay.

JUROR NO. 33: Twice.

THE COURT: Okay.

1 JUROR NO. 33: So I was very (inaudible) generally
2 with child abuse (inaudible)
3 THE COURT: Uh huh.
4 JUROR NO. 33: (Inaudible)
5 THE COURT: (Inaudible)
6 MR. SERGI: Are you -- are you close to home?
7 JUROR NO. 33: Yeah, pretty -- pretty close to
8 home, yeah.
9 THE COURT: So --
10 JUROR NO. 33: Her husband's a cop.
11 THE COURT: Any objection to Ms. Koski being
12 excused at this time?
13 MR. SERGI: No, sir.
14 MS. JONES GARCIA: No. That's fine.
15 THE COURT: Thank you for your candor. You have a
16 nice weekend. Give us a call back over the weekend to see if
17 you'd be needed again, all right?
18 JUROR NO. 33: (Inaudible) husband. He's on call
19 too.
20 MR. SERGI: Take care.
21 THE COURT: Good. Juror number 36 please.
22 COURT CLERK: 36.
23 THE COURT: Come on back, sir. Steven -- Steven
24 Phillips, is it?
25 JUROR NO. 36: Yes.

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THE COURT: You get the mic. Please have a chair there. And you had indicated that you didn't think that you could be fair and impartial. Please explain.

JUROR NO. 36: My niece was involved in a situation like this.

THE COURT: Okay.

JUROR NO. 36: And it was involving a he said/she said, so he was acquitted.

THE COURT: Uh huh. Okay.

JUROR NO. 36: And I don't think I could be impartial.

THE COURT: All right. And that's the question that you really have to think about. And that is your job, if you're selected as a juror, would be to listen carefully to the evidence produced in court and decide the case based upon the evidence produced in court and the law as given to you by the Court, and not on that prior family experience where somebody didn't get convicted out of a he said/she said, right?

JUROR NO. 36: Yes.

THE COURT: And so you're the only one that can tell us how it's going inside; can I or can't I do that.

JUROR NO. 36: I don't think I could be impartial, no.

THE COURT: Okay.

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MR. SERGI: Nothing, thank you.

THE COURT: Mr. Phillips, I appreciate your candor. It's very, very important. So just give your card to the Bailiff and call back over the weekend and see if you're needed again. Thanks a lot.

MS. JONES GARCIA: Thank you.

THE COURT: Have a good weekend.

JUROR NO. 36: (Inaudible)

THE COURT: Juror number 3 please.

COURT CLERK: Number 3.

THE COURT: Come on in, Mr. Hardiman.

JUROR NO. 3: Good morning -- afternoon.

THE COURT: Good afternoon. It is afternoon. Go ahead and have a seat. And you had asked to come back and talk to us.

JUROR NO. 3: Yes. I have been before your courtroom on two occasions as a candidate juror.

THE COURT: Uh huh.

JUROR NO. 3: In both cases I was released from jury service because I, at the time, expected beyond reasonable doubt as grounds for conviction. I expected irrefutable proof. That was the result of a friend of mine having been convicted. He pled out (unintelligible) To this day, I have my doubt whether he had done it. So the last time I was dismissed from jury service I says well, he's convicted,

1 nobody's really squawking about it, why am I squawking about
2 it. And the answer comes down to a simple denial.

3 And so in the -- my denial that he'd done it, he done it.
4 So as disclosure to the Court, I have to tell you of the
5 incident -- experience. As I'm standing here today it says
6 reasonable doubt (inaudible)

7 THE COURT: Okay. Well, I appreciate that. And we
8 go --

9 JUROR NO. 3: That's your --

10 THE COURT: -- we go through changes in life. We
11 develop a mindset. And we really want jurors to do exactly
12 what you're doing now and bring those things (inaudible) So
13 what you're telling us is you could apply the standard that
14 we're talking about. The State wants to prove beyond a
15 reasonableness. That doesn't mean any and every (inaudible)
16 but any reasonable (inaudible)

17 JUROR NO. 3: Yes, sir.

18 THE COURT: And you could accept that as the proper
19 verdict?

20 JUROR NO. 3: Yes, sir.

21 THE COURT: Okay. Either party wish to inquire?

22 MS. JONES GARCIA: Yes, please.

23 THE COURT: Sure.

24 MR. JONES GARCIA: Mr. Hardiman, if I can just
25 inquire a little bit as to -- to the thought process that you

1 engaged in after the second time I think you said you were
2 excused. And you did some reflecting on what your position
3 was about what needed to be proved. Could you just talk a
4 little bit about the thought process that you went through to
5 decide that (inaudible) comfortable with reasonable doubt.

6 JUROR NO. 3: Well, the process probably started,
7 at least from the first jury service, and just sort of stewed
8 along. And the period of time I gave conscious thought to it,
9 and a lot of it was (inaudible) other kind of just stewing on
10 it. The thought was, as I had expressed before, why did I
11 resist the idea that he was guilty before. Much of that was
12 based on my personal experience with him.

13 He and I had started our careers at approximately --
14 approximately the same time with the same company, grown to be
15 fast friends. Subsequently I had moved to California to
16 follow my career. He had stayed in New York, and we had lost
17 touch. So more than 10 years, probably around 15 years, when
18 he done the bad deed, or was alleged to have done the bad
19 deed.

20 He put up a defense, but ultimately said, I'm going to
21 surrender to the court system because I would impoverish my
22 family if I proceeded to conclusion. Okay. Well, that's
23 still putting up his front.

24 My own thought process was that he was a good citizen all
25 the way around, right. I -- I'd -- I'd never known him to

1 have any harsh thoughts, let alone do anything (inaudible)
2 learned anything new about the circumstance (inaudible) How
3 did you come to this conclusion that he didn't do it in the
4 first place when he was convicted, right. Nobody's making any
5 noise about it since then. And -- well, that's essentially
6 it. It was saying oh Larry, you're just denying (inaudible)
7 My memory is of him in 1975. So I'd lost touch with him since
8 then. So that was the memory, just denial. He had done
9 (inaudible) So that was the thought process. Did that answer
10 your question?

11 MS. JONES GARCIA: It did. And (inaudible)

12 MR. SERGI: No, I don't.

13 THE COURT: Mr. Hardiman, appreciate you coming in.
14 (Inaudible) Take your seat, we'll be out in a little bit. So
15 juror number 45 is next.

16 MALE VOICE: Keep your seats. I'm going to stay
17 standing.

18 THE COURT: Yes, really. 45 please.

19 COURT CLERK: 45.

20 THE COURT: I don't have 14 circled. I want to do
21 14 circled, is that what you're telling me? Okay. Bonnie
22 Phinney, have a chair.

23 JUROR NO. 45: Thank you.

24

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1 THE COURT: And Bonnie, you'd indicated that you
2 didn't think that you could be fair and impartial. If you'd
3 just explain please.

4 JUROR NO. 45: About 20 years I was going out with
5 a gentleman, we were breaking up. And he took me out on a
6 logging road and told me either have sex or get out of the
7 car.

8 THE COURT: Okay.

9 JUROR NO. 45: And so I just felt that that was, in
10 all fairness, was something that maybe you should know about.

11 THE COURT: Okay.

12 JUROR NO. 45: And --

13 THE COURT: All right.

14 JUROR NO. 45: And he stalked me for like a year
15 later, and you know, so --

16 THE COURT: Let's talk about what your job --

17 JUROR NO. 45: Okay.

18 THE COURT: -- would be here if you are seated as a
19 juror.

20 JUROR NO. 45: Right.

21 THE COURT: And that is, of course, that you're
22 going to have to listen to the evidence being produced.

23 JUROR NO. 45: Okay.

24 THE COURT: Make a decision in this case, based on
25 the evidence produced in court --

1 JUROR NO. 45: Uh huh.
2 THE COURT: -- the law as given to you by the
3 Court. And that bad experience that you had out on one of our
4 local logging road just can't play a part in it. And you're
5 the only one in this room that can tell us if you can
6 accomplish that. Can you set it aside or --
7 JUROR NO. 45: I -- I've set it aside for probably
8 20 years.
9 THE COURT: Okay.
10 JUROR NO. 45: There's hardly anyone who knew about
11 it. So --
12 THE COURT: Okay.
13 JUROR NO. 45: Something that --
14 THE COURT: And that's why we do this back here
15 too.
16 JUROR NO. 45: Yes. And so to be -- that's what I
17 said -- you know, felt in all fairness --
18 THE COURT: Okay.
19 JUROR NO. 45: Then that's -- that you should know
20 about it. And --
21 THE COURT: Appreciate that.
22 JUROR NO. 45: I -- I could.
23 THE COURT: Okay.
24 JUROR NO. 45: Yes, put it out of my mind.
25 THE COURT: Does either counsel have any questions?

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MS. JONES GARCIA: I don't. Thank you.

MR. SERGI: Not -- not that -- given the nature of the allegation, there's -- there's not adults involved in it, it's not a -- a -- a rape or something like that. But having to relive these memories --

JUROR NO. 45: Uh huh.

MR. SERGI: Is that going to be a problem for you?

JUROR NO. 45: No.

MR. SERGI: You know, in your future because we don't want to mess you up --

JUROR NO. 45: Oh.

MR. SERGI: -- in the future either.

JUROR NO. 45: Oh, no, no. Like I said, this was 20 years ago.

MR. SERGI: Okay.

JUROR NO. 45: So --

MR. SERGI: So you'll be able to keep an open mind and --

JUROR NO. 45: Yes, yes.

MR. SERGI: Okay, thank you very much.

THE COURT: Thank you for the full disclosure. That's important. We appreciate that. So juror number 14 please.

COURT CLERK: 14.

THE COURT: Good morning, Mr. Myhres.

1 JUROR NO. 14: Morning.

2 THE COURT: You get the chair.

3 JUROR NO. 14: Okay.

4 THE COURT: You get the microphone. You asked to
5 come back. Go ahead and explain.

6 JUROR NO. 14: Well I didn't actually ask to come
7 back. But ---

8 THE COURT: Okay. You'd indicated.

9 JUROR NO. 14: I had indicated to the Bailiff that
10 my daughter had been molested as a child.

11 THE COURT: Okay.

12 JUROR NO. 14: And that's been 20 years ago.

13 THE COURT: Okay. Do you think that that would
14 affect your ability to be fair and impartial in this case?

15 JUROR NO. 14: No, not really.

16 MR. SERGI: Was --- was the individual charged and
17 ultimately convicted?

18 JUROR NO. 14: One of them, yes; one of them, no.

19 MR. SERGI: Okay. Were you satisfied with how the
20 judicial system handled the matter?

21 JUROR NO. 14: No.

22 MR. SERGI: Okay. On both instances, or just ---

23 JUROR NO. 14: Just the one instance.

24 MR. SERGI: --- the one where nobody was punished?

25 JUROR NO. 14: Yeah.

1 MR. SERGI: Okay. How old -- how old was your --
2 was it your daughter, you said?
3 JUROR NO. 14: Yeah, and she was 12 years old.
4 MR. SERGI: I -- I don't have any further
5 questions. Okay, thanks.
6 THE COURT: And Mr. Myhres, the thing that you need
7 to be able to be (inaudible) is that you're going to have to
8 decide issues of this case that are very, very (inaudible)
9 JUROR NO. 14: Oh.
10 THE COURT: And you decide the issues based on the
11 evidence in this case --
12 JUROR NO. 14: Yeah.
13 THE COURT: And not on your family experience --
14 JUROR NO. 14: Right.
15 THE COURT: -- with that incident.
16 JUROR NO. 14: Well the only reason I wouldn't be
17 satisfied with what the Court did then is the one person pled
18 nolo contendere, and they just sort of let him off.
19 THE COURT: Okay.
20 JUROR NO. 14: They didn't -- they didn't put him
21 in jail. They didn't do nothing. So --
22 THE COURT: Okay. Okay. But is that going to
23 affect your decision in this case?
24 JUROR NO. 14: No, no.
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THE COURT: Okay. Because the State has the burden of proof. They're going to have to prove their case to you.

JUROR NO. 14: Yeah, right.

THE COURT: And so you can find yourself in a situation at the conclusion of this trial saying, you know, I listened to everything (inaudible) And you couldn't say well, you know what, I remember that happening back there with my daughter --

JUROR NO. 14: Uh huh.

THE COURT: -- and this is my chance to strike back after the thought.

JUROR NO. 14: No, I don't think -- personally I don't think so, no.

THE COURT: Okay. And that's good. I'm just trying to get you to look inside.

JUROR NO. 14: I've had a long time to get over it.

THE COURT: Okay. Thank you. And appreciate your bringing that to our attention. Thank you, Mr. Myhres. You can go out and retake your seat. Juror number 49 please.

COURT CLERK: 49.

THE COURT: Mr. Homer, you get the chair and you get the microphone. And you are -- is it correct that you're David Homer?

JUROR NO. 49: Yes.

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THE COURT: And you'd indicated that you didn't think you could be fair and impartial. If you could explain.

JUROR NO. 49: On a couple levels.

THE COURT: Okay.

JUROR NO. 49: My wife was molested by her nephew when she was babysitting as a teenager, and 20 years later discovered that all three -- four of her cousins had the same experience at the same time. Now my brother-in-law's probably going to get arrested if he ever comes back to Kittitas County for doing the same thing to the same women. In addition to that, I have three granddaughters (unintelligible) And I don't even want to hear the evidence in this case because it's going to turn my stomach. I couldn't take the oath.

THE COURT: Okay.

JUROR NO. 49: I would not be impartial.

THE COURT: Fair enough. And that's exactly what we want people to be willing to say. There's some cases where we just can't be fair and impartial.

JUROR NO. 49: And that's me in this case.

THE COURT: Well, give us a call over the weekend. Any objection to Mr. Homer being excused?

MR. JONES GARCIA: No, your Honor.

THE COURT: Have a good weekend. Forget about this case over the weekend and call back over the weekend to see if you're needed again. Okay.

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MR. SERGI: Thank you, sir.

THE COURT: That was 49, so 50 please.

COURT CLERK: Next number?

THE COURT: 50, 5-0.

COURT CLERK: 50.

THE COURT: Come on in, Ms. Perry. You get the chair, you get the microphone. You had indicated that there was some reason that you could not be fair and impartial. If you'd just explain.

JUROR NO. 50: It depends. I have a problem with if --- if the law said that such-and-such is the way you have to decide --

THE COURT: Uh huh.

JUROR NO. 50: -- I would probably go along with it. But it would give me emotional problems, depending on what it is, for three weeks or a couple of months. That's, you know --

THE COURT: And then --

JUROR NO. 50: Sometimes emotional problems aren't worth making those decisions. It's --

THE COURT: Well, and that does affect some jurors action when they come in.

JUROR NO. 50: I -- I don't know any specifics. I can't really give you a for instance. But I do know that I do

1 have some strong opinions. And because it's the law, I would
2 go with what instructions you gave me.

3 THE COURT: Okay.

4 JUROR NO. 50: But could I live with myself after
5 that, I just don't --

6 THE COURT: Okay. And that's what you have to
7 think about. Is your job, if you get selected on this jury is
8 going to be to take the law that the Court gives you, and
9 listen very carefully to all the testimony. Take the facts of
10 the case, apply the law to the facts, and then that way decide
11 the case. And sometimes you'll get people that will come in
12 and they'll say, you know, I listened to that case, I struggle
13 with it, and I've struggled with it ever since because I have
14 a relatively good feeling that the guy's guilty. But because
15 it wasn't proven, I had to come in and vote for not guilty.
16 That's a possibility. That's a possibility. And a juror has
17 to be willing to say I could do that. And what I hear you
18 saying is, I could do that. Is that true?

19 JUROR NO. 50: I think I could do that. That --
20 that's -- that's -- I just wanted to --

21 THE COURT: Okay.

22 JUROR NO. 50: I have a concern there is --

23 THE COURT: Okay.

24 JUROR NO. 50: -- is all. I think I could do that,
25 yes.

1 THE COURT: Okay.

2 JUROR NO. 50: I won't know 'til the moment
3 arrives.

4 THE COURT: Well the problem is this. You have to
5 be able to raise your hand and swear that you will follow the
6 instructions essentially. And so when it comes to that point,
7 you know, it's not going to be you by yourself back there. It
8 will be you and 11 other people. And you'll need to work
9 through the evidence and decide what has and hasn't been
10 proved, and in that way come to a conclusion. But you have to
11 be able to be comfortable doing that.

12 I've had people come in here and say you know what, I just
13 couldn't do this. I can tell you right now. It's not my
14 personality to do that. And if I have conflicting testimony
15 (inaudible) I just don't think I could do that. I respect
16 them for their willingness to say that.

17 But you're the one that has to tell us; can I or can't I do
18 the job of a juror.

19 JUROR NO. 50: There's a possibility that I
20 wouldn't. And that's not that ---

21 THE COURT: Do either of you want to (inaudible)

22 MR. SERGI: Well, and I also heard --- thought I
23 understood you to say that you don't know what affect it might
24 have on you coming up in the next couple weeks to a month.
25 And ---

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JUROR NO. 50: Right. If I were to go against the way I feel and -- and follow the letter of the law, I don't know what kind of emotional stress that that would put on me.

MR. SERGI: Does that concern you?

JUROR NO. 50: Yes, it does. That -- that's the main reason that -- I -- I know nothing. I've never been in the -- trouble, I've never been in a courtroom for any reason, so I don't know what the laws are. Okay. But there is a possibility that if it's totally against what I believe, that I would not be able to follow the law; that I would have to --

THE COURT: I don't think it would surprise too many people (inaudible) distraught. (Inaudible) On the other hand, I suppose we have surprise (inaudible)

MR. SERGI: I -- I -- I would ask (inaudible)

JUROR NO. 50: It's just that, you know, everybody sees things on TV.

THE COURT: You know, this --

JUROR NO. 50: And nothing against you 'cause I don't know you. But criminals get sentences that are way too small, you know. It's -- so there are things that I do disagree with.

MR. SERGI: (Inaudible) Anyway, I'd ask that (inaudible)

1 THE COURT: Okay. You're released, Mrs. Perry.
2 I'm going to ask you to call back over the weekend, see if
3 you'll be needed again.
4 JUROR NO. 50: Okay.
5 THE COURT: You're excused from this case.
6 JUROR NO. 50: Okay.
7 THE COURT: Thank you very much.
8 JUROR NO. 50: Sorry to disappoint you.
9 MR. SERGI: No.
10 THE COURT: No, there's no disappointment at all.
11 I appreciate --- we want people to come back and be willing to
12 be open and say things like this. That's their right. We can
13 be sure to get (inaudible) So don't think we're disappointed
14 in you. We're not at all.
15 JUROR NO. 50: All right.
16 THE COURT: All right.
17 JUROR NO. 50: Thank you.
18 MR. SERGI: Take care.
19 THE COURT: 52 please.
20 COURT CLERK: 52.
21 THE COURT: Come on back, you get the chair.
22 JUROR NO. 52: Okay.
23 THE COURT: You get the microphone.
24 JUROR NO. 52: Okay.
25 THE COURT: And you are Sue Wood, is that correct?

1 JUROR NO. 52: Yes, I am.

2 THE COURT: And Sue, you'd indicated that you
3 didn't think you could be fair and impartial. And if you'd
4 just explain please.

5 JUROR NO. 52: I had a similar thing. I had that
6 happen to me when I was younger.

7 THE COURT: When you were little?

8 JUROR NO. 52: Yeah.

9 THE COURT: Okay.

10 JUROR NO. 52: And I just --

11 THE COURT: Couldn't set it aside?

12 JUROR NO. 52: Could not, absolutely. I still
13 can't.

14 THE COURT: (Inaudible) Sorry to have to bring that
15 up for you. I know it's a painful experience, but very much
16 appreciate you saying so.

17 MS. JONES GARCIA: Thank you.

18 THE COURT: Give us a call back over the weekend to
19 see if you're needed, okay?

20 JUROR NO. 52: Okay.

21 THE COURT: Thanks a lot. You have a good day now.

22 Juror number 62 please -- excuse me, 60, 6-0.

23 COURT CLERK: 60.

24 THE COURT: 60, Theresa Marks. Come on in. You
25 get the microphone, and you get the chair.

1 JUROR NO. 60: Okay.
2 THE COURT: And you are Theresa Marks, is that
3 correct?
4 JUROR NO. 60: Yes, I am.
5 THE COURT: And Theresa, you didn't think you could
6 be fair and impartial. And if you'd just explain please.
7 JUROR NO. 60: I've got a sister whose two younger
8 kids were assaulted by her husband.
9 THE COURT: Okay.
10 JUROR NO. 60: Also have a 10 year old -- 11 year
11 old -- I have a hard time not putting -- pushing things on the
12 victim.
13 THE COURT: Get you a Kleenex. So counsel.
14 Needless to say, this is an emotional thing for you.
15 JUROR NO. 60: It is.
16 THE COURT: Do you think you could be open minded
17 and fair and impartial?
18 JUROR NO. 60: No.
19 THE COURT: Any objection to Ms. Marks being
20 excused?
21 MR. SERGI: (Inaudible)
22 THE COURT: Appreciate your candor. Sorry that
23 it's hard for you. But it's so important that people be
24 willing to come back here and say that. You have a nice
25

1 weekend. Call over the weekend to see if you'd be needed
2 again, okay? Now 63 please.
3 COURT CLERK: 63.
4 THE COURT: 6-3. Come on back. You get the chair,
5 you get the microphone. And Janice Cheek. You indicated you
6 didn't think you could be fair and impartial. Please explain.
7 JUROR NO. 63: Well, I've been (unintelligible)
8 molested (inaudible) niece for six years (inaudible) And this
9 man was familiar (inaudible)
10 THE COURT: You couldn't be open minded (inaudible)
11 JUROR NO. 63: No.
12 THE COURT: Is that what you're saying?
13 JUROR NO. 63: Yes.
14 THE COURT: Any objection to Ms. Cheek being
15 excused?
16 MS. SERGI: No, your Honor.
17 MS. JONES GARCIA: No.
18 THE COURT: Appreciate your candor. Sorry we had
19 to bring it up for you. Know that it creates old memories
20 that can be hard to deal with. But appreciate your letting us
21 know, okay. Have a good weekend. Call us over the weekend to
22 see if you'll be needed again, all right?
23 JUROR NO. 63: I will.
24 THE COURT: Anybody else that you want to
25 (inaudible)

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MR. SERGI: Not that I'm aware of, your Honor.

THE COURT: And where are we at now? Anybody done any math?

MR. SERGI: I think we've lost about 22, including the (inaudible)

THE COURT: Probably pretty good chance. Let's see what we've got here.

MS. JONES GARCIA: I've got (inaudible)

THE COURT: Twenty-three total, correct?

MS. JONES GARCIA: Yes.

THE COURT: So that means that we've got 44 left, and minus 14, which would be pre-empts -- actually 16 would be your pre-empts. We're still okay.

MS. JONES GARCIA: Yeah, I -- I counted -- I -- in my math I have us (inaudible)

THE COURT: And I doubt that you're going to use all your pre-empts (inaudible) What I'm going to do is I'm going back to 9 and 16 and I think at this point in time we can probably let them go because of (inaudible) Number 9 and 16?

MS. JONES GARCIA: (Inaudible)

THE COURT: All right.

MS. JONES GARCIA: (Inaudible)

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THE COURT: Okay. Well let's go out and face
(inaudible) Okay. Let's head out and we'll make that --

(End of excerpt)

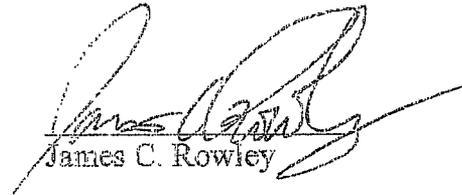
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VERIFICATION OF PETITION

I, James C. Rowley, verify under penalty of perjury that the attached *Personal Restraint Petition* is true and correct and has been filed on my behalf.

DATED this 2 day of NOV., 2010.


James C. Rowley

FILED
COURT OF APPEALS
DIVISION II

10 NOV -3 PM 12:11
STATE OF WASHINGTON
BY _____
DEPUTY

FILED
COURT OF APPEALS DIV II
STATE OF WASHINGTON
2010 NOV 3 PM 12:15

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

In re Personal Restraint Petition of
JAMES ROWLEY,

Petitioner.

NO. 41372-8

PETITIONER'S MOTION TO
PROCEED IN FORMA PAUPERIS

I. IDENTITY OF MOVING PARTY

James Rowley, Petitioner, seeks the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Waive the filing fee and other costs associated with Petitioner's *Personal Restraint Petition*. A copy of Petitioner's *Statement of Finances* is attached.

III. FACTS

Petitioner is an indigent defendant who seeks to file the attached PRP. Due to his indigence, Petitioner seeks to have the filing fee and other costs waived.

III. ARGUMENT

Pursuant to RAP 16.8, Petitioner respectfully requests that this Court waive the filing fee and other costs associated with his *Personal Restraint Petition*.

Petitioner may file the petition without payment of a filing fee, **PETITIONER MAY FILE THE PETITION WITHOUT PAYMENT OF A FILING FEE**


Court Clerk

dated 12/21/10
dp COURT CLERK

1 IV. CONCLUSION

2 This Court should waive the filing fee and other costs in this case.
3

4 DATED this 2nd day of November, 2010.

5 /s/ Jeffrey E. Ellis

6 Jeffrey E. Ellis, WSBA #17139

7 *Attorney for Mr. Rowley*

8 Law Office of Alsept & Ellis

9 621 SW Morrison St. Ste 1025

10 Portland, OR 97205

11 (206) 218-7076 (ph)

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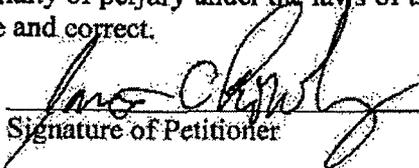
CERTIFICATE

I, James C. Rowley, certify as follows:

1. That I am the petitioner and I wish to collaterally attack the judgment that was entered in the above-entitled cause.
2. That I own:
 a. No real property
 b. Real property valued at \$ _____.
3. That I own:
 a. No personal property other than my personal effects
 b. Personal property (automobile, money, inmate account, motors, tools, etc.) valued at \$ _____.
4. That I have the following income:
 a. No income from any source.
 b. Income from employment, disability payments, SSI, insurance, annuities, stocks, bonds, interests, etc., in the amount of \$ 47.04 on an average monthly basis. I received \$ 564.48 after taxes over the past year.
5. That I have:
 a. Undischarged debts in the amount of \$ 40,000.
 b. No debts.
6. That I am without other means to prosecute said PRP and desire that the filing fee be waived.
7. That I can contribute no funds toward the expense of review:
8. The following is a brief statement of the nature of the case and the issues sought to be reviewed: Involuntary plea.
9. I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.
10. I certify that I will immediately report any change in my financial status to the court.

I, James C. Rowley, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date and Place



Signature of Petitioner

COURT OF APPEALS
2010/11/11 - 2 P112-116

10/18/2010 11:21

Department of Corrections

Page 407 of 415

AE1_BANK_STATE

WASHINGTON STATE PENITENTIARY

OTR/TASTB

TRUST ACCOUNT STATEMENT

6.04.4.0.1.1

DOC# 0000982733 Name: ROWLEY, JAMES C
LOCATION: E01-037-EW229

BKG# 21679

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
10/09/2010	TV CABLE FEE DEBT		0.46	0.50
10/09/2010	105 - TV CABLE FEE		(0.50)	0.00
10/14/2010	CLASS 3 GRATUITY-WC CLOTHING ROOM P/R		47.04	47.04
10/14/2010	Deductions-CVC-10221999 D D		(2.35)	44.69
10/14/2010	Deductions-TVD-04112009 D D		(0.46)	44.23
TRANSACTION DESCRIPTIONS --			SAVINGS BALANCE SUB-ACCOUNT	
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
TRANSACTION DESCRIPTIONS --			WORK RELEASE SUB-ACCOUNT SAVINGS	
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
TRANSACTION DESCRIPTIONS --			EDUCATION ACCOUNT SUB-ACCOUNT	
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
TRANSACTION DESCRIPTIONS --			MEDICAL ACCOUNT SUB-ACCOUNT	
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
TRANSACTION DESCRIPTIONS --			POSTAGE ACCOUNT SUB-ACCOUNT	
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
TRANSACTION DESCRIPTIONS --			COMM SERV REV SUB-ACCOUNT FUND ACCOUNT	
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE