

IN THE WASHINGTON STATE COURT
OF APPEALS FOR DIVISION
II

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CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

IRVIN GREENE

PETITIONER
v. #10-1-02314.5

PERSONAL RESTRAINT PETITION
FOR CONSOLIDATION W/ DIRECT
APPEAL

STATE OF WASHINGTON

RESPONDENT

APPEAL NO. 42283-8-II

43457-1

MEMORANDUM IN SUPPORT OF CONSOLIDATED
PERSON RESTRAINT PETITION OF PETITIONER
IRVIN I. GREENE UNLAWFUL RESTRAINT
W/IA OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. STATUS OF PETITIONER

"I" IRVIN I. GREENE, APPLY FROM OR FOR RELIEF FROM CONFINEMENT.
I AM NOW IN CUSTODY SERVING SENTENCE UPON CONVICTION OF A CRIME. I AM NOW
IN CUSTODY BECAUSE OF THE FOLLOWING TYPE OF COURT ORDER.

1. I WAS CONVICTED OF THE CRIMES OF FELONY HARASSMENT, AND FELONY STALKING.

2. THE COURT IN WHICH I WAS CONVICTED WAS CONVICTED WAS PIERCE COUNTY SUPERIOR
COURT, CASE NO. 10-1-02314.5, APPEAL NO. 42283-8-II.

3. I WAS SENTENCED AFTER TRIAL BY JURY, WHEN JURORS FOUND GUILTY, THATS, GUILTY OF
BOTH COUNTS, THE JUDGE WHOM SENTENCED ME WAS EDWARD MURPHY.

4. MY ATTORNEY AT TRIAL WAS TRAVIS CURRY FROM THE DEPARTMENT OF ASSIGNED COUNSEL,
LOCATED AT 949 MARKET, THOMA, WASHINGTON 98402 NO. [253] 798-6062.

PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL

IRVIN I. GREENE

5. I DID APPEAL FROM THE DECISION OF TRIAL COURT. I APPEARED TO THE COURT OF APPEALS DIVISION II.

WASHINGTON REPORTS, AND PAGE NUMBER

6. SINCE MY CONVICTION I HAVE ASKED A COURT FOR SOME RELIEF FROM MY SENTENCE. I HAVE ASK THE WASHINGTON COURT OF APPEALS DIVISION II. 950 BROADWAY TACOMA, WA. 98402.

7. [IF I HAVE ANSWERED IN QUESTION #6 THAT I DID ASK FOR RELIEF], THE NAME OF MY LAWYER IN THE PENDING DIRECT APPEAL IS STEPHANIE C. CUNNINGHAM, IN MY ANSWER TO QUESTION #6 STEPHANIE C. CUNNINGHAM AT 4616 25TH AVE N.E. NO. 552 SEATTLE, WA. 98105.

8. REFER TO VERBATIM REPORTS BOTH TRIAL AND PENDING PROCEEDINGS

B. GROUNDS FOR REVIEW

I AM THE DEFENDANT IN THIS CASE FROM PIERCE COUNTY SUPERIOR COURT # 10-1-02314-5 AND APPEAL NO. 42263-8- II AND ASK THIS COURT TO CONSIDER MY PERSONAL RESTRIKT PETITION TO BE CONSIDERED W/ MY DIRECT APPEALS FOR THESE GROUNDS AND STATUTES.

NOTE: I IRVIN L. GREENE DOX # 919102 I AM CUNNINGHAM

PERSONAL RESTRIKT PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL 2.
IRVIN L. GREENE

STATEMENT OF FINANCES

1. I DO ASK THE COURT TO FILE THIS WITHOUT MAKING ME PAY THE FILING FEE BECAUSE I AM SO POOR I CANNOT PAY THE FEE.
2. I HAVE \$ 0.00 IN MY PRISON ACCOUNT, OR INSTITUTION ACCOUNT.
3. I DO ASK THE COURT TO APPOINT A LAWYER FOR ME BECAUSE I AM SO POOR I CANNOT AFFORD TO PAY A LAWYER.
4. I AM NOT EMPLOYED. MY SALARY OR WAGES AMOUNT TO \$ 0.00 A MONTH.
5. DURING THE LAST 12 MONTHS I DID NOT GET ANY MONEY FROM A BUSINESS, PROFESSION OR -- -- OTHER FORM OF SELF EMPLOYMENT.
6. DURING THE LAST 6 MONTHS, I DID NOT HAVE ANY RENT PAYMENTS.
DID NOT GET ANY INTEREST.
DID NOT GET ANY DIVIDENDS?
DID NOT GET ANY OTHER MONEY?
7. DID NOT HAVE ANY CASH.
HAVE ANY SAVINGS ACCOUNTS, OR CHECKING ACCOUNTS, OR OWN STOCKS, BONDS, OR NOTES,
8. NO IS THE ANSWER TO QUESTIONS OF PROPERTIES, OR THINGS OF EQUITABLE VALUE, OR INTEREST.
9. I AM NOT MARRIED.
10. I HAVE NO ONE TO SUPPORT OTHER THAN MYSELF.
11. I OWE NO BILLS, "STRIKE", I HAVE COLLECTIONS DEBTS AND CAN NOT PAY NOR SETTLE BECAUSE OF MY INCARCERATION.

PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION AND/DIRECT APPEAL
SERVING L. GREENE

CMUNDEN

WASHINGTON STATE PENITENTIARY

OTRTASTB

TRUST ACCOUNT STATEMENT

6.03.1.0.1.9

DOC# 0000919102 Name: GREENE, IRVIN L
LOCATION: E04-023-MH03

BKG# 46134

Account Balance Today (04/17/2012) Current : 0.00
Hold :
Total : 0.00

Account Balance as of 04/17/2012 0.00

03/15/2012 04/17/2012

SUB ACCOUNT	START BALANCE	END BALANCE
SPENDABLE BAL	0.00	0.00

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
MEDD	MEDICAL COPAY DEBT	04092000-1	9.00		0.00
POSD	POSTAGE DEBT	04092000-2	2.06		0.00
COSXD	COST OF SUPERVISION DEBT	10012011	200.00	0.00	0.00
COIS	COST OF INCARCERATION /07112000	04172004	UNLIMITED	0.00	0.00
EL	ESCORTED LEAVE	09082011	UNLIMITED	0.00	0.00
LMD	LEGAL MAIL DEBT	10282011	4.18	0.00	0.00
COSFD	COS - FELONY DEBT (206)	11082007	0.00	400.00	0.00
POSD	POSTAGE DEBT	04092000-1	13.92		0.00
MEDD	MEDICAL COPAY DEBT	06042008	3.00	0.00	0.00
HYGA	INMATE STORE DEBT	09262011	129.60	0.00	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	03212012	6.08	0.00	0.00
TVD	TV CABLE FEE DEBT	04092000	1.29		0.00
SPHD	STORES PERSONAL HYGIENE DEBT	04092000	5.46		0.00
COSFD	COS - FELONY DEBT (206)	06262010	0.00	0.00	0.00
MEDD	MEDICAL COPAY DEBT	04092000	5.44		0.00
MISCD	MISCELLANEOUS DEBT	11012011	16.65	0.00	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	09132011	9.50	0.00	0.00
LMD	LEGAL MAIL DEBT	03122012	4.05	0.00	0.00
TVD	TV CABLE FEE DEBT	03102012	1.00	0.00	0.00
COSUD	COS - OMMU DEBT (206)	04072004	0.00	100.00	0.00
LFO	LEGAL FINANCIAL OBLIGATIONS	20070511	UNLIMITED		0.00
COI	COST OF INCARCERATION	04172004	UNLIMITED	0.00	0.00
TVD	TV CABLE FEE DEBT	09102011	3.00	0.00	0.00
MISCD	MISCELLANEOUS DEBT	07212011	1.10	0.00	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	04092000-1	6.25		0.00
POSD	POSTAGE DEBT	04092000	1.60		0.00
HYGA	INMATE STORE DEBT	04162007	128.45	11.35	0.00

ATTACHMENT - PERSONAL RESTRICTIONS PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL
IRVIN L. GREENE

STATUTES

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 22, OF THE WASHINGTON CONSTITUTION GUARANTEES A CRIMINAL DEFENDANT THE RIGHT TO BE REPRESENTED BY COUNSEL. SEE: WHEAT V. UNITED STATES, 486 U.S. 153, 159 (1988).

RCW 10.73.100 SECTION, 853 P.2D SUBJECT OF THIS
STATUTE CONVICTION OBTAIN ON INSUFFICIENT EVIDENCE.

CITING CASE LAW FINDINGS

STATE V. KNIPSTAD SEE: KNIPSTAD MOTION TO DISMISS FOR INSUFFICIENT OR LACK OF EVIDENCE.

UNDER STRICKLAND V. WASHINGTON, 486 U.S. 668, 104 S. CT 2052, 80 L. ED. 2D 674 (1988)

MASBRO V. UNITED STATES, U.S. 538, 123 S. CT. 1690, 1694, 155 L. ED. 2D 714, (2003).

STATE V. KLINGER, 96 W.N. APP. 619, 980 P.2D 282 (1999).

INCLUDING CITATION: GOODMAN V. BERTRAND, 467 F.3D 1022 THE CIRCUIT (2006).

IN RE PETITION OF RILEY, 122 W.N. 2D 772, 863 P.2D (1993)

IN RE STATE V. NEWTON, 42 W.N. APP. 718, 714 (1986) REVERSED ON OTHER GROUNDS [CONVICTION EVIDENCE] 109 W.N. 2D. 69, 743 P.2D 247 (1987).

PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL

IRVIN L. GRIENE

5.

FOUNDATIONS FOR ARGUMENT CITING THESE
CASE FACT FINDINGS AS FOLLOWS

GROUND #1 I WERE INEFFECTIVE ASSISTANTS COUNSEL, DURING THE MAIN REASON FOR THE INITIAL CONFLICT, WAS ON JULY 8TH THEN PRE-TRIAL COUNSEL ARON D. TALNEY WHO MARRIED THE STATES PROSECUTOR NIEL NORRIS THREATEN ME IF I DID NOT TAKE A PLEA DEAL FOR THE STATUTORY AMOUNT OF 40 TO 60 MONTHS, THAT THE PROSECUTOR WAS GOING TO ADD 2 AMENDED COUNTS OF FELONY HARASSMENT, AND FELONY STALKING. I CLAIM THIS WAS ON JULY 8TH, 2010 IN THE CDPJ INTERVIEW ROOM. NOTE: THIS WAS SUPPOSED TO BE AN OMNIBUS REVIEW, I FURTHER ARGUE I WAS NOT PRESENT WHEN THAT ORDER WAS SIGNED BY THE JUDGE, I DO NOT KNOW, OR SEEK WHAT JUDGE SIGNED THE ORDER.

[REASON FOR ARGUMENT OF THE 1ST GROUND IS (A) I FEEL MY THEN - - - -
COUNSEL ARON D. TALNEY VIOLATED MY DUE PROCESS RIGHTS UNDER RULE 1.3
ATTORNEY CLIENT PRIVILEGE WASHINGTON COURT RULES. AND ARON D. TALNEY FURTHER
VIOLATED MY CONSTITUTIONAL RIGHT UNDER THE SIXTH AMENDMENT RIGHT TO COUNSEL.
I CONTEND UNDER BOTH OF THOSE STATUTES, ESPECIALLY THE SIXTH AMENDMENT, STATES
I THE CRIMINAL DEFENDENT AM GUARANTEED THE RIGHT TO EFFECTIVE ADVOCATE

REFER TO ATTACHED PORTION DATE THE 8TH DAY OF JULY 2010.

CONCLUSION FOR ARGUMENT OF GROUND #1

1. I WOULD AS THE COURT TO EITHER DISMISS BOTH OF THESE COUNTS WITH PREJUDICE, OR
2. I ASK COURT FOR ENJOINTORY RELIEF. ON THE ABOVE STATUTE FOR GROUND #1

PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL

IRVING L. GREENE

1 [] **DEVELOPMENTAL DISABILITIES PROFESSIONAL:** The court has been
2 advised by a party to the proceedings that the defendant may be developmentally disabled and
3 hereby orders that one of the experts qualify as a developmental disabilities professional.

4 **PLACE OF EXAMINATION**

5 [] **A(1). PIERCE COUNTY JAIL.** IT IS HEREBY ORDERED that the examination
6 shall take place in the Pierce County Jail. If the evaluator determines that the examination
7 should take place at Western State Hospital, the Pierce County Sheriff's Department shall
8 transport the defendant to Western State Hospital, and at the end of such period of
9 examination and testing return the defendant to the custody of the Pierce County Jail. The
10 report is to be submitted to this court in writing within fifteen days of receipt of this order,
11 (the charging documents and the discovery by Western State Hospital, unless the court
12 grants further time. If the defendant is released from jail prior to the examination, the
13 defendant shall contact the staff at Western State Hospital at (253) 761-7565 within the
14 next working day following his/her release from jail to schedule an appointment for
15 examination at a facility.

13 [] **A(2).** The defendant waives the statutory requirement of two experts if the
14 examination occurs in the Pierce County Jail.

14 [] **B(1). OUT OF CUSTODY.** IT IS HEREBY ORDERED that as the defendant is not
15 currently in custody, the defendant and/or his/her attorney shall contact the staff at Western
16 State Hospital at (253) 761-7565 within the next working day following the date of this
17 order to schedule an appointment for examination at a facility. The examination shall
18 occur, and the report submitted to this court, within fifteen days of the receipt of the order,
19 the charging documents and the discovery by Western State Hospital unless the court grants
20 further time.

19 [] **B(2).** The defendant waives the statutory requirement of two experts if the examination
20 occurs at a community facility.

21 ~~[]~~ **C(1). WESTERN STATE HOSPITAL.** IT IS HEREBY ORDERED that the
22 examination is to occur at Western State Hospital, following receipt by the Hospital of the
23 order, the charging documents, and the discovery. The defendant is hereby committed to
24 the care of the Division of Social and Health Services for up to fifteen days from the date of
25 admission to the hospital. Following the examination the defendant is to be returned to the
26 Pierce County Jail for further proceedings in this matter. The report shall be furnished to
27 the court in not less than twenty-four hours preceding the transfer of the defendant back to
28 jail.

ORDER FOR EXAM BY WESTERN STATE HOSPITAL - 2
Revised 2/27/07

Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, Washington 98402-3696
Telephone: (253) 798-6062

ATTACHMENT - PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL

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C(2). WESTERN STATE HOSPITAL TRANSPORTATION. In the event that the examination is to take place at Western State Hospital, **IT IS FURTHER ORDERED** that the Sheriff of Pierce County shall forthwith transport the defendant to Western State Hospital for the purposes set forth in the preceding paragraph and at the end of such period of examination and testing return the defendant to the custody of the Pierce County Jail to be held pending further proceedings against the defendant.

IT IS FURTHER ORDERED that the staff of Western State Hospital shall file the report with the undersigned Court, and provide copies to the Prosecuting Attorney, the Defense Counsel and others as designated in RCW 10.77.060 and 10.77.065.

NATURE OF EXAMINATION

The report of the examination shall include the following pursuant to RCW 10.77.060:

- A description of the nature of the examination;
- A diagnosis of the defendant's mental condition;
- COMPETENCY:** an opinion as to the defendant's capacity to understand the proceedings and to assist in defendant's own defense. This opinion is to include an opinion as to whether the defendant suffers from a mental disease, defect, or is developmentally disabled;
- SANITY:** an opinion as to the extent, at the time of the offense, as a result of mental disease or defect, the defendant was unable to either perceive the nature and quality of the acts with which the defendant is charged, or to know right from wrong with reference to those acts;
- DIMINISHED CAPACITY:** the capacity of the defendant to have the particular mental state of mind which is an element of the offense(s) charged, as listed below:
 OFFENSE _____ MENTAL STATE _____
 OFFENSE _____ MENTAL STATE _____
- An opinion as to whether the defendant is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons;
- An opinion as to whether the defendant should be evaluated by a County Designated Mental Health Professional under RCW 71.05.
- The Staff is further required to give an opinion as to whether further examination and testing is required.

ORDER FOR EXAM BY WESTERN STATE HOSPITAL - J
Revised 2/27/07

Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, Washington 98402-3696
Telephone: (253) 798-6062

ATTACHMENT - PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION w/ DIRECT APPEAL
IRVIN L. FRIEGE

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IT IS FURTHER ORDERED that the Staff of Western State Hospital is granted access to the defendant's medical records, whether they are held by any mental health, medical, educational, or correctional facility that relate to present or past emotional or physical condition of the defendant for the purpose of conducting the examination.

IT IS FURTHER ORDERED that this action be stayed during this examination period and until this court enters an order finding the Defendant to be competent to proceed. A competency proceeding is scheduled for 27 July 2010 at 1:30 pm.

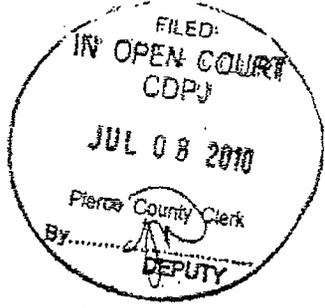
DONE IN OPEN COURT this 8th day of July, 2010.

[Signature]
JUDGE

Presented by:
[Signature]
AARON TALNEY, WSBA #22154
Attorney for Defendant
Phone 798-7849
Fax 798-6715

Approved as to Form:
[Signature]
BRYCE NELSON, WSBA #33142
Deputy Prosecuting Attorney
Phone: 798-6612
Fax 798-6636

Copy Received by:
In custody. Notified by atty
Defendant



ORDER FOR EXAM BY WESTERN STATE HOSPITAL - 4
Revised 2/27/07

Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, Washington 98402-3696
Telephone: (253) 798-6062

ADJUDGMENT - PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION w/ DIRECT APPEAL
IRVING L. FRIESEN

GROUND #2 I FURTHER ARGU AND CONTEND BECAUSE OF WHAT I ARGUED IN GROUND #1, I WAS DENIED SPEEDY TRIAL, BECAUSE OF THE MOVIE HE ARON D. TALKLEY AND THE STATE PROSECUTION NIEL HORRBE, W/ BRYE, BRYE NELSON WENT IN FRONT OF THE JUDGE TO SIFER ORDER, AND I NOW WANT AN EVIDENTIARY HEARING IF IT WAS OR WAS NOT ON THE RECORD.

[REASON FOR ARGUMENT OF GROUND #2 IS (A) UNDER STATE V. AMERN A
DEPENDENT IN A CRIMINAL CASE IS NOT INTIRED TO ATTEND ONVIBUS PROCEEDINGS, UNLESS THERE ARE SOME OUTSIDE CIRCUMSTANCES THE DEFENDENT DID NOT TRUST IN THE
PROCEEDINGS.

[SEE: REFER TO STATE V. AMERN FOR ONVIBUS ORDERS AND PROCEEDINGS.]

FINALLY (B) I CONTEND ARON TALKLEY IN LIEN OF THE WASTE OF MY SPEEDY TRIAL RIGHTS, FOR THE TOTAL MISJUDGEMENT TO MAKE A DECISION THAT WAS BOTH ERRONEOUS AND BLATENTLY HARMFUL IN LIEN OF THE REPORT IT SELF WAS UNCESSARY.

[SEE: FORENSIC PSYCHOLOGICAL REPORT ATIONG FROM WESTERN STATE HOSPITAL.

(C) [CONCLUSION OF GROUND #2] I ARGU BOTH MY COUNSEL AND THE COURT ERRED WITH DISCRETION AND CITE: REW 1.3 ALSO 6TH AMENDMENT TO UNITED STATES CONSTITUTION

STICHLAND V. WASHINGTON, 466, U.S. 668, 104 S. CT. 2052, 80 L. ED. 2D. 674

(1984) A DEFENDENT CLAIMING INEFFECTIVE ASSISTANCE OF COUNSEL MUST SHOW THAT COUNSEL'S ACTIONS WERE NOT SUPPORTED BY A REASONABLE STRATEGY AND THAT THE ERRORS WERE PREJUDICIAL.

PERSONAL RESTRIKT PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL

IRVING L. GREENE

GROUND #3 I FURTHER CLAIM EFFECTIVE ASSISTANCE OF PRETRIAL COUNSEL, WHEN THE COURT ORDERED APPOINTMENT OF SPECIAL CONFLICT COUNSEL, TO FILE BRIEF IN OPPOSITION TO DEFENSE COUNSEL'S MOTION TO FORFEIT COUNSEL.

REASON FOR GROUND #3 I ARGUE THE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL WHEN CONFLICT COUNSEL VANESSA C. MARTIN AT 1425 BROADWAY #412 SEATTLE, WA 98122

(A) PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN SHE INTERVIEWED ME & PRE-TRIAL MOTION ON 11-29-10 WHEN CONFLICT COUNSEL VANESSA C. MARTIN MOVED FOR MOTION FROM FOR BEING SEALED AND THE HEARING TO BE SEALED. NOTE: THIS MOTION WAS DENIED IN COPPI THE HONORABLE RONALD CUPEPPER PRESIDING. SEE: ATTACHED BRIEF, SAME MOTION HEARING 11-29-10.

(B) I FURTHER ARGUE I WAS MISLEAD BY CONFLICT COUNSEL TO HAVE THE PROCEEDINGS CLOSED AND SEALED. NOTE: THESE PROCEEDINGS WERE NOT INCLUDED IN THE - - - VERBATIM REPORT. SEE: HEARING DATE SEALED WAS SEALED, CORRECTION SEALED 12-10-10 JUDGE WINDA LEE PRESIDING. REFER TO SEALED

(C) I CONCLUDE ARGUMENT OF GROUND #3 BECAUSE AT THE TIME IS WAS IGNORANT OF THE FACTS OF THE LAW AND MY RIGHTS, AND I WAS IN ADVISED BY VANESSA C. MARTIN ADVISED TO SEAL SOMETHING THAT WAS PUBLIC RECORD, AND BELIEF FOR THIS 3RD GROUND SHOULD BE GRANTED HEARING AND GRANT MY PETITION BASED OF THE FACTS OF BRIEFS AND RECORD FROM 11-29-10 IN COPPI THE HONORABLE JUDGE CUPEPPER PRESIDING,

NOTE: NONE FOR RECORD TO BE UNSEALED, FOR THIS WOULD SUBSTANTIATE GROUNDS FOR INEFFECTIVE COUNSEL CLAIM.

CITING CONSTITUTIONAL UNITED STATES CONST ARTICLE, 22

CITING STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052 80 L. 2D 674, - - -

(1981) A DEFENDANT CLAIMING INEFFECTIVE COUNSEL MUST SHOW THAT COUNSEL'S ACTIONS WERE NOT SUPPORTED BY A REASONABLE STRATEGY AND THAT THE ERRORS WERE PREJUDICIAL.

PERSONAL RESISTANT PETITION
FOR CONSOLIDATION W/ DIRECT APPEAL

GROUND #4 I CLAIM AN AFRU FURTHER INEFFECTIVE ASSISTANCE OF PROBATION ADVOCACY FROM ACTUAL PROCEEDINGS THAT WERE CLOSED DECEMBER 10TH, 2010. I AM MAKING SHOWING AND OFFER OF PROOF, THAT IN THE FIRST TWO PAGES, ACTUALLY TO REPHRASE, THE 2ND PAGE OF CONFLICT COUNSEL'S VANESSA C. MARTIN'S BRIEF STATES, IN THE SECOND PAGE, 3RD PARAGRAPH MR. FRIEGNE WILL NOT COOPERATE WITH EXAMINER! REASON FOR THIS PARTICULAR ARGUMENT, IS THAT THERE WAS NO ABSOLUTE VALIDITY TO THAT PART IN THE BRIEF, AND IT WAS ON THE RECORD IN THE CLOSED PROCEEDINGS THAT MS. VANESSA MARTIN MISLEAD ME ABOUT CLOSING THE PROCEEDINGS AND SEALING.

CONCLUSION OF ARGUMENT OF GROUND #4: I STRENUOUSLY AFRU AND COMPLAIN BOTH CONFLICT COUNSEL VANESSA C. MARTIN, AND JUDGE LINDA CILLES ERRED IN LIMBO VIOLATING MY DUE PROCESS RIGHTS, AND MY SIXTH AMENDMENT RIGHT TO COUNSEL, THE RIGHT TO EFFECTIVE ADVOCATE.

" REFER TO ATTACHED BRIEF PAGES #1 TO #2" FROM MOTION DATE - - -
DECEMBER 10TH 2010 3:06 P.M. NO. 10-1-02314-5

ALSO SEE: NO. FORENSIC REPORT FROM WESTERN STATE HOSPITAL FROM - - -
JULY 28TH, 2010 REPORTED BY JOHNNY JOHNSON P.S.D.
CONFLICT, CONTRADICTS CONFLICT COUNSEL BRIEF AND STATEMENT

1 on the record after we're done with the continuance
2 aspect, but I'm not ready to proceed yet. I just met
3 Mr. Greene today. Last week, due to the snow, I wasn't
4 able to get to the law library and get a brief.

5 THE COURT: Well, Mr. Talney, so you're asking
6 to be removed as standby?

7 MR. TALNEY: I'm not standby counsel in this
8 particular case, Your Honor. We're assigned to
9 represent Mr. Greene. I'm moving to withdraw as his
10 attorney. And it is true that as part of that motion --

11 THE COURT: I haven't seen the motion. In
12 fact, it's not in the file. It's probably in the
13 clerk's office downstairs.

14 MR. TALNEY: I did drop off a bench copy not
15 this last Friday but the Friday before, the day it was
16 filed.

17 MS. MARTIN: The 19th.

18 THE COURT: I didn't know I was going to be
19 here until about 9:00 today.

20 MR. TALNEY: I assume that's why the Court has
21 never seen the bench copy, because nobody expected you
22 to be here. But DAC's position is that Mr. Greene has
23 forfeited his right to be represented by an attorney by
24 his conduct. The case -- when I came before the Court I
25 informed Judge Lee that I thought Mr. Greene would need

1 to be assigned an attorney to handle that issue so he
2 wasn't unrepresented for that matter. That's been done.

3 She was given the case very short notice with just
4 a few days to respond. And then if she couldn't make it
5 into the office, I don't think it's unreasonable to
6 continue it, by any means.

7 THE COURT: Well, the trial is set for
8 tomorrow, so continuing this motion would necessarily
9 result in a trial continuance.

10 MR. TALNEY: Right. I don't see any way
11 around that.

12 THE COURT: I note there was a competency
13 finding back in August. Was Mr. Greene at Western State
14 for any length of time?

15 MR. TALNEY: He was there.

16 THE DEFENDANT: Nine days, Your Honor.

17 THE COURT: So not too long.

18 THE DEFENDANT: That was a motion for my
19 attorney to send me and I filed a motion arguing that.

20 THE COURT: Ms. Martin has been appointed to
21 kind of oppose the motion to require you to go without
22 an attorney. Do you have any objection to continuing
23 that?

24 THE DEFENDANT: I have no objection as far as
25 the continuance, but I do have an objection with the

1 State forcing me to represent myself.

2 MS. MARTIN: And I talked with Mr. Greene for
3 some time.

4 THE COURT: That still has to be decided.

5 MS. MARTIN: Yeah, that that is the issue,
6 actually, before the Court, so I've done a red form
7 asking to continue the motion for two weeks.

8 THE COURT: Can I ask, apparently DAC thinks
9 his conduct has created the problem. Who has seen the
10 conduct? Is this Judge Lee most of the time?

11 MR. TALNEY: Well, I think Judge Lee was able
12 to observe his conduct in court on two occasions.
13 There's other attorneys in our office and myself.

14 MS. MARTIN: And, Your Honor, I think a
15 preliminary issue in this case -- we may need to take it
16 up in front of Judge Lee -- but I don't believe
17 Department of Assigned Counsel has standing to make this
18 motion. They aren't responsible for people having
19 lawyers. The Court is responsible for people having
20 lawyers, and DAC is a function of the government that
21 provides those lawyers. But I don't believe that they
22 are able to pick and choose who they represent. I think
23 that's for --

24 THE COURT: Well, that may be and that's
25 probably a good thing to brief and argue. So will you

State of Washington vs. Irvin Lee Greene

PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION w/ ~~PERSONAL~~ DIRECT APPEAL
IRVIN L. GREENE

1 be able to argue in a week or so?

2 MS. MARTIN: I'm asking for two weeks because
3 I'm going to file my response and then DAC may have
4 another volley.

5 THE COURT: Does the State have any particular
6 position on the issue about who represents Mr. Greene?

7 MR. YU: Your Honor, I'm not the prosecutor
8 handling this case. This is Mr. Horibe's case. We do
9 have an opinion as to the date of when it's set. We're
10 requesting a date December 13th or later --

11 MS. MARTIN: That's what I've asked for.

12 MR. YU: -- because of Mr. Horibe's trial
13 schedule.

14 MS. MARTIN: And I did chat very briefly in
15 the hall with Mr. Horibe right after I've been appointed
16 and he said, quote, I don't really think I'm a party to
17 that.

18 THE COURT: So I'm going to set this hearing
19 on the 13th. Judge Lee will be back there so she may
20 have read the material Mr. Talney filed. What about the
21 trial date?

22 MS. MARTIN: I have moved it to the day after
23 the motion, Your Honor, to 12-14-11, which is how this
24 was set to unless you want to kick it out farther.
25 Obviously it's not going to go on 12-14 because either

1 Mr. Greene gets new counsel or gets co-counsel.

2 THE COURT: Or he has Mr. Talney.

3 MS. MARTIN: I feel fairly confident based on
4 Mr. Talney's declaration that he will be granted leave
5 to withdraw.

6 MR. TALNEY: I would be ready, though.

7 MS. MARTIN: Okay. He would be ready.

8 THE COURT: So let's say the 13th and the 14th
9 for the trial date.

10 MS. MARTIN: Excellent. And, Your Honor, I
11 did have another issue I wanted to address, which is I
12 was hoping that the Court would perhaps consider signing
13 an order to seal the brief that Mr. Talney filed. I
14 believe the belief contains some items that may be
15 construed as attorney-client privilege and
16 communication, and just out of an abundance of caution,
17 I would ask to seal the brief.

18 THE COURT: Was the document filed in the
19 clerk's office? It's been filed already?

20 MR. TALNEY: My brief has already been filed.

21 THE COURT: Well, why should I seal it?

22 MS. MARTIN: Well, I guess so that anyone who
23 hasn't seen it can't see it going forward. It contains
24 not specifics but indications of communications between
25 Mr. Greene and Mr. Talney and Mr. Greene and DAC, and

1 uphill battle, but I'm not going to decide it. I'll
2 leave it up to Judge Lee.

3 (The matter was continued.)
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1 DAC is covered by the privilege, so just in an abundance
2 of caution I'm making the motion.

3 THE COURT: Well, Mr. Yu?

4 MR. YU: Bone club, aren't you required to ask
5 anybody in the courtroom if they're interested or
6 opposed?

7 THE COURT: So does anybody in the courtroom
8 have a position on whether this brief should be sealed?

9 MR. YU: I don't have a position.

10 MR. TALNEY: No.

11 THE COURT: My inclination is no. Isn't it a
12 public record? So I'm going to deny the motion to seal
13 the brief.

14 MS. MARTIN: And my final motion is this
15 hearing be held ex-parte with only Mr. Talney and myself
16 present. I don't believe the State has a position on
17 this case, and I also think that we are necessarily
18 going to be discussing privileged issues, so I would
19 make a motion to have the hearing held ex-parte.

20 THE COURT: Well, I'm going to leave that for
21 Judge Lee or whoever is here on the 13th. So that's off
22 the record?

23 MR. TALNEY: Yes. Well, sealing the
24 courtroom.

25 THE COURT: My impression is that may be an

December 10 2010 3:06 PM

KEVIN STOCK
COUNTY CLERK
NO: 10-1-02314-5

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

STATE OF WASHINGTON

NO. 10-1-02314-5

Plaintiff,

**MOTION IN OPPOSITION TO DEFENSE
COUNSEL'S MOTION TO FORFEIT
COUNSEL**

v.

IRVIN GREENE,

Defendant.

COMES NOW, the defendant, IRVIN GREENE, by and through his Specially-Appointed Defense attorney, Vanessa C. Martin, and submits this memorandum in opposition of Defense Counsel's Motion to Forfeit Counsel.

Introduction

While facing serious felony Domestic Violence charges, the Department of Assigned Counsel seeks to force Mr. Greene to defend himself at trial without an attorney.

MOTION IN OPPOSITION TO
DEFENSE COUNSEL'S MOTION
TO FORFEIT COUNSEL- 1

Law Offices of Vanessa C. Martin
1425 Broadway #412
Seattle, WA 98122
Phone (206) 325-8792 Fax: (206) 260-8999

1 Mr. Green was arraigned in Pierce County Superior Court in May,
2 2010. Aaron Talney of Department of Assigned Counsel (DAC) was
3 appointed to represent Mr. Greene. Throughout Mr. Talney's representation
4 he indicates in his brief he has been the subject of threats, both firsthand and
5 through messages delivered to his colleagues. Mr. Greene has been the
6 subject of at least one competency exam and may have underlying mental
7 health issues related either to injury or mental illness that may affect his
8 behavior. That has not been determined as Mr. Greene will not cooperate
9 with the examiner. Mr. Talney has sought to withdraw from the case and
10 has further made a motion that Mr. Greene has forfeited his right to counsel
11 and new counsel should not be appointed.
12
13
14
15

16 Mr. Greene did not waive his constitutional right to counsel. He
17 wants the assistance of counsel.

18 Department of Assigned counsel, through Mr. Talney, is seeking to in
19 effect cut off Mr. Greene's access to counsel based on what they feel is
20 inappropriate conduct towards one of their attorneys. This does not meet the
21 standard for forfeiture, which can be employed only in the most egregious
22 and extreme circumstances. If attorney Talney is entitled to withdraw, then
23 Mr. Greene is entitled to new counsel, unless Mr. Greene affirmatively seeks
24
25

MOTION IN OPPOSITION TO
DEFENSE COUNSEL'S MOTION
TO FORFEIT COUNSEL- 2

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ATTACHMENT - PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL



STATE OF WASHINGTON
 DEPARTMENT OF SOCIAL AND HEALTH SERVICES
 WESTERN STATE HOSPITAL
 W27-19 * 9601 Steilacoom Blvd. S.W. * Tacoma WA 98498-7213 * (253) 582-8900

JULY 28, 2010

FORENSIC PSYCHOLOGICAL REPORT

RE: STATE OF WASHINGTON
 vs.
IRVIN GREENE

CAUSE NO: 10-1-02314-5
WSH NO: 800017
DOB: 10/09/1966

The forensic evaluation reflected in this report was conducted pursuant to court order under the authority of RCW 10.77.060. This report was released only to the court, its officers and to others designated in statute and is intended for their use only. Any other use or distribution of this document is not authorized by the undersigned.

NATURE OF EXAMINATION

Reason for Referral

Mr. Irvin Greene is charged with five counts of Domestic Violence Court Order Violation, which allegedly occurred between April and May 2010. According to a Pierce County Superior Court order dated July 8, 2010, the above named defendant was committed to Western State Hospital (WSH) for up to 15 days for an evaluation to aid the Court in determining whether the defendant is competent to stand trial or in need of psychiatric treatment in order to restore his trial competency. As is mandated by RCW 10.77.060, this report will also address the defendant's mental condition, dangerousness to others, likelihood of committing further criminal acts, and any further need for evaluation under RCW 71.05.

Pursuant to RCW 10.77.060, two qualified experts or professional persons were designated to independently examine the mental condition of the defendant, and subsequently issue a report. Those two professionals are Helmut Steinwender, M.D., treating psychiatrist, and Joanna Johnson, Psy.D, staff psychologist.

Sources of Information

Mr. Greene was admitted to the Center for Forensic Services at WSH on July 19, 2010 to undergo psychological, psychiatric, psychosocial, and physical examinations, including 24-hour clinical observations. Information from the following sources was considered in preparing this report:

1. Multidisciplinary intake interview on July 19, 2010
2. Individual forensic interview on July 27, 2010
3. Mental health records, Western State Hospital, Tacoma, Washington
4. Discovery documents provided by the State
5. Washington Access to Criminal History (WATCH) report, Washington State Patrol

ATTACHMENT - PERSONAL RESTRAINT PETITION FOR
 CONSOLIDATION W/ DIRECT APPEAL
 IRVIN L. GREENE

**FORENSIC PSYCHOLOGICAL REPORT
RE: IRVIN GREENE****JULY 28, 2010
PAGE 2**

This comprehensive evaluation and report was completed by the undersigned taking into consideration all of the examinations, consultation, and findings of the entire evaluation team.

Notification

Prior to each interview, Mr. Greene was notified of the purpose and the authority for the evaluation, the non-confidential nature of the evaluation, and the individuals ordered to receive a copy of the evaluation. Mr. Greene was informed that he had the right to refuse to answer questions and had the right to have his attorney present during the interview. Additionally, he was notified that a recommendation for further evaluation or treatment might result from this evaluation, although the purpose of the interview was not to provide him with treatment. Mr. Greene indicated that he understood his rights and agreed to proceed without benefit of attorney.

DIAGNOSTIC INFORMATION**Relevant Clinical History**

The following account is based on all of the sources of information listed above and includes the defendant's self-report. To the extent that this information relies in part on the defendant's self-report, it is thus limited by the veracity of the defendant.

Mr. Greene reported that he was born and raised in Tacoma, Washington. He is the second oldest of two brothers and two sisters. Mr. Greene reported that prior to his arrest he was residing in "a room" and stated "I have a place where I go." He was never married and he has no children. Mr. Greene reportedly completed the eleventh grade and he subsequently received his GED.

Regarding employment history, Mr. Greene stated "I hustle" and when asked if he sells drugs, he replied "not going to comment on that." He reportedly received GAU. Legally, Mr. Greene indicated that he has "eight felony points" and that he was incarcerated in prison three times. Mr. Greene denied any current medical problems. He reported difficulties with sleep and that he suffers from "depression and anxiety," however, he has no history of psychiatric treatment or hospitalizations.

Record Review & Collateral Information

Washington Access to Criminal History (WATCH) report listed eight felony convictions: Taking Motor Vehicle without Permission (07/08/86), Promote Prostitution-2 (03/27/87), Four Counts Robbery-1 (05/05/88), Burglary-2 (04/21/97), and Cont Sub-Poss No Prescription (04/06/07). Four gross misdemeanor convictions: Obstruct Law Enforcement Officer (07/28/04), Drive W/License Susp or Revoked-1 (01/04/05), and Two Counts of Domestic Violence Court Order Violation (01/06/10). Nine misdemeanor convictions: Five Counts of Harassment (01/08/99), Harassment (06/03/02), Municipalities Code Violation (06/27/02), Drive

ATTACHMENT - PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION w/ DIRECT APPEAL
IRVIN L. GREENE

**FORENSIC PSYCHOLOGICAL REPORT
RE: IRVIN GREENE****JULY 28, 2010
PAGE 3**

W/License Susp or Revoked-3 (07/28/04), Criminal Trespass-2 (09/08/09). Two classifications unknown convictions: Two Counts of Assault (02/24/98).

Course of Hospitalization

Upon admittance to the Center for Forensic Services at WSH, Mr. Greene was placed on Ward F-1 under the treatment and care of Dr. Steinwender, staff psychiatrist. Dr. Steinwender provided Mr. Greene with a provisional diagnosis of Polysubstance Abuse and Antisocial Personality Disorder. Mr. Greene was not prescribed medication during this hospitalization.

According to the chart notes, on 07/19/10, Mr. Greene denied having a mental illness, although admitted to behavioral issues, stating, "Yeah, I do. I am a criminal with a criminal mind. I will do criminal activity 'til I die." Mr. Greene was described as pleasant and cooperative. He interacted appropriately with others and he was not a behavioral management problem.

Mental Status Examination on 07/19/10 and 07/27/10

Mr. Greene presented as a 43-year-old, single, mixed racial male, who appeared his chronological age. He was cooperative and pleasant during the evaluation, however, made several indignant remarks regarding his attorney. Hygiene and grooming was adequate and he made good eye contact. No difficulties with coordination or gait were observed. Mr. Greene denied any disturbance with appetite, sleep, or energy level. When asked his mood on intake, he stated "pretty good." On 07/27/10, Mr. Greene reported that his mood was "better now than when I was in jail" and he subsequently stated "mad as hell about court shit." Affect was congruent. He denied any thoughts of self harm or harm against others.

Mr. Greene's speech was clear, spontaneous and rate, volume, rhythm and tone were within normal limits. Thought process was goal-directed and logical. He denied auditory or visual hallucinations. Mr. Greene did not appear distracted or internally preoccupied during our contacts. Thought content was reality based and rational.

Mr. Greene was alert and oriented to person, place, date, and situation. Attention and concentration was adequate. Recent and remote memory was intact. Intelligence was estimated to be in the average range, based on his vocabulary, sentence structure and fund of knowledge. Formal judgment was intact and insight adequate.

Diagnostic Impressions

During this hospitalization, Mr. Greene did not present with symptoms of a major mood or psychotic disorder. Upon intake, he reported having "depression and anxiety," although he did not exhibit the signs or symptoms that are characteristic of an individual who is experiencing a mood disorder and during the remainder of his hospitalization, he denied any mental health concerns.

ATTACHMENT - PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION w/ DIRECT APPEAL
IRVIN L. GREENE

FORENSIC PSYCHOLOGICAL REPORT
RE: IRVIN GREENE

JULY 28, 2010
PAGE 4

Mr. Greene presented as guarded when questioned about his history of substance use, therefore I will leave that as a rule out. Mr. Greene does have an extensive history of violating the rights of others and he has demonstrated patterns of antisocial behavior; however, it is unclear if those behaviors started before the age of 15, therefore Adult Antisocial Behavior is warranted and a more detailed history is needed in order to rule out Antisocial Personality Disorder.

Based upon clinical interview data, record review, and consultation with Ward F-1 clinical staff, I offer the following diagnostic impression of Mr. Greene at this time:

Axis I: Adult Antisocial Behavior
 Rule Out: Substance Abuse, Unspecified
 Axis II: Rule Out: Antisocial Personality Disorder
 Axis III: Deferred to Medical Professionals

COMPETENCY

RCW 10.77.010 [14] states: "incompetency means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of a mental disease or defect."

I interviewed Mr. Greene on July 27, 2010, regarding his competency to proceed to trial on the pending charges. Mr. Greene did not present with symptoms of acute psychosis, mood instability or cognitive impairment at the time of our interview.

Mr. Greene reported that he was charged with violation of a no contact order; however, he was unsure of how many counts, explaining that he was originally charged with seven counts. He reported that the police are "alleging that I violated no contact order," but when asked how so, he said, "I can't say." Mr. Greene presented an understanding of the distinctions between felonies and misdemeanors. He indicated that if convicted, he could receive "one year for each count."

Mr. Greene identified his attorney and reported that counsel is a "fucking piece of shit" and that he intends on asking the court "for another paid attorney." He reported that he was upset because of "the moves he's pulled," including sending him to WSH. Mr. Greene indicated that he had spoken to counsel once in jail and stated "we didn't talk, I was ranting and raving." He added that he gave his attorney a chance to contact him and that he "affected his due process and speedy trial rights." Mr. Greene reported that counsel's job is "to provide adequate representation."

Mr. Greene identified available pleas of guilty, not guilty, and Alford plea. He was able to address his legal options in a logical and reasonable manner. Mr. Greene was also knowledgeable about court proceedings and he adequately explained the roles of courtroom participants. He reported that a plea bargain is to "take a deal, plead guilty for less time." Mr. Greene indicated that with a different attorney, he believed that he would get a fair trial.

ATTACHMENT- PERSONAL RESTRAINT PETITION FOR
 CONSOLIDATION OR A DIRECT APPEAL
 IRVIN L. GREENE

**FORENSIC PSYCHOLOGICAL REPORT
RE: IRVIN GREENE****JULY 28, 2010
PAGE 5****Discussion of Competency**

Mr. Greene demonstrated substantial awareness of his charges and of court procedures. Although he had concerns about his attorney's capacity to defend him, his claims were not influenced by symptoms of a mental illness. Mr. Greene demonstrated the capacity to provide relevant information and to communicate with his defense counsel. I do not have any concerns that Mr. Greene would be able to participate in planning a defense strategy and make reasoned choices during courtroom proceedings. **Consequently, it is my opinion that Mr. Greene has the capacity to understand the nature of the proceedings against him and to assist in his own defense.**

DANGEROUSNESS

This opinion regarding dangerousness was court-ordered and conducted within the scope of RCW 10.77.060 regarding pre-trial mental health evaluations. An opinion is to be made as to whether the defendant presents a substantial danger to others or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control of the court or other persons or institutions.

Cautionary Note: Given the present level of risk assessment technology, and frequently incomplete historical data, mental health professionals can best assist the court in making pre-trial dangerousness assessments by identifying the presence of known risk factors and providing a clinical formulation of how these factors affect a defendant. This assessment does rely considerably on the defendant's self-report, and this sets an upper limit on the reliability of any opinions rendered.

Current practice in violence risk assessment involves the consideration of factors frequently associated with future violence. The HCR-20 is an instrument that organizes such known risk factors, dividing them into three categories: Historical, Clinical, and Risk Management. Not all portions of the HCR-20 could be completed for the evaluation; for example, the Hare Psychopathy Checklist-Revised was not completed. Therefore, the HCR-20 was not formally completed and scored, but was used as a guideline for identifying known risk factors.

Historical Risk Factors are relatively stable elements of the individual's life and are unlikely to change. In Mr. Greene's case, the following Historical Risk Factors were present: Previous Violence, Relationship Instability and Employment Problems.

Historical Risk Factors that may have been present or were present to a lesser degree include: Possible Personality Disorder and Substance use Problems.

Clinical Risk Factors describe the individual's current mental state and are considered to be more amenable to treatment. Mr. Greene demonstrated evidence of the following Clinical Risk Factors: Negative Attitudes.

**FORENSIC PSYCHOLOGICAL REPORT
RE: IRVIN GREENE****JULY 28, 2010
PAGE 6**

Finally, Risk Management Factors are those that are likely to influence the individual in the future, and also are considered changeable. Mr. Greene possessed the following Risk Management Factors: Exposure to Destabilizers, Lack of Personal Support and Stress.

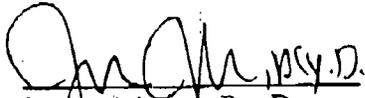
Based upon Mr. Greene's documented criminal history, information obtained through interviews and treatment, and a review of risk factors, it is my professional opinion that he is currently a high risk for future danger to others or for committing future criminal acts jeopardizing public safety and security.

DMHP EVALUATION

An opinion is required as to whether the defendant should receive a RCW 71.05 civil commitment evaluation by a designated mental health professional. This opinion is based solely upon the above evaluation under RCW 10.77.060. Other reasons may exist to require a civil commitment evaluation, which fall within the scope of other standards outside the purview of this evaluation.

Based upon the information referred to in this report, there is no evidence to indicate that Mr. Greene presents an *imminent* risk of danger to self or others as a result of major mental illness; therefore an evaluation by a DMHP does not appear required at this time.

This evaluation is completed upon submission of this report. If I may be of further assistance to the Court in this matter, please do not hesitate to contact me.



Joanna Johnson, Psy.D.
Licensed Psychologist
Center for Forensic Services
Western State Hospital
(253) 761-7564
joanna.johnson@dshs.wa.gov

JJ/jrd

cc: Criminal Presiding Judge, Pierce County Superior Court
Bryce Nelson, Deputy Prosecuting Attorney
Aaron Talney, Attorney for Defendant
Pierce County DMHP @ Good Samaritan Hospital
Judy Snow, Pierce County Jail

ATTACHMENT - PETITION, PERSONAL RESTRAINT FOR
CONSOLIDATION W/ DIRECT APPEAL

IRVIN, GREENE

27

GROUND # 5 I FINALLY CONCLUDE MY ARGUMENTS, THAT I WAS, OR I STILL AM - - -
BEING DENIED EFFECTIVE ASSISTANCE OF BOTH TRIAL COUNSEL TRAVIS CURRIE
FROM THE DEPARTMENT OF ASSIGNED COUNSEL FAIL TO FILE MOTION IN CRUCIAL
PHASES OF BOTH PRETRIAL AND TRIAL PROCEEDING BASED IN GROUNDS OF INSUFFICIENT
AND LACK OF EVIDENCE,

CITING THE 6TH AMENDMENT RIGHT TO EFFECTIVE TRIAL ADVOCATE

STATE V. KLINFER, 96 W.N. APP. 619, 980 P.2D 232 (1999). PRP INEFFECTIVE ASSISTANCE OF
COUNSEL, TRIAL COUNSEL WHO DID NOT BRING MOTION TO DISMISS.

IN RE PETITION OF RILEY, 122 W.N. 2D 772, 863 P.2D (1993).

IN STATE V. NEWTON, 42 W.N. APP. 718, 714 (1986) REVERSED ON OTHER GROUNDS
[CONVICTION EVIDENCE] 109 W.N. 2D 69, 743 P.2D 217 (1987).

AND CROSSING OF GROUND # 5 MY APPELLATE COUNSEL STEPHANIE C. LUKINERMAN WAS
NOT AND SHOULD HAVE RAISED THE SAME ISSUES I RAISED IN MY [SHE] SO I REQUEST
THIS PETITION TO BE CONSOLIDATED WITH MY DIRECT APPEAL.

CITING STRICKLAND V. WASHINGTON, 446, U.S. 668, 104 S. CT. 2052 I. ED. 8D 714 (2003).

IN RE LORD 123, W.N. 2D 296, 303, 868 P.2D 835 (1994)

PERSONAL RESTRIKT PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL

response shall be filed by _____ Testimony will/will not be required.

8. Regarding OTHER PRE-TRIAL MOTIONS: No additional motions are anticipated, except:

Briefing schedule: Affidavits and briefs of the moving party must be served and filed by: _____

Responsive Brief must be served and filed by: _____

The hearing will last about _____ (min/hr)

9. Regarding TRIAL

a. The trial will be jury non-jury, and will last about 4-5 days.

b. Is an interpreter needed: No Yes. Language: _____ (If an interpreter is needed, State will call interpreter services at ext. 6091)

10. Regarding WITNESSES:

There will be out-of-state witnesses yes no. None known

A child competency or child hearsay hearing is needed yes no.

State:

All witnesses have been disclosed.

A Witness List has been filed.

A witness list must be filed by: _____

Defense:

All witnesses have been disclosed.

A Witness List has been filed.

A witness list must be filed by: 2 weeks prior to trial

11. Other

Defendant needs a competency examination.

Defendant is applying for drug court.

Defendant is seeking an evaluation which may necessitate a continuance.

12. The Court sets a Status Conference for _____ (date) for the purpose of:

13. Other orders: DEFENDANT ASSES TO BE ARRANGED IN AMENDED INFO
AS ~~RECORDED~~ DEFENSE WAS PREVIOUSLY PROVIDED WITH A
COPY OF AMENDED INFO

Dated 8-31- 20 10

[Signature]
Defendant

Judge

[Signature]
Defendant's Attorney/Bar # 28154

[Signature] 367AM
Prosecuting Attorney/Bar # _____

ORDER ON OMNIBUS HEARING - 3 (Rev. 3/08)

4616 25th Avenue NE
Number 552
Seattle, Washington 98105

STEPHANIE C. CUNNINGHAM
Attorney at Law

phone (206) 526-5001
fax (206) 374-2474
SCCAAttorney@yahoo.com

December 30, 2011

Irvin L. Greene, DOC# 919102
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

RE: Your appeal in *State v. Greene*
Pierce Co. No. 10-1-02314-5
Appeal No. 42263-8-II

Dear Mr. Greene,

Enclosed for your records is a copy of the Opening Brief of Appellant, which I filed on your behalf at the Court of Appeals. I thoroughly reviewed the documents and transcripts from your case, and chose the issues for the brief based on what I believe were the most arguable issues in light of the evidence presented at the trial, current case law, and the standards of review on appeal.

As you will see when you read the brief, I argued that the Information and the jury instructions for the harassment charge were deficient because they did not include the element that a threat must be a "true threat." I researched several other issues, including the ones you mentioned in your letters, and unfortunately found that the law and/or the facts were not in our favor. It is important to remember that an appeal is not a second trial. The Court of Appeals will not substitute its judgment for that of the trial judge or jury. It will only look to see if no reasonable judge or jury would have made the same decisions, and will give the judge and jury the benefit of the doubt. So because there appeared to be at least some factual and legal support for the continuances, the amendment of the information, and the jury's verdicts, I did not feel that I could challenge those issues on appeal.

Next, it is my duty to tell you that appeals are generally very difficult to win, and less than 10% of appeals actually result in the reversal of a conviction. Additionally, if you lose your appeal, the State may seek to recoup the costs of appeal from you. The costs include: attorney's fees, costs of transcribing the report of proceedings, costs of reproducing the clerk's papers, and the costs of copying the briefs and pleadings, and can vary from \$2,000 to \$3,000 or more. You are responsible for paying the amount designated in the cost bill. However, if you voluntarily withdraw your appeal before the

AGREEMENT - PERSONAL RESISTING PETITION FOR
CONSOLIDATION W/ DIRECT APPEAL

I. GREENE 2L

Court considers your appeal, the State has been willing to waive the imposition of costs, but this is entirely discretionary.

You should take these matters into consideration as you proceed. If you wish, you can choose to withdraw your appeal. If at any time in this process you want to withdraw your appeal, you may contact me and I will help you to do so. I do not tell you this because I believe you should withdraw, I just want you to have all the information you need so that you can make fully informed decisions regarding your appeal.

If you wish to proceed with your appeal, and if there are additional issues that you want raised that I did not include in the brief, you may raise those issues by filing a pro se "Statement of Additional Grounds for Review" with the Court of Appeals. In that document, you can identify and discuss any issues that you believe were not adequately addressed by the brief I filed. The pro se Statement does not require citations to the trial record or to legal authority (cases, statutes, etc.).

I have sent a letter to the Court of Appeals notifying it that you want a copy of the transcripts. The Court will arrange for a copy to be sent to you within the next few weeks. You are not required to file a pro se Statement. But if you do, you must submit it to the Court of Appeals within 30 days from the date you receive your copy of the transcript. Please refer to the Rules of Appellate Procedure (RAP) 10.10 for additional information regarding how to prepare and file a pro se Statement of Additional Grounds.

Finally, the State now has 60 days to file a response brief. If you have any questions or concerns, please do not hesitate to contact me. I will keep you informed of any action by the Appellate Court in this matter, and will send you copies of any additional documents filed in this case.

Sincerely yours,



Stephanie C. Cunningham

Enclosure: Opening Brief of Appellant
Letter to COA

REQUEST FOR RELIEF

CONCLUSION

I AM CLAIMING BASED ON THE FACTS AND STATUTES OF CONVENIZABLE ISSUES, THAT I HAVE SET FORWARD IN THIS PETITION. I DO ASKED THE COURT TO EXCEPT MY PETITION ON THE MERITS, AS TO SCHEDULE ME A HEARING REGARDING THE THE GROUNDS AND FACTS, OR AS AGAIN I HAVE STREMOUSLEY SET FORTH IN THIS PETITION.

BECAUSE OF BOTH PRE-TRIAL, TRIAL COUNSEL'S FAILURE FILE WRITING MOTIONS IN MY BEHALF, THATS, BEHALF, AND TO FINALLY TO CONCLUDE MY APPELLATE COUNSEL FAILURE TO FURTHER CHECK ALL THE FACTS OF LAW, AND TO FIND THE SAME CAUSE OF ISSUES, WITH I CONSIDER EVIDENT UNLAWFUL RESTRAINT. I ASKED THE COURT TO DO, ALL THE FOLLOWING [1.] DISMISS MY CONVICTION OF FELONY HARASSMENT WITH PREJUDICE.

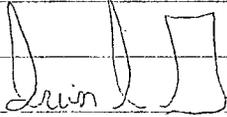
[2.] GRANT ME AN EVIDENTIARY HEARING OR [3.] APPOINT ME NEW APPELLATE COUNSEL.

I DEPOSE AND SAY I AM THE PETITIONER, AND THAT I HAVE READ.

WASHINGTON MAIL BOX RULE FOR INTERESTED PETITIONERS

DATED THE 14TH DAY OF MAY 2012 FROM PETITIONER

IRVIN L. GREENE #919102

SIGNED,  JUN. 5. 11. 12

PERSONAL RESTRAINT PETITION FOR
CONSOLIDATION w/ DIRECT APPEAL

IRVIN L. GREENE