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COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON  
BY *[Signature]*  
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COURT OF APPEALS  
DIVISION II

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IN RE THE PERSONAL RESTRAINT  
OF  
DYNAMITE SALAVEA,  
Petitioner.

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PERSONAL RESTRAINT PETITION

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Sheryl Gordon McCloud  
710 Cherry St.  
Seattle, WA 98104-1925  
(206) 224-8777  
Attorney for Petitioner  
Dynamite Salavea

**ORIGINAL**

**A. STATUS OF PETITIONER**

I, Dynamite Salavea, DOC #827880, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, Washington, 98326, apply for relief from my conviction and sentence. I was found guilty by jury verdict to four counts of rape of a child in the first degree (Counts 1-4) in violation of RCW 9A.44.073, and two counts of child molestation in the first degree (Counts 5-6) in violation of RCW 9A.44.083, in Pierce County Superior Court. I received a standard sentence of 280 months. I am currently incarcerated at the Clallam Bay Corrections Center pursuant to that sentence.

1. The court in which I was sentenced is Pierce County Superior Court, No. 00-1-05147-8.

2. On June 12, 2001, I was found guilty by jury verdict of four counts of rape of a child in the first degree (Counts 1-4) in violation of RCW 9A.44.073, and two counts of child molestation in the first degree (Counts 5-6) in violation of RCW 9A.44.083.

3. The Judgment was entered on August 10, 2001, with the sentence of 280 months.

4. The judge who imposed the sentence was Pierce County Superior Court Judge Kathryn J. Nelson.

5. My lawyer in the Pierce County Superior Court was Don Lundahl, WSBA No. 21424, 2028 Asilomar Dr, Antioch, CA 94509-8929, (360) 556-1399.

6. I did timely appeal the decision of the trial court, in Court of Appeals Case No. 27744-1-II. My appeal lawyer raised two issues: the state's delay in filing the charges until after I turned 18, and the trial court's error in admitting the "child hearsay" statements that the alleged victims supposedly made to their mother, the family friends, and the interviewers. The Court of Appeals rejected both arguments and affirmed the convictions and sentences on January 10, 2003. *State v. Salavea*, 115 Wn.App. 52, 60 P.3d 1230 (2003).

7. The Washington Supreme Court then granted defense counsel's petition for review on the single issue of prosecutorial delay in filing. In a decision dated March 11, 2004, that Court affirmed. *State v. Salavea*, 151 Wn.2d 133, 86 P.3d 125 (2004).

8. My lawyer on appeal was Mary K. Young High, WSBA No. 20123, 949 Market St., Ste. 334, Tacoma, WA 98402-3696, (253) 798-6062.

9. This is the first time I have filed a personal restraint petition.

**B. GROUNDS FOR RELIEF**

I have the following reasons for this Court to grant me relief from the sentence described in Part A.

**First Ground**

I was convicted of two counts of the exact same crime – rape of a child in the first degree – against the exact same person, on the exact same dates, in identical charging language followed by identical instructions. Convictions of both Counts I and II violate double jeopardy clause protections, since they both charge the exact same crime – rape of a child in the first degree – against the exact same victim, on the exact same dates, and the jury instructions failed to distinguish between the two of them in any way.

**Second Ground**

My convictions of both Counts III and IV violate double jeopardy clause protections, since they both charge the exact same crime – rape of a child in the first degree – against the exact same victim, on the exact same dates, and the jury instructions failed to distinguish between the two of them in any way.

### **Third Ground**

I was also convicted of committing two counts of child molestation in the first degree against those same children, on those same dates, in Counts V and VI. Convictions of both child molestation in Counts V and VI, involving the exact same victims of Counts I-IV, on the exact same dates, also violate double jeopardy clause protections – given that the jury instructions included the elements of “sexual contact” and sexual gratification in not just the molestation crimes, but also the rape crimes.

C. OATH OF PETITIONER

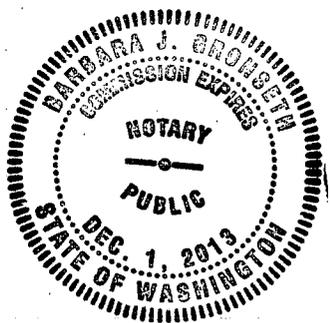
THE STATE OF WASHINGTON, )  
 ) ss.  
COUNTY OF CLALLAM. )

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Dated this 14 day of November, 2011.

Dynamite Salavea  
Dynamite Salavea

SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of November, 2011.



Barbara J. Gronseth

Print Name: BARBARA J. GRONSETH

NOTARY PUBLIC in and for the State of Washington, residing at:

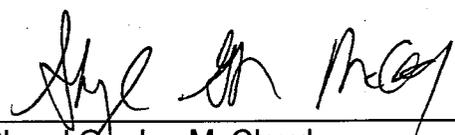
Clallam Bay

My commission expires: Dec. 1, 2013

**CERTIFICATE OF SERVICE**

I certify that on the 30<sup>th</sup> day of November, 2011, a true and correct copy of the foregoing Personal Restraint Petition was served upon the following individual by depositing same in the United States Mail, first class, postage prepaid:

Mark Lindquist, Prosecutor  
Pierce County Prosecutor's Office  
Appellate Unit  
930 Tacoma Avenue South  
Tacoma WA 98402-2171

  
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Sheryl Gordon McCloud