

**NO. 46557-4-II**

**IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON,**

**DIVISION II**

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**STATE OF WASHINGTON,**

**Respondent,**

**vs.**

**KEVIN S. ROBINSON,**

**Appellant.**

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**RESPONDENT'S BRIEF**

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**RYAN JURVAKAINEN**  
**Prosecuting Attorney**  
**SEAN BRITTAIN/WSBA 36804**  
**Deputy Prosecuting Attorney**  
**Representing Respondent**

**HALL OF JUSTICE**  
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## TABLE OF CONTENTS

	PAGE
<b>I. ISSUE .....</b>	<b>1</b>
<b>II. SHORT ANSWER.....</b>	<b>1</b>
<b>III. FACTS .....</b>	<b>1</b>
<b>IV. ARGUMENT .....</b>	<b>1</b>
<b>V. CONCLUSION .....</b>	<b>2</b>

## TABLE OF AUTHORITIES

	Page
<b>Statutes</b>	
RCW 10.73.090 .....	1
<b>Rules</b>	
CrR 7.8(c) .....	1, 2

## **I. ISSUE**

1. Did the trial court abuse its discretion by failing to transfer the Appellant's motion to the Court of Appeals as a personal restraint petition?
2. Is the Cowlitz County Prosecutor's Office the correct party to address the Appellant's personal restraint petition?

## **II. SHORT ANSWER**

1. Yes. Under CrR 7.8(c), the trial court should have transferred the Appellant's motion to the Court of Appeals as a personal restraint petition.
2. No. The Appellant is under the jurisdiction of the Department of Corrections; therefore, the Department of Corrections is the correct party to address the Appellant's personal restraint petition.

## **III. FACTS**

The State agrees with the Appellant's rendition of the procedural history and facts of the present matter.

## **IV. ARGUMENT**

The State concedes that under CrR 7.8(c), the Appellant's motion should have been transferred to the Court of Appeals as a personal restraint petition. Reviewing the record and the court papers, there is no contention that the Appellant's motion would be time barred under RCW 10.73.090. The Appellant entered a guilty plea on May 8, 2008. CP -10. His judgment and sentence was filed on that same date. CP 11-24. On June 13, 2014, six years later, the Appellant filed his motion for relief from judgment. CP 25-

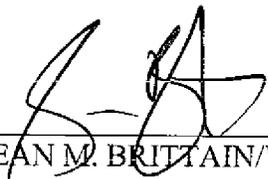
108. The trial court was correct in finding that the Appellant failed to make a substantial showing that he was entitled to relief. CP 127. The Appellant was requesting the trial court reverse the sanctions that the Department of Corrections had imposed upon him, which was outside of the trial court's jurisdiction. CP 127.

However, under CrR7.8(c), the trial court was required to transfer the Appellant's motion to the Court of Appeals as a personal restraint petition. Therefore, the State agrees with the Appellant that his matter should be brought before the Court of Appeals as a personal restraint petition. Additionally, the State requests the Court of Appeals grant its attached Motion to Substitute Proper Respondent.

#### V. CONCLUSION

The Appellant's case should be transferred to the Court of Appeals as a personal restraint petition. The Court of Appeals should grant the State's Motion to Substitute Proper Respondent.

Respectfully submitted this 14 day of May, 2015.

  
\_\_\_\_\_  
SEAN M. BRITTAIN/WSBA #36804  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

Lisa E. Tabbut  
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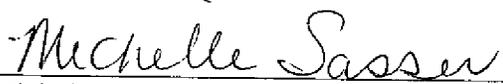
AND,

Sent to the Appellant by US mail,

Kevin Robinson  
DOC # 764821  
Coyote Ridge Correction Center  
P.O. Box 769  
Connell, WA 98326

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

Signed at Kelso, Washington, on the 15<sup>th</sup> day of May, 2015.

  
Michelle Sasser

# COWLITZ COUNTY PROSECUTOR

**May 15, 2015 - 10:59 AM**

## Transmittal Letter

Document Uploaded: 6-465574-Respondent's Brief.pdf

Case Name: State of Washington v. Kevin S. Robinson

Court of Appeals Case Number: 46557-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Michelle Sasser - Email: [sasserm@co.cowlitz.wa.us](mailto:sasserm@co.cowlitz.wa.us)

A copy of this document has been emailed to the following addresses:

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