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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF:

SCOTT SKYLSTAD,

Petitioner.

BRIEF OF AMICUS CURIAE
WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

PAMELA B. LOGINSKY
Staff Attorney
Washington Association
of Prosecuting Attorneys
206 10th Ave. S.E.
Olympia, WA 98501
(360) 753-2175

TABLE OF CONTENTS

I. INTEREST OF AMICUS CURIAE 1

II. ISSUES PRESENTED 2

 III. STATEMENT OF FACTS 2

IV. ARGUMENT 3

 A. THE LEGISLATURE HAS ERECTED A JURISDICTIONAL BAR TO THE REVIEW OF UNTIMELY COLLATERAL ATTACKS UPON FACIALLY VALID JUDGMENTS 3

 B. ONLY EXTRAORDINARY CIRCUMSTANCES WILL JUSTIFY THE EQUITABLE TOLLING OF A STATUTE OF LIMITATIONS 11

V. CONCLUSION 18

TABLE OF AUTHORITIES

TABLE OF CASES

Abad v. Cozza, 128 Wn.2d 575, 911 P.2d 376 (1996) 5

Alexander v. Cockrell, 294 F.3d 626 (5th Cir. 2002) 15

Alvarez-Machain v. United States, 107 F.3d 696 (9th Cir. 1996) 13

Arthur v. State, 820 So.2d 886 (Ala. Crim. App. 2001) 9

Brown v. Cain, 112 F. Supp. 2d 585 (E.D. La. 2000) 14

Calderon v. Thompson, 523 U.S. 538, 118 S. Ct. 1489,
140 L. Ed. 2d 728 (1998) 12

Calderon v. U.S. Dist. Court (Beeler), 128 F.3d 1283 (9th Cir. 1997),
cert. denied, 523 U.S. 1061 (1998), overruled in part on other grounds,
Calderon v. U.S. Dist. Court (Kelly), 163 F.3d 530 (9th Cir. 1998), cert.
denied, 526 U.S. 1060 (1999) 13

Calderon v. U.S. Dist. Court (Kelly), 163 F.3d 530 (9th Cir. 1998),
cert. denied, 526 U.S. 1060 (1999) 15

Commonwealth v. Hoffman, 780 A.2d 700 (Pa. Super. 2001) 10

Corjasso v. Ayers, 278 F.3d 874 (9th Cir. 2002) 15

Davis v. Johnson, 158 F.3d 806 (5th Cir 1998) 13

Douchette v. Bethel Sch. Dist. No. 403, 117 Wn.2d 805,
818 P.2d 1362 (1991) 12

Drew v. Department of Corrections, 297 F.3d 1278
(11th Cir. 2002), cert. denied, 537 U.S. 1237 (2003) 14

Eisermann v. Penarosa, 33 F. Supp.2d 1269 (D. Haw. 1999) 14

Fadayiro v. United States, 30 F. Supp. 2d 772 (D.N.J. 1998) 14

<u>Fahy v. Horn</u> , 240 F.3d 239 (3d Cir.), <u>cert. denied</u> , 534 U.S. 944 (2001)	14
<u>Felder v. Johnson</u> , 204 F.3d 168 (5th Cir.), <u>cert. denied</u> , 531 U.S. 1035 (2000)	14
<u>Fisher v. Johnson</u> , 174 F.3d 710 (5th Cir. 1999), <u>cert. denied</u> , 531 U.S. 1164 (2001)	16
<u>Frye v. Hickman</u> , 273 F.3d 1144 (9th Cir. 2001), <u>cert. denied</u> , 535 U.S. 1055 (2002)	14
<u>Gassler v. Bruton</u> , 255 F.3d 492 (8th Cir. 2001)	14
<u>Geraci v. Senkowski</u> , 211 F.3d 6 (2d Cir.), <u>cert. denied</u> , 531 U.S. 1018 (2000)	14
<u>Geraci v. Senkowski</u> , 23 F. Supp.2d 246 (E.D. N.Y. 1998), <u>aff'd</u> , 211 F.3d 6 (2d Cir.), <u>cert. denied</u> , 531 U.S. 1018 (2000)	14
<u>Guy F. Atkinson Co. v. State</u> , 66 Wn.2d 570, 403 P.2d 880 (1965)	12
<u>Harris v. Hutchinson</u> , 209 F.3d 325 (4th Cir. 2000)	14
<u>Hazel v. Van Beek</u> , 135 Wn.2d 45, 954 P.2d 1301 (1998)	7
<u>Helton v. Sec'y for the Department of Corrections</u> , 259 F.3d 1310 (11th Cir. 2001), <u>cert. denied</u> , 535 U.S. 1080 (2002).	15
<u>Holt v. Morris</u> , 84 Wn.2d 841, 529 P.2d 1081 (1974), <u>overruled on other</u> <u>grounds</u> , <u>Wright v. Morris</u> , 85 Wn.2d 899, 540 P.2d 893 (1975)	5
<u>Honore v. Board of Prison Terms & Paroles</u> , 77 Wn.2d 660, 466 P.2d 485 (1970)	5
<u>In re Carlstad</u> , 150 Wn.2d 583, 80 P.3d 587 (2003)	8, 13, 17
<u>In re Grieve</u> , 22 Wn.2d 902, 158 P.2d 73 (1945)	4
<u>In re Lybarger</u> , 2 Wash. 131, 25 P. 1075 (1891)	4

<u>In re Personal Restraint of Johnson</u> , 131 Wn.2d 558, 933 P.2d 1019 (1997)	5
<u>In re Rafferty</u> , 1 Wash. 382, 25 P. 465 (1890)	5
<u>In re Runyan</u> , 121 Wn.2d 432, 853 P.2d 424 (1993)	4, 5
<u>In re the Personal Restraint Petition of Benn</u> , 134 Wn.2d 868, 952 P.2d 116 (1998)	7
<u>In re the Personal Restraint Petition of Hoisington</u> , 99 Wn. App. 423, 993 P.2d 296 (2000)	7
<u>Irwin v. Department of Veterans Affairs</u> , 498 U.S. 89, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990)	13
<u>Johnson v. United States</u> , 544 U.S. 295, 125 S. Ct. 1571, 161 L. Ed. 2d 542 (2005)	14, 16
<u>Jones v. Morton</u> , 195 F.3d 153 (3rd Cir. 1999).	15
<u>Justice v. United States</u> , 6 F.3d 1474 (11th Cir. 1993)	15
<u>Kuhlmann v. Wilson</u> , 477 U.S. 426, 106 S. Ct. 2616, 91 L. Ed. 2d 364 (1986)	12
<u>Lehman v. United States</u> , 154 F.3d 1010 (9th Cir.1998), <u>cert denied</u> , 526 U.S. 1040 (1999)	14
<u>Maciel v. Carter</u> , 22 F. Supp.2d 843 (N.D. Ill. 1998)	14
<u>Marsh v. Soares</u> , 223 F.3d 1217 (10th Cir. 2000), <u>cert. denied</u> , 531 U.S. 1194 (2001)	14, 16
<u>McCleskey v. Zant</u> , 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991)	12
<u>Miles v. Prunty</u> , 187 F.3d 1104 (9th Cir. 1999)	15
<u>Millay v. Cam</u> , 135 Wn.2d 193, 955 P.2d 791 (1998)	11

<u>Miller v. Marr</u> , 141 F.3d 976 (10th Cir.), <u>cert. denied</u> , 525 U.S. 891 (1998)	14
<u>Miranda v. Castro</u> , 292 F.3d 1063 (9th Cir.), <u>cert. denied</u> , 537 U.S. 1003 (2002)	14
<u>Plowden v. Romine</u> , 78 F. Supp.2d 115 (1999)	14
<u>Pugh v. Smith</u> , 2006 U.S. App. LEXIS 24665, ___ F.3d ___ (11th Cir. Sept. 29, 2006)	14
<u>Rhodes v. Senkowski</u> , 82 F. Supp.2d 160 (S.D.N.Y. 2000)	14
<u>Ruth v. Dight</u> , 75 Wn.2d 660, 453 P.2d 631 (1969)	6
<u>Sandvik v. United States</u> , 177 F.3d 1269 (11th Cir. 1999)	14
<u>Shoemate v. Norris</u> , 390 F.3d 595 (8th Cir. 2004)	16
<u>Shumway v. Payne</u> , 136 Wn.2d 383, 964 P.2d 349 (1998)	7, 12
<u>Smaldone v. Senkowski</u> , 273 F.3d 133 (2nd. Cir. 2001), <u>cert. denied</u> , 535 U.S. 1017 (2002)	14
<u>Spokane v. State</u> , 198 Wash. 682, 89 P.2d 826 (1939)	12
<u>State v. Duvall</u> , 86 Wn. App. 871, 940 P.2d 671 (1997), <u>review denied</u> , 134 Wn.2d 1012 (1998)	11
<u>State v. Gore</u> , 101 Wn.2d 481, 681 P.2d 227, 39 A.L.R.4th 975 (1984) ..	8
<u>State v. Langford</u> , 67 Wn. App. 572, 837 P.2d 1037 (1992), <u>review denied</u> , 121 Wn.2d 1007 (1993), <u>cert. denied</u> , 510 U.S. 838 (1993)	8
<u>State v. Littlefair</u> , 112 Wn. App. 749, 51 P.3d 116 (2002), <u>review denied</u> , 149 Wn.2d 1020 (2003)	8
<u>State v. Robinson</u> , 104 Wn. App. 657, 17 P.3d 653, <u>review denied</u> , 145 Wn.2d 1002 (2001)	16, 17

<u>State v. Rosales</u> , 299 Mont. 226, 999 P.2d 313 (2000)	9
<u>State v. Sampson</u> , 82 Wn.2d 663, 513 P.2d 60 (1973)	4
<u>State v. Skylstad</u> , ____ Wn.2d ____, 2006 Wash. LEXIS 667 (2006)	3
<u>State v. Skylstad</u> , 129 Wn. App. 1050, 2005 Wash. App. LEXIS 3172 (2005)	3
<u>State v. Skylstad</u> , 2005 Wn. App. LEXIS 3237 (2005)	3
<u>State v. Walker</u> , 93 Wn. App. 382, 967 P.2d 1289 (1998)	5
<u>Taliani v. Chrans</u> , 189 F.3d 597 (7th Cir. 1999)	14
<u>Toliver v. Olsen</u> , 109 Wn.2d 607, 746 P.2d 809 (1987)	5
<u>United States v. Saro</u> , 252 F.3d 449 (D.C. Cir. 2001), <u>cert. denied</u> , 534 U.S. 1149 (2002)	15
<u>United States v. Van Poyck</u> , 980 F. Supp. 1108 (C.D. Cal. 1997)	14
<u>Whalem/Hunt v. Early</u> , 233 F.3d 1146 (9th Cir. 2000)	14
<u>Williams v. Sims</u> , 390 F.3d 958 (7th Cir. 2004)	16

CONSTITUTIONS

Pub. L. No. 104-132, 110 Stat. 1214 (1996)	9
Wash. Constitution art. 1, § 13	3

STATUTES

28 U.S.C. § 2244(d)	8, 13
28 U.S.C. § 2244(d)(1)	9
42 Pa. C.S.A. § 9545(b)(1)-(2)	11
Laws of 1854, p. 213, § 445	4
Laws of 1947, chapter 256, § 3	4
Laws of 1989, ch. 395	9
Montana Code § 46-21-102	10
RCW 10.73.090	2, 6-8, 11, 12
RCW 10.73.090(1)	7, 8
RCW 10.73.090(3)	16
RCW 10.73.100	6, 7, 12
RCW 4.72.010	4
RCW 7.36.130	2, 4, 7
RCW 7.36.130(1)	7, 11

RULES AND REGULATIONS

Ala. R. Crim. P. 32.2(c) 9
RAP 16.1(c) 5
RAP 16.6(b) 1

OTHER AUTHORITIES

Final Legis. Rep., S.H.B. 1071, 51st Leg., Reg. Sess. (Wash. 1989) 9
Mark A. Wilner, Notes and Comments, Justice at the Margins:
Equitable Tolling of Washington’s Deadline for Filing Collateral
Attacks on Criminal Judgments, 75 Wash. L. Rev. 675 (2000) 8

I. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys ("WAPA") represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes. Those persons are also responsible by law for responding to collateral attacks upon criminal convictions that are filed in state courts. *See* RAP 16.6(b).

WAPA is interested in cases, such as this, which have wide-ranging impact on the prosecution system. Recognition of the limited nature of the jurisdiction that has been conferred upon the courts by the legislature with regard to collateral attacks upon criminal convictions will foster respect for the courts by ensuring the finality of judgments. Recognition of the limitations will allow prosecutors to redirect the hundreds of hours spent responding to claims for which relief cannot be granted judicially to the prosecution of new cases.

II. ISSUES PRESENTED

1. Whether the one-year time bar for filing a collateral attack contained in RCW 10.73.090 and incorporated into RCW 7.36.130 is jurisdictional?

2. Whether, if RCW 10.73.090 and RCW 7.36.130 are not jurisdictional, may equitable tolling be applied to allow a petitioner to file a collateral attack more than one-year after the petitioner's conviction became final?

3. Whether the petitioner's misreading of RCW 10.73.090 provides grounds for equitably tolling the one year time-bar contained in RCW 10.73.090?

III. STATEMENT OF FACTS

The petitioner, Scott Sklystad, filed his pro se personal restraint petition (PRP) on November 21, 2005, more than one-year after the mandate issued in the appeal from his conviction. This PRP was dismissed as untimely by the court of appeals.

In a supplemental brief filed on September 1, 2006, Sklystad claims for the first time that the one year time-bar contained in RCW 10.73.090 should be equitably tolled. See Petitioner's Supplemental Brief, at 14-16. Sklystad's request for equitable tolling is based solely upon a plea to be relieved from his misinterpretation of RCW 10.73.090. The claim is

unsupported by any claim or evidence of governmental wrongdoing or interference. Id.

Skylstad's request for equitable tolling is also silent with respect to his diligence in pursuing his claims. Skylstad, who filed the instant PRP while his second appeal was still pending,¹ clearly understood that the conclusion of all appeals was not a prerequisite to the filing of a collateral attack. Skylstad has not claimed that the facts supporting the claims contained in his PRP were unknown to him prior to the expiration of the one-year time bar on May 14, 2005.

IV. ARGUMENT

A. THE LEGISLATURE HAS ERECTED A JURISDICTIONAL BAR TO THE REVIEW OF UNTIMELY COLLATERAL ATTACKS UPON FACIALLY VALID JUDGMENTS

A court's authority to reopen a judgment in a criminal case arises from either a statute or the constitution. The constitutional authority, which is contained in article 1, § 13, is very narrow and does not permit challenges that go beyond the face of a final judgment of a court of competent jurisdiction. Any inquiry beyond the face of a final judgment results from

¹Skylstad filed the instant PRP on November 21, 2005. Division Three did not issue its denial of Skylstad's motion to reconsider its October 11, 2005, rejection of his sentencing appeal until December 1, 2005. See State v. Skylstad, 2005 Wn. App. LEXIS 3237 (2005); State v. Skylstad, 129 Wn. App. 1050, 2005 Wash. App. LEXIS 3172 (2005). This Court did not deny Skylstad's petition for review until September 7, 2006. See State v. Skylstad, ___ Wn.2d ___, 2006 Wash. LEXIS 667 (2006).

legislative authorization. There is none that applies to Scott Skylstad's untimely collateral attack.

As noted by this Court in the past:

The legislature has long played a role in deciding the scope of collateral relief, and this court has accepted this involvement, so long as the scope of the relief afforded is not constricted beyond the narrow boundaries of our constitution.

In re Runyan, 121 Wn.2d 432, 443, 853 P.2d 424 (1993).

Legislative authorization for review beyond the face of a final judgment can be found in two separate statutes. The first statute, which applies only to superior courts, is RCW 4.72.010. See State v. Sampson, 82 Wn.2d 663, 665, 513 P.2d 60 (1973). The second statute, which applies to all courts of record, is RCW 7.36.130.

The habeas corpus statute, RCW 7.36.130, is derived from a statute passed by the first legislature of Washington Territory. As first enacted, the territorial habeas corpus statute was an *absolute* prohibition against collateral review of a facially-valid judgment by a court of competent jurisdiction. Laws of 1854, p. 213, § 445. That restriction was repeatedly upheld by the Washington Supreme Court. In re Lybarger, 2 Wash. 131, 25 P. 1075 (1891); In re Grieve, 22 Wn.2d 902, 158 P.2d 73 (1945). In 1947, the habeas corpus statute was amended to allow such challenges when the challenge is based upon a constitutional violation. Laws of 1947, chapter 256, § 3. “[T]hese

statutory changes have never affected, nor could they affect, the core constitutional inquiry protected by our state suspension clause.” Runyan, 121 Wn.2d at 443.

In the 1970’s, the Supreme Court created personal restraint petitions as the procedural mechanism for carrying out the Legislature’s grant of jurisdiction at the appellate court level. See generally RAP 16.1(c); Toliver v. Olsen, 109 Wn.2d 607, 746 P.2d 809 (1987). These procedural rules, however, did not override or alter the restrictions placed upon the courts’ review of collateral attacks by the Legislature. See In re Rafferty, 1 Wash. 382, 25 P. 465 (1890).²

In 1989, the Legislature acted to restore some finality to criminal judgments by limiting the authority it had previously granted to courts to look behind the face of a judgment and sentence. Honore v. Board of Prison Terms & Paroles, 77 Wn.2d 660, 691, 466 P.2d 485 (1970) (Hale, J., concurring). Specifically, the Legislature restricted the number of petitions for relief a prisoner could file with respect to a single conviction and the

²Once the legislature acted to expand jurisdiction beyond that preserved by Const. art. I, § 13, Const. art. 4, § 4 permits the court to adopt procedural rules for dealing with the *legislatively* expanded scope of jurisdiction. Holt v. Morris, 84 Wn.2d 841, 529 P.2d 1081 (1974), overruled on other grounds, Wright v. Morris, 85 Wn.2d 899, 540 P.2d 893 (1975). To the extent any procedural rules regarding collateral attacks conflict with the legislature’s substantive grant of authority, the statute controls. See, e.g., In re Personal Restraint of Johnson, 131 Wn.2d 558, 563-65, 933 P.2d 1019 (1997); Abad v. Cozza, 128 Wn.2d 575, 593 n. 2, 911 P.2d 376 (1996); State v. Walker, 93 Wn. App. 382, 967 P.2d 1289, 1293 (1998).

length of time a prisoner could wait before bringing a petition.³ See RCW 10.73.090; RCW 10.73.100. The time-bar and the legislatively authorized grounds for waiving the one-year time-bar were incorporated into the jurisdictional statute governing all habeas corpus proceedings:

No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge the party when the term of commitment has not

³Although the application of a statute of limitations can seem harsh in certain cases,

[t]here is nothing inherently unjust about a statute of limitations. . . No civilized society could lay claim to an enlightened judicial system which puts no limit on the time in which a person can be compelled to defend against claims brought in good faith, much less whatever stale, illusory, false, fraudulent or malicious accusations of civil wrong might be leveled against him.

In applying the statutes of limitation, the courts have made many assumptions. Stale claims, from their very nature, are more apt to be spurious than fresh; old evidence is more likely to be untrustworthy than new. Time dissipates and erodes the memory of witnesses and their abilities to accurately describe the material events. In time witnesses die or disappear, and the longer the time the more likely this will happen. With the passage of time, minor grievances may fade away, but they may grow to outlandish proportions, too. Finally ... is the basic philosophy underlying the idea that society itself benefits ... when there comes a time to everyone ... that one is freed from the fears and burdens of threatened litigation.

While it has been a cherished ambition of the common law to provide a legal remedy for every genuine wrong, it is also a traditional view that compelling one to answer stale claims in the courts is in itself a substantial wrong. After all, when an adult person has a justifiable grievance, he usually knows it and the law affords him ample opportunity to assert it in the courts. Consequently, as a matter of basic justice, the courts usually have a cogent reason to give limitation statutes a literal and rigid reading, and to declare that the right to sue begins with the wrongful acts and ends with the statutory period. . .

Ruth v. Dight, 75 Wn.2d 660, 664-65, 453 P.2d 631 (1969).

expired, in either of the cases following:

(1) Upon any process issued on any final judgment of a court of competent jurisdiction except where it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the state of Washington or of the United States have been violated and the petition is filed within the time allowed by RCW 10.73.090 and 10.73.100.

See RCW 7.36.130.

That the RCW 10.73.090 time-bar is jurisdictional has been recognized by this Court in response to requests to consider collateral attacks filed after the expiration of the one-year period. See, e.g., Shumway v. Payne, 136 Wn.2d 383, 397-98, 964 P.2d 349 (1998) (“The statute of limitation set forth in RCW 10.73.090(1) is a mandatory rule that acts as a bar to appellate court consideration of personal restraint petitions filed after the limitation period has passed, unless the petitioner demonstrates that the petition is based solely on one or more of the [grounds contained in RCW 10.73.100]”); In re the Personal Restraint Petition of Benn, 134 Wn.2d 868, 938-39, 952 P.2d 116 (1998) (court rules cannot be used to alter or enlarge the time limit contained in RCW 10.73.090). The doctrine of equitable tolling cannot be applied to jurisdictional statutes. See, e.g., Hazel v. Van Beek, 135 Wn.2d 45, 61, 954 P.2d 1301 (1998).

While Division Three in In re the Personal Restraint Petition of Hoisington, 99 Wn. App. 423, 993 P.2d 296 (2000), and Division Two in

State v. Littlefair, 112 Wn. App. 749, 760, 51 P.3d 116 (2002), review denied, 149 Wn.2d 1020 (2003), applied equitable tolling to RCW 10.73.090, those courts could not overrule the contrary Washington Supreme Court authority that acknowledges the jurisdictional nature of the statute. State v. Gore, 101 Wn.2d 481, 487, 681 P.2d 227, 39 A.L.R.4th 975 (1984); State v. Langford, 67 Wn. App. 572, 581, 837 P.2d 1037 (1992), review denied, 121 Wn.2d 1007 (1993), cert. denied, 510 U.S. 838 (1993). This Court has never authorized the equitable tolling of the one-year time bar contained in RCW 10.73.090. In re Carlstad, 150 Wn.2d 583, 593, 80 P.3d 587 (2003).

Division II found support for its conclusion that RCW 10.73.090 is subject to equitable tolling in federal cases and in a student authored note. Littlefair, 112 Wn. App. at 758-759, citing Mark A. Wilner, Notes and Comments, Justice at the Margins: Equitable Tolling of Washington's Deadline for Filing Collateral Attacks on Criminal Judgments, 75 Wash. L. Reb. 675 (2000). A review of the federal statute, however, reveals that the federal case law sheds no light upon whether our legislature intended RCW 10.73.090 act as a jurisdictional bar or as a statute of limitations.

The federal statute, 28 U.S.C. § 2244(d), and RCW 10.73.090 share little in common other than the selection of one year as the cutoff date. The Washington statute utilizes language that bars the filing of a collateral attack. See RCW 10.73.090(1) (“No petition or motion for collateral attack may be

filed more than one year after the judgment becomes final....”). The federal statute, on the other hand, uses typical statute of limitations language. See 28 U.S.C. § 2244(d)(1) (“A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.”).

The federal statute of limitations was adopted seven years after our legislature enacted our time-bar statute. Compare Pub. L. No. 104-132, 110 Stat. 1214 (1996), with Laws of 1989, ch. 395. Thus, neither the federal statute nor the cases which hold that the federal time limit can be equitably tolled can shed any light upon the intent of the Washington Legislature. The contemporaneous legislative history does demonstrate that chapter 1989 was to be an absolute bar to collateral attacks filed beyond the one-year limit, except when a RCW 10.73.100 exception applied. See Final Legis. Rep., S.H.B. 1071, 51st Leg., Reg. Sess. (Wash. 1989).

Washington would not be the first state to hold that its collateral attack time-bar is jurisdictional. Courts in Alabama, Montana and Pennsylvania have reached this conclusion with respect to their time-bars. See, e.g., Arthur v. State, 820 So.2d 886 (Ala. Crim. App. 2001) (Ala. R. Crim. P. 32.2(c)⁴ is mandatory and jurisdictional); State v. Rosales, 299

⁴Ala. R. Crim. P. 32.2(c) states:

(c) Limitations period. Subject to the further provisions

Mont. 226, 999 P.2d 313 (2000) (Montana Code § 46-21-102⁵ is jurisdictional); Commonwealth v. Hoffman, 780 A.2d 700 (Pa. Super.

hereinafter set out in this section, the court shall not entertain any petition for relief from a conviction or sentence on the grounds specified in Rule 32.1(a) and (f), unless the petition is filed: (1) In the case of a conviction appealed to the Court of Criminal Appeals, within one (1) year after the issuance of the certificate of judgment by the Court of Criminal Appeals under Rule 41, Ala. R. App. P.; or (2) in the case of a conviction not appealed to the Court of Criminal Appeals, within one (1) year after the time for filing an appeal lapses; provided, however, that the time for filing a petition under Rule 32.1(f) to seek an out-of-time appeal from the dismissal or denial of a petition previously filed under any provision of Rule 32.1 shall be six (6) months from the date the petitioner discovers the dismissal or denial, irrespective of the one-year deadlines specified in the preceding subparts (1) and (2) of this sentence; and provided further that the immediately preceding proviso shall not extend either of those one-year deadlines as they may apply to the previously filed petition. The court shall not entertain a petition based on the grounds specified in Rule 32.1(e) unless the petition is filed within the applicable one-year period specified in the first sentence of this section, or within six (6) months after the discovery of the newly discovered material facts, whichever is later; provided, however, that the one-year period during which a petition may be brought shall in no case be deemed to have begun to run before the effective date of the precursor of this rule, i.e., April 1, 1987.

⁵Montana Code § 46-21-102 states that:

(1) Except as provided in subsection (2), a petition for the relief referred to in 46-21-101 may be filed at any time within 1 year of the date that the conviction becomes final. A conviction becomes final for purposes of this chapter when:

- (a) the time for appeal to the Montana supreme court expires;
- (b) if an appeal is taken to the Montana supreme court, the time for petitioning the United States supreme court for review expires; or
- (c) if review is sought in the United States supreme court, on the date that that court issues its final order in the case.

(2) A claim that alleges the existence of newly discovered evidence that, if proved and viewed in light of the evidence as a whole would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted, may be raised in a petition filed within 1 year of the date on which the conviction becomes final or the date on which the petitioner discovers, or reasonably should have discovered, the existence of the evidence, whichever is later.

2001) (42 Pa. C.S.A. § 9545(b)(1)-(2)⁶ are jurisdictional). The language of Washington's time-bar statute, RCW 10.73.090 and its habeas corpus jurisdictional statute, RCW 7.36.130(1), is more akin to the statutes of these states, then to the federal statute. Washington should, therefore, join these states in rejecting equitable tolling of its time-bar provision.

B. ONLY EXTRAORDINARY CIRCUMSTANCES WILL JUSTIFY THE EQUITABLE TOLLING OF A STATUTE OF LIMITATIONS

While equitable tolling is available if a statute is not jurisdictional, the doctrine is used sparingly. See State v. Duvall, 86 Wn. App. 871, 875, 940 P.2d 671 (1997), review denied, 134 Wn.2d 1012 (1998). The predicates for equitable tolling are bad faith, deception, or false assurances by the defendant and the exercise of diligence by the plaintiff. Millay v. Cam, 135 Wn.2d 193,

⁶42 Pa. C.S.A. § 9545(b)(1)-(2) states as follows:

(b) TIME FOR FILING PETITION.--

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

206, 955 P.2d 791 (1998).

In Washington equitable tolling is only appropriate when consistent with both the purpose of the statute providing the cause of action and the purpose of the statute of limitations. Douchette v. Bethel Sch. Dist. No. 403, 117 Wn.2d 805, 812, 818 P.2d 1362 (1991). The purpose of RCW 10.73.090 is to further the State's compelling interest in the finality of criminal judgments. Finality serves the goals of rehabilitation, deterrence and punishment. Kuhlmann v. Wilson, 477 U.S. 426, 452-53, 106 S. Ct. 2616, 91 L. Ed. 2d 364 (1986); McCleskey v. Zant, 499 U.S. 467, 491, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991); Calderon v. Thompson, 523 U.S. 538, 118 S. Ct. 1489, 1500-01, 140 L. Ed. 2d 728 (1998); Shumway, 136 Wn.2d at 399. The purpose of Skylstad's action is to upset a presumptively accurate conviction.

Essentially, Skylstad is requesting that this Court add a new "ignorance of the law" exception to the legislatively recognized exceptions to the one-year period contained in RCW 10.73.100. This is a step that a Court may not take. See, e.g., Guy F. Atkinson Co. v. State, 66 Wn.2d 570, 575, 403 P.2d 880 (1965) ("Courts will not read into statutes of limitations exceptions not embodied therein."); Spokane v. State, 198 Wash. 682, 694, 89 P.2d 826 (1939) ("To construe a further exception into the statute ... is to legislate judicially -- an abhorrent thing"). It is also a step that this Court

refused to take in In re Personal Restraint Petition of Carlstad, 150 Wn.2d at 593 (refusing to accept a tardy collateral attack solely because the pro se litigant erroneously believed that the “mailbox rule” applied to state court pleadings).

The federal courts have determined that the time limitation for filing a federal habeas corpus action set forth at 28 U.S.C. § 2244(d) is not jurisdictional. Accordingly, the federal courts have indicated that the time limit is subject to equitable tolling. See, e.g., Davis v. Johnson, 158 F.3d 806, 810-11 (5th Cir 1998). Although the federal courts do not require proof of governmental misconduct, the federal courts do recognize that “[e]quitable tolling will not be available in most cases, as extensions of time will only be granted if “extraordinary circumstances” beyond a prisoner’s control make it impossible to file a petition on time.” Calderon v. U.S. Dist. Court (Beeler), 128 F.3d 1283, 1289 (9th Cir. 1997), cert. denied, 523 U.S. 1061 (1998), overruled in part on other grounds, Calderon v. U.S. Dist. Court (Kelly), 163 F.3d 530 (9th Cir. 1998), cert. denied, 526 U.S. 1060 (1999) (citing Alvarez-Machain v. United States, 107 F.3d 696, 701 (9th Cir. 1996)).

Equitable tolling is not available for “what is best a garden variety claim of excusable neglect”. Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990). Application of this principle has led the federal courts to reject equitable tolling predicated upon

deficiencies related to petitioner's pro se status, lack of knowledge and expertise,⁷ delay in receiving the state disposition,⁸ delay in receiving transcripts,⁹ deficiencies in the prison law library,¹⁰ erroneous advice from a lawyer,¹¹ hospitalization due to acquired immune deficiency syndrome,¹²

⁷See, e.g., Johnson v. United States, 544 U.S. 295, 311, 125 S. Ct. 1571, 161 L. Ed. 2d 542 (2005); Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000), cert. denied, 531 U.S. 1194 (2001); Felder v. Johnson, 204 F.3d 168, 171 (5th Cir.), cert. denied, 531 U.S. 1035 (2000); Miller v. Marr, 141 F.3d 976, 978 (10th Cir.), cert. denied, 525 U.S. 891 (1998); Eisermann v. Penarosa, 33 F. Supp.2d 1269, 1273 (D. Haw. 1999).

⁸Drew v. Department of Corrections, 297 F.3d 1278 (11th Cir. 2002), cert. denied, 537 U.S. 1237 (2003); Plowden v. Romine, 78 F. Supp.2d 115, 119 (1999); Geraci v. Senkowski, 23 F. Supp.2d 246, 252-53 (E.D. N.Y. 1998), aff'd, 211 F.3d 6 (2nd Cir.), cert. denied, 531 U.S. 1018 (2000); Maciel v. Carter, 22 F. Supp.2d 843, 857 (N.D. Ill. 1998).

⁹See Gassler v. Bruton, 255 F.3d 492, 495 (8th Cir. 2001); Brown v. Cain, 112 F. Supp. 2d 585, 587 (E.D. La. 2000); Fadayiro v. United States, 30 F. Supp. 2d 772, 779-80 (D.N.J. 1998); United States v. Van Poyck, 980 F. Supp. 1108, 1110-11 (C.D. Cal. 1997).

¹⁰Whalem/Hunt v. Early, 233 F.3d 1146, 1148 (9th Cir. 2000)(en banc); Miller, 141 F.3d at 978 (not enough to say without elaboration that library was deficient).

¹¹Pugh v. Smith, 2006 U.S. App. LEXIS 24665, __ F.3d __ (11th Cir. Sept. 29, 2006); David v. Hall, 318 F.3d 343, 346 (1st Cir. 2003); Miranda v. Castro, 292 F.3d 1063, 1068 (9th Cir.), cert. denied, 537 U.S. 1003 (2002); Smaldone v. Senkowski, 273 F.3d 133, 138 (2nd Cir. 2001), cert. denied, 535 U.S. 1017 (2002); Frye v. Hickman, 273 F.3d 1144, 1146 (9th Cir. 2001), cert. denied, 535 U.S. 1055 (2002); Fahy v. Horn, 240 F.3d 239, 244 (3d Cir.), cert. denied, 534 U.S. 944 (2001) ("attorney error, miscalculation, inadequate research, or other mistakes have not been found to rise to the 'extraordinary' circumstances required for equitable tolling"); Geraci v. Senkowski, 211 F.3d 6, 9 (2d Cir.), cert. denied, 531 U.S. 1018 (2000); Harris v. Hutchinson, 209 F.3d 325 (4th Cir. 2000); Taliani v. Chrans, 189 F.3d 597, 598 (7th Cir. 1999) ("a lawyer's mistake is not a valid basis for equitable tolling"); Sandvik v. United States, 177 F.3d 1269, 1270 (11th Cir. 1999) ("mere attorney negligence . . . is not a basis for equitable tolling").

¹²Rhodes v. Senkowski, 82 F. Supp.2d 160 (S.D.N.Y. 2000).

prison lockdowns,¹³ the merits of the collateral attack,¹⁴ and prior unsuccessful efforts to be heard.¹⁵ Equitable tolling was held to be available when a petitioner's reliance upon prison officials to comply with his instructions regarding timely submitted petition is ignored,¹⁶ when the court loses a timely filed petition,¹⁷ and when petitioner is mentally incompetent to assist his counsel.¹⁸

The burden of establishing entitlement to the extraordinary remedy of equitable tolling plainly rests with the petitioner. See, e.g., Alexander v. Cockrell, 294 F.3d 626 (5th Cir. 2002); Helton v. Sec'y for Dep't of Corrs., 259 F.3d 1310, 1313-14 (11th Cir. 2001)(denying equitable tolling in light of petitioner's failure to present necessary evidence); United States v. Saro, 252 F.3d 449, 454 (D.C. Cir. 2001), cert. denied, 534 U.S. 1149 (2002); see also Justice v. United States, 6 F.3d 1474, 1479 (11th Cir. 1993) ("The burden is on the plaintiff to show that equitable tolling is warranted.").

¹³See Lehman v. United States, 154 F.3d 1010, 1016 (9th Cir.1998), cert denied, 526 U.S. 1040 (1999); Van Poyck, 980 F. Supp. at 1111.

¹⁴Helton v. Sec'y for the Department of Corrections, 259 F.3d 1310, 1314-15 (11th Cir. 2001), cert. denied, 535 U.S. 1080 (2002).

¹⁵Jones v. Morton, 195 F.3d 153, 160 (3rd Cir. 1999).

¹⁶Miles v. Prunty, 187 F.3d 1104 (9th Cir. 1999).

¹⁷Corjasso v. Ayers, 278 F.3d 874 (9th Cir. 2002).

¹⁸Calderon v. U.S. Dist. Court (Kelly), 163 F.3d 530, 541 (9th Cir. 1998), cert. denied, 526 U.S. 1060 (1999).

Here, Skylstad identified no external impediment to his filing a timely collateral attack. Skylstad does not contend that he was ill, hospitalized, or mentally incompetent. Skylstad does not claim that he the Department of Corrections or other government actor barred his access to the courts or to his legal pleadings between May 14, 2004, when his convictions became final and November 21, 2005, when he filed his PRP. The most Skylstad claims, is that he erroneously interpreted RCW 10.73.090(3). This, however, is not a basis for equitable tolling. *See, e.g., Shoemate v. Norris*, 390 F.3d 595, 598 (8th Cir. 2004) (pro se status, lack of legal knowledge or legal resources, confusion about or miscalculations of the limitations period, or the failure to recognize the legal ramifications of actions taken in prior post-conviction proceedings are inadequate to warrant equitable tolling); *Williams v. Sims*, 390 F.3d 958, 963 (7th Cir. 2004) (“even reasonable mistakes of law are not a basis for equitable tolling”); *Fisher v. Johnson*, 174 F.3d 710, 714 (5th Cir. 1999), *cert. denied*, 531 U.S. 1164 (2001) (same); *see also Johnson v. United States*, 544 U.S. 295, 311, 125 S. Ct. 1571, 161 L. Ed. 2d 542 (2005) (“[W]e have never accepted *pro se* representation alone or procedural ignorance as an excuse for prolonged inattention when a statute's clear policy calls for promptness.”).

Skylstad’s claim to equitable tolling is not even as strong as the claims rejected by the Court of Appeals in *State v. Robinson*, 104 Wn. App.

657, 17 P.3d 653, review denied, 145 Wn.2d 1002 (2001), and by this Court in In re Personal Restraint Petition of Carlstad. In Robinson, the defendant prepared a motion to withdraw her guilty plea prior to the expiration of the one-year limitation period and she mailed the motion to the court three days prior to the expiration of the one-year limitation period. Despite delivering a copy of the motion to the prosecutor within the three day window, the postal service inexplicably took six days to deliver the motion to the clerk's office. Nonetheless, Robinson's request that the one-year limitation period be equitably tolled for three days was denied because "postal delay is such a common experience" that she should have allowed extra time. Robinson, 104 Wn. App. at 668-69.

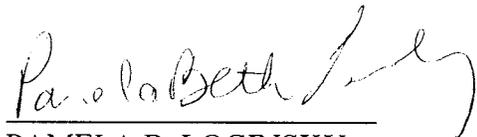
Both petitioners in Carlstad were incarcerated. One petitioner handed his completed PRP to prison authorities five days before the one-year time period expired, while the other petitioner handed his completed PRP to prison authorities three days before the one-year time period expired. Carlstad, 150 Wn.2d at 586-87. In both cases, the PRP's reached the court after the expiration of the one-year period. Id. This Court refused to consider whether the one-year time bar contained in RCW 10.73.090 was subject to equitable tolling because "neither [petitioner] has demonstrated that prison officials acted with bad faith, deception, or false assurances." Carlstad, 150 Wn.2d at 593. Similarly, this Court should refuse to consider Skylstad's

untimely PRP.

V. CONCLUSION

The order dismissing Skylstad's untimely collateral attack should be affirmed.

Respectfully submitted this 24th day of October, 2006.

A handwritten signature in cursive script, appearing to read "Pamela B. Loginsky", written over a horizontal line.

PAMELA B. LOGINSKY
WSBA No. 18096
Staff Attorney