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July 6, 2006

Clerk of the Court
Washington Supreme Court
Filed via e-mail

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SUPREME COURT
STATE OF WASHINGTON
2006 JUL -6 A 8:00
BY C. J. MERRITT
CLERK

RE: *In re PRP of Clark Elmore*—No. 70233-1
Statement of Additional Authorities

Clerk of the Court:

Pursuant to RAP 10.8 and RAP 16.10, Petitioner submits the following additional authority in support of his Personal Restraint Petition:

Ineffective Assistance of Counsel and ABA Death Penalty Guidelines:

Landrigan v. Schriro, 441 F.3d 638, 645-46 (9th Cir. 2006) (“A comparison of the results of the minimal investigation by Farrell with the amount of available mitigating evidence Landrigan claims was available leaves us with grave doubts whether Landrigan received effective assistance of counsel during his penalty phase proceeding....The state urges, however, that Farrell's investigatory shortcomings are irrelevant because Landrigan would not permit the introduction of mitigating evidence in the sentencing phase of his trial. It is clear from this statement by counsel that Landrigan was unwilling to have these two particular people testify, but there is no mention of any other witnesses, and there is no indication that Landrigan would have precluded the introduction of mitigating evidence by other means.... The possibility of other evidence or witnesses simply never came up, doubtless because defense counsel had no other evidence to present. Indeed, due to his lawyer's meager investigation, there was no other mitigating evidence available to which Landrigan could object or not object.”);

Lundgren v. Mitchell, 440 F.3d 754, 771 (6th Cir. 2006) (“More recent ABA Guidelines, which the United States Supreme Court has recognized as reflecting prevailing professional norms, emphasize that investigations into mitigating evidence should comprise efforts to discover all reasonably available mitigating evidence.”);

Canaan v. McBride, 395 F.3d 376, 384 (7th Cir. 2005) (“We follow the Court's lead in *Strickland* and *Wiggins* by looking first to the ABA Standards for Criminal Justice and the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.”);

Thomas v. Beard, 388 F.Supp.2d 489 (E.D. Pa. 2005) (“The fact that Thomas may have directed counsel not to present mitigating evidence, even assuming, *arguendo*, that such direction was made knowingly does not render reasonable counsel's decision not to investigate. As ABA guidelines indicate, ‘The investigation for preparation of the sentencing phase should be conducted *regardless of any initial assertion by the client that mitigation is not to be offered.*’”).

Davis v. State, --- So.2d ----, 2006 WL 510508 (Ala. Crim. App. 2006)(“In this case counsel failed to conduct the type of investigation sanctioned by the guidelines developed by the American Bar Association for attorneys representing defendants in death-penalty cases as endorsed by the United States Supreme Court in *Wiggins v. Smith*.”);

Improper Use of Shackles:

Lakin v. Stine, 431 F.3d 959, 963 (6th Cir. 2005) (“We therefore conclude that the principle that shackling a defendant at trial without an individualized determination as to its necessity violates the due process clause was clearly established long before *Deck* was decided.”)

State v. Gomez, 123 P.3d 1131, 1141-42 (Ariz. 2005) (“In the end, it is the state's burden to prove any shackling error harmless beyond a reasonable doubt. On this record, the State has not carried this burden. *Deck* therefore compels us to vacate the death sentence and remand for new sentencing proceedings.”).

Sincerely,

/s/

Jeff Ellis

Meredith Martin Rountree

Attorneys for Mr. Elmore

cc: Hon. David McEachran
Whatcom County Prosecuting Attorney

Rec. 7-6-06

-----Original Message-----

From: Jeff Ellis [mailto:ellis_jeff@hotmail.com]

Sent: Thursday, July 06, 2006 7:46 AM

To: OFFICE RECEPTIONIST, CLERK

Subject: In re PRP of Elmore--No. 70233-1

Attached please find a statement of additional authorities to be filed in the above-entitled case. A copy of this document has been served on Mr. McEachran, counsel for the State. Please contact me if you have any questions.

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