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STATE OF WASHINGTON

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NO. 83788-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE RESTRAINT OF:

DEMAR RHOME

Petitioner

PETITIONER'S REPLY TO STATE'S RESPONSE TO
PERSONAL RESTRAINT PETITION

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ORIGINAL

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TABLE OF CONTENTS

Table of Authorities	ii
I. Introduction to Reply	1
II. Argument	2
A. The Petitioner Is Not Advocating a New Rule of Criminal Procedure – <i>State v. Kolocotronis</i> , 73 Wash. 2d 92 (1968), Was Not Overruled by <i>Faretta v. California</i> , 422 U.S. 806 (1975), Nor Was It Overruled by <i>State v. Hahn</i> , 106 Wash. 2d 885 (1986).....	2
B. Because Mr. Rhome’s Direct Appeal Was Pending at the Time That <i>Indiana v. Edwards</i> , 128 S. Ct. 2379 (2008), Was Decided and Because Rhome Unsuccessfully Attempted to Stay Consideration of His Direct Appeal After Certiorari Was Granted in <i>Indiana v. Edwards</i> , There Is No Retroactivity Bar to Consideration of <i>Indiana v. Edwards</i> in This Case.	4
C. The Question of Prejudice	8
D. <i>State v. Hahn</i> , Which Misapplied <i>Faretta</i> , Was Clearly Overruled by <i>Indiana v. Edwards</i> Before Mr. Rhome’s Direct Appeal Became Final.....	13
E. Reply to the State’s Argument That the Trial Court Properly Exercised Its Discretion in Finding That Mr. Rhome’s Waiver of His Right to Counsel Was Knowing, Voluntary and Intelligent.....	14
III. CONCLUSION.....	18

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Arizona v. Fulminante</i> , 499 U.S. 279 (1991).....	9, 10
<i>Brecht v. Abrahamson</i> , 507 U.S. 619 (1993).....	9
<i>Cordova v. Baca</i> , 346 F.3d 924 (9th Cir. 2003)	10
<i>Faretta v. California</i> , 422 U.S. 806 (1975)	<i>passim</i>
<i>Indiana v. Edwards</i> , 128 S. Ct. 2379 (2008)	<i>passim</i>
<i>Neder v. United States</i> , 527 U.S. 1 (1986).....	12
<i>Robinson v. Ignacio</i> , 360 F.3d 1044 (9th Cir. 2004)	10
<i>Rose v. Clark</i> , 478 U.S. 570 (1986)	10, 12
<i>Satterwhite v. Texas</i> , 486 U.S. 249 (1988)	9
<i>Smith v. Robbins</i> , 528 U.S. 259 (2000).....	10
<i>Teague v. Lane</i> , 489 U.S. 288 (1989)	6, 7
<i>United States v. Cronin</i> , 466 U.S. 648 (1984)	10
<i>United States v. Erskine</i> , 355 F.3d 1161 (9th Cir. 2004).....	14
<i>United States v. Gonzalez-Lopez</i> , 548 U.S. 140 (2006).....	11, 12
<i>United States v. Olano</i> , 507 U.S. 725 (1993).....	10

STATE CASES

<i>In re Richardson</i> , 100 Wash. 2d 669, 675 P.2d 209 (1983)	8
<i>In re St. Pierre</i> , 118 Wash. 2d 321, 823 P.2d 492 (1992).....	6, 7, 8
<i>State v. Dhaliwal</i> , 150 Wash. 2d 559, 79 P.3d 432 (2003).....	9

<i>State v. Hahn</i> , 106 Wash. 2d 885, 726 P.2d 25 (1986).....	<i>passim</i>
<i>State v. Irizarry</i> , 111 Wash. 2d 591, 763 P.2d 432 (1988)	6, 7
<i>State v. Kolocotronis</i> , 73 Wash. 2d 92, 436 P.2d 774 (1968)...	<i>passim</i>
<i>State v. Madsen</i> , ___ Wash. 2d ___, 2010 WL 1077894 (Wash. 2010).....	1
<i>State v. Rafay</i> , 167 Wash. 2d 644, 222 P.3d 86 (2009)	1, 2, 15
<i>State v. Woodall</i> , 5 Wash. App. 901, 491 P.2d 680 (1972)	3

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. VI	11
U.S. Const. amend. XIV	2, 14
Wash. Const. art. I § 3.....	2, 14
Wash. Const. art. I § 22.....	1, 2

I. INTRODUCTION TO REPLY

This Court has recently addressed the right to self-representation under art. I, § 22 of the Washington State Constitution in two cases. *See State v. Madsen*, ___ Wash. 2d ___, 2010 WL 1077894 *6 (Wash. 2010) (holding that “the right to represent oneself is a fundamental right explicitly enshrined in the Washington Constitution and implicitly contained in the United States Constitution”), and *State v. Rafay*, 167 Wash. 2d 644, 222 P.3d 86 (2009) (holding that art. I § 22 of the state constitution affords a right of self-representation on appeal, a right not accorded by the United States Constitution).

Both *Rafay* and *Madsen* recognize that this right to self-representation is not absolute and there are reasonable limitations that can be placed on that right. *Madsen* at *3 (“The right to proceed *pro se* is neither absolute nor self executing”); *Rafay* at 652 (same, citing specifically to *State v. Kolocotronis*, 73 Wash. 2d 92, 98, 436 P.2d 774 (1968)). Neither *Rafay* nor *Madsen* involved a defendant who was mentally ill or had mental health problems that could interfere with his ability to represent himself. In *Rafay*, again citing

to *Kolocotronis*, this Court stated “that reasonable limits on the right may be necessary in some cases because of countervailing prudential and constitutional considerations.” *Id.* at 654.

The countervailing concerns in *Kolocotronis* were the defendant’s mental competency to intelligently waive the services of counsel and whether he had adequate mental competency to act as his own counsel.

II. ARGUMENT

A. **The Petitioner Is Not Advocating a New Rule of Criminal Procedure – *State v. Kolocotronis*, 73 Wash. 2d 92 (1968), Was Not Overruled by *Faretta v. California*, 422 U.S. 806 (1975), Nor Was It Overruled by *State v. Hahn*, 106 Wash. 2d 885 (1986).**

Kolocotronis specifically addressed the tension between a defendant’s right to appear and defend in person under art. I § 22 (amend. 10) of the State Constitution with his right to a fair trial and due process of law under art. I § 3. It found that these countervailing constitutional considerations may limit the constitutional right to self-representation. *Kolocotronis* at 97-99.

Faretta, decided under the United States Constitution’s Fourteenth Amendment due process clause, did not overrule

Kolocotronis, and did not create an absolute right to self-representation for mentally ill, but competent defendants. The Supreme Court made this clear in *Indiana v. Edwards*, 128 S. Ct. 2379, 2384 (2008), where it concluded that *Faretta* had not foreclosed requiring a mentally ill but competent defendant to accept counsel.

Faretta did not have to explicitly address this circumstance because *Faretta* was “literate, competent and understanding.” Moreover, “*Faretta* and later cases have made clear that the right of self-representation is not absolute (citations omitted).” *Indiana v. Edwards* at 2384. In fact, *Faretta* clearly signaled such a limitation was permissible because it

rested its conclusion in part upon pre-existing state law set forth in cases all of which are consistent with, and at least two of which expressly adopt, a competency limitation on the self-representation right. *See* 422 U.S., at 813, and n.9, 95 S. Ct. 2525 (citing 16 state-court decisions and two secondary sources).

Id. at 2386 (2008).

Footnote 9 in *Faretta* specifically cites to *State v. Woodall*, 5 Wash. App. 901, 491 P.2d 680 (1972), which relied exclusively on

Kolocotronis to uphold the trial court's decision to deny self-representation to a mentally ill but competent defendant. Thus, *Faretta* did not overrule *Kolocotronis*.

The state further argues that *Kolocotronis* was overruled by *State v. Hahn, supra*. State's Resp. at pp. 18-20. To the extent that *Hahn* can be read as overruling the decision in *Kolocotronis*, it is based on a misreading and misapplication of *Faretta* to a defendant who is mentally ill. Moreover, *Hahn* only addressed the issue in the context of the federal constitutional right to due process and did not disturb the state constitutional basis for the *Kolocotronis* decision. Finally, the continuing validity of *Kolocotronis* is underscored by this Court's recent citation to and reliance on *Kolocotronis* in *State v. Rafay, supra*.

B. Because Mr. Rhome's Direct Appeal Was Pending at the Time That *Indiana v. Edwards*, 128 S. Ct. 2379 (2008), Was Decided and Because Rhome Unsuccessfully Attempted to Stay Consideration of His Direct Appeal After Certiorari Was Granted in *Indiana v. Edwards*, There Is No Retroactivity Bar to Consideration of *Indiana v. Edwards* in This Case.

As argued in section A above, application of *Indiana v. Edwards* to Mr. Rhome's case would not establish a new rule of

criminal procedure in Washington, because the *Kolocotronis* decision already required consideration of a defendant's mental competency in ruling on a request to proceed *pro se*. However, to the extent that the state argues that the Court should be constrained from considering *Indiana v. Edwards* in its analysis or prevented from considering it with respect to Mr. Rhome's federal constitutional claim or its impact on the state constitutional claim, there is no retroactivity bar.

Indiana v. Edwards was decided on June 19, 2008. Certiorari had been granted on December 6, 2007.¹ 522 U.S. 1074. On December 19, 2007, after the briefs had been filed in Mr. Rhome's direct appeal, his counsel filed a motion for stay based on the grant of certiorari in *Indiana v. Edwards*. See App. A (Court of Appeals Docket); App. B (Motion for Stay).² The motion for stay was denied on January 29, 2008, and an unpublished decision affirming Mr. Rhome's conviction was filed on February 25, 2008. Mr. Rhome

¹ Certiorari was granted on the following question: "May states adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?"

² A stay was requested to "permit additional briefing on the question of whether Mr. Rhome should have been permitted to represent himself in this matter despite the challenged finding of competency." App. B at pp. 1-2.

filed a timely petition for review on March 18, 2008. While his petition for review was pending with the Washington Supreme Court, the United States Supreme Court decided *Indiana v. Edwards* on June 19, 2008. Rhome's petition for review was denied on December 2, 2008, and a mandate issued on December 31, 2008. *Id.*

In *In Re St. Pierre*, 118 Wash. 2d 321, 326, 823 P.2d 492, 495 (1992), the Washington Supreme Court adopted the retroactivity analysis set forth in *Teague v. Lane*, 489 U.S. 288 (1989). Under the *Teague/St. Pierre* retroactivity analysis, the critical issue is whether Mr. Rhome's case was final when *Indiana v. Edwards* was decided. "Final" for these purposes means a case in which a judgment of conviction has been rendered, the availability of appeal exhausted and the time for petitioning for certiorari has elapsed or a petition for certiorari has finally been denied. *St. Pierre* at 327.

The procedural history of *St. Pierre* is similar to that in *Rhome*. In *St. Pierre* the defendant's case was appealed to this Court and his conviction was affirmed. After *St. Pierre* was published but before his motion for reconsideration was denied, this Court decided *State v. Irizarry*, 111 Wash. 2d 591, 763 P.2d 432 (1988), which

presented an issue that Mr. St. Pierre had not raised in his direct appeal. After the motion for reconsideration was denied, St. Pierre brought a personal restraint petition seeking application of *Irizarry* to his case, even though that claim had not been raised in his earlier direct appeal.

Applying *Teague*, *St. Pierre* had no difficulty determining that Mr. St. Pierre's conviction was not final when *Irizarry* was decided. *Id.* at 327, 495 ("Since this court announced the result in *Irizarry* 8 days before denying petitioner's motion for reconsideration, petitioner's conviction was not yet final and he is entitled to retroactive application of the rule"). It sanctioned raising the *Irizarry* issue for the first time in the personal restraint petition, rejecting "any notion an issue may become final for the purposes of retroactivity analysis before the finality of the case as a whole." It noted that, "[a] contrary approach would encourage parties to maintain seemingly frivolous claims on appeal in the hope another decision may announce a new rule. Such an approach would result in an inefficient use of judicial resources and distract parties from issues of consequence." *Id.*

Applying these principles to Mr. Rhome's case, to the extent that the Court considers *Indiana v. Edwards* a new rule or a rejuvenation of this Court's previous rule in *State v. Kolocotronis*, there is no retroactivity bar to the application of these principles to Mr. Rhome's case.

C. The Question of Prejudice

The state argues that Mr. Rhome must establish by a preponderance of the evidence that he was actually and substantially prejudiced by a violation of his constitutional rights or fundamental error of law. State Resp. at pp. 11-12, and 24-29. In his original petition Mr. Rhome established prejudice under this standard. See Petition at pp. 26-30, 35, 45. Moreover, given the nature of the issues presented by this petition, these constitutional errors should be considered *per se* prejudicial. *In re St. Pierre* at 329, 496 ("some errors which result in *per se* prejudice on direct review will also be *per se* prejudicial on collateral attack"). For example, some ineffective assistance of counsel claims based on a conflict of interest which adversely affected the attorney's performance result in presumed prejudice. *In re Richardson*, 100 Wash. 2d 669, 679,

675 P.2d 209 (1983); *State v. Dhaliwal*, 150 Wash. 2d 559, 79 P.3d 432 (2003).

Each of the grounds presented by this Petition is structural error, i.e., a defect that fundamentally undermined the reliability and fairness of Mr. Rhome's trial. *Arizona v. Fulminante*, 499 U.S. 279 (1991). The United States Supreme Court has repeatedly reaffirmed that "[s]ome constitutional violations...by their very nature cast so much doubt on the fairness of the trial process that, as a matter of law, they can never be considered harmless." *Satterwhite v. Texas*, 486 U.S. 249, 256 (1988). This is true whether review takes place on direct appeal or in a post-conviction setting such as federal habeas corpus review. *Brecht v. Abrahamson*, 507 U.S. 619, 629-30, 638 (1993) (changing the standard for review of trial type constitutional errors on habeas review, but leaving intact the automatic reversal for structural defects).

"Structural errors" must "be corrected regardless of their effect" on the trial because they violate "basic protections [without which] a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment

may be regarded as fundamentally fair.” *United States v. Olano*, 507 U.S. 725, 735 (1993) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991) and *Rose v. Clark*, 478 U.S. 570, 577-78 (1986)).

When a defendant is actually or constructively denied the assistance of counsel, “[n]o specific showing of prejudice [is] required,” because “the adversary process itself [is] presumptively unreliable.” *United States v. Cronin*, 466 U.S. 648, 659 (1984); *see also Smith v. Robbins*, 528 U.S. 259, 286 (2000) (presume prejudice when a defendant has suffered an actual or constructive denial of assistance of counsel altogether); *Robinson v. Ignacio*, 360 F.3d 1044, 1061 (9th Cir. 2004) (“Because of the fundamental importance of the right to counsel, Robinson need not prove prejudice and harmless error analysis is not required”); *Cordova v. Baca*, 346 F.3d 924, 930 (9th Cir. 2003) (defective waiver of right to counsel when accused asserted his to self representation was *per se* prejudicial: denial of right to counsel requires “automatic reversal of a conviction” regardless of “reason for the denial – whether it be an

oversight on the part of the court, a failure to give proper warning or some other reason).³

Applying these principles to Mr. Rhome's case, if the Court finds error with respect to any one of the grounds raised in his Petition, prejudice should be presumed because the error would constitute a structural defect in the trial proceedings. If this Court finds that the superior court erred in permitting Mr. Rhome to represent himself, whether that error is based on his federal constitutional claim, his state constitutional claim under *Kolocotronis*, or solely because the superior court conducted an inadequate colloquy to establish a proper waiver of counsel, the constitutional violation, whatever its source, had the same effect. It "necessarily render[ed the] trial fundamentally unfair' [and] deprived [Mr. Rhome] of 'basic protections' without which 'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence...and no criminal punishment

³ The denial of a defendant's Sixth Amendment right to counsel of choice is also considered a structural error, even though that right is not derived from the "Sixth Amendment's purpose of ensuring a fair trial." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-149 (2006).

may be regarded as fundamentally fair.” *Neder v. United States*, 527 U.S. 1 at 8-9, (quoting *Rose v. Clark*, 478 U.S. 570, 577-578 (1986)).

Moreover, fundamental unfairness is not the only criterion used for defining structural error. It may also be based on “the difficulty of assessing the effect of the error.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, at 148-50 and n.4 (2006) (concluding that denial of right to counsel of choice should be deemed “structural” on this reasoning – given that “[i]t is impossible to know what different choices the rejected counsel would have made, and to quantify the impact of those different choices on the outcome of the proceedings”).

Similarly, erroneously permitting a mentally ill defendant who cannot competently represent himself to act as his own lawyer should be considered structural error, both because the adversary process itself is rendered fundamentally unfair, and because it may be impossible to know what different choices counsel would have made and the impact those choices would have had on the proceedings.

D. *State v. Hahn*, Which Misapplied *Faretta*, Was Clearly Overruled by *Indiana v. Edwards* Before Mr. Rhome's Direct Appeal Became Final.

The state's brief relies heavily on *State v. Hahn* in support of its claim that it overruled *Kolocotronis* and that it prohibited the trial court from considering Mr. Rhome's mental illness in ruling on his motion for self-representation. State's Resp. at pp. 18-20. *Hahn*, limiting its analysis to the *federal* constitutional right to self-representation, concluded that the *federal* right to self-representation trumped any countervailing constitutional considerations and prudential concerns that *Kolocotronis* identified which should limit the right to self-representation.

Indiana v. Edwards established two points relevant to *Hahn*:

(1) that *Hahn* was flat-out wrong in concluding that *Faretta* effectively overruled *Kolocotronis*; and (2) it overruled *Hahn*'s conclusion that the *federal* constitutional right to self-representation trumped the other countervailing constitutional and prudential concerns. Thus, once *Indiana v. Edwards* was decided, the state constitutional requirements of *Kolocotronis* became mandatory and because Mr. Rhome's case was still in the appellate pipeline, he

should receive the benefit of *Hahn* being overruled on this particular point.⁴

E. Reply to the State's Argument That the Trial Court Properly Exercised Its Discretion in Finding That Mr. Rhome's Waiver of His Right to Counsel Was Knowing, Voluntary and Intelligent

The state argues that the standard of review for this claim is abuse of discretion. While the Washington case law applies an abuse of discretion standard, federal law concerning the validity of a waiver of the constitutional right to counsel strongly argues for a *de novo* standard of review. See *United States v. Erskine*, 355 F.3d 1161, 1166 (9th Cir. 2004) (the validity of a *Faretta* waiver is a mixed question of law and fact reviewed *de novo*).

Moreover, if the state is right that *Hahn* overruled *Kolocotronis* and that it prohibited a trial court from considering the defendant's mental problems in conducting the *Faretta* counsel waiver colloquy, then the trial court abused its discretion as a matter of law because he no doubt applied the incorrect legal standard set

⁴ Rhome also argues in Ground 1 of his Personal Restraint Petition the due process question left open by *Indiana v. Edwards* under the federal constitution, i.e., that as with *Kolocotronis* and art. I § 3 of the Washington Constitution, the Fourteenth Amendment of the U.S. Constitution should also be interpreted to *require* consideration of the mentally ill defendant's competency to represent himself when ruling on such a motion. This is the federal due process question left open by *Indiana v. Edwards*.

forth in *State v. Hahn*. A court abuses its discretion when its ruling is based on an erroneous view of the law or if it rests on facts that are unsupported by the record. *State v. Rafay*, 167 Wash. 2d 644, 655, 222 P.3d 86, 91 (2009).

King County Superior Court Judge Canova conducted Mr. Rhome's competency hearing and ultimately found him competent to stand trial. A different judge, King County Superior Court Judge Kessler, subsequently conducted the *Faretta* counsel waiver colloquy. There is no evidence in the record that Judge Kessler had reviewed, much less considered, a transcript of Mr. Rhome's competency hearing, or had considered any of the mental health reports submitted in support of the parties' positions at that competency hearing.

Nevertheless, Judge Kessler proceeded with a routine waiver of counsel colloquy and made no effort to inquire into either Mr. Rhome's competency to represent himself or into how his mental condition could possibly affect the requirement that his Sixth Amendment and state constitutional waiver of counsel be voluntary, knowing and intelligent.

If the state's reading of *Hahn* is correct, then one should logically conclude that Judge Kessler, aware of *State v. Hahn*, assumed that Mr. Rhome's mental health problems and deficiencies should have no bearing on his *Faretta* inquiry, thus explaining his failure to make inquiry and findings on the specific question of whether Mr. Rhome was mentally competent to represent himself. Thus, Judge Kessler's conclusion that that waiver was knowing and intelligent rests on an inadequate and unsupported factual record. By applying an incorrect legal standard and failing to make an adequate factual inquiry, the trial court abused its discretion in granting the defendant self-representation and accepting his counsel waiver.

In addition to Mr. Rhome's documented history of mental health problems, the court should have been on notice of the need to conduct a penetrating inquiry when Mr. Rhome began the colloquy by expressing delusional and paranoid thoughts concerning jail guards stealing his mail and his belief that the guards were sexually involved with his co-defendant Kialani Brown. 8/30/05 RP 5. Rather than recognizing this red flag as a signal to further investigate

Mr. Rhome's level of functioning and understanding, the court limited its focus to issues such as Rhome's understanding of the Rules of Evidence, the penalties that he was facing and the seriousness of the charges against him.

Mr. Rhome not only expressed paranoid and delusional thoughts, he had difficulty tracking the topics that the superior court judge attempted to cover during the colloquy. *See* 8/30/05 RP 9-11. After the judge explained the need to object to evidence for purposes of appeal, Rhome responded with a discussion of the prosecution wrongfully withholding evidence; once Rhome focused on that point, he dismissed it by concluding that he would simply object to anything the prosecutor "tries to drag against me"; and concluded with a nonsensical statement about why he was making the decision. 8/30/05 RP 12.

Despite all of these red flags, Mr. Rhome's competency was not raised or addressed in any meaningful manner during the colloquy. *State v. Hahn* recognized that "[w]hether there has been an intelligent waiver of counsel is an *ad hoc* determination which depends upon the particular facts and circumstances of the case,

including the background, experience and conduct of the accused.”

(citations omitted.) (emphasis added.) 106 Wash. 2d at 901.

Because the superior court judge who conducted the counsel waiver colloquy made no significant inquiry into Mr. Rhome’s background, experience and conduct, he could not, and did not, make an adequate determination.

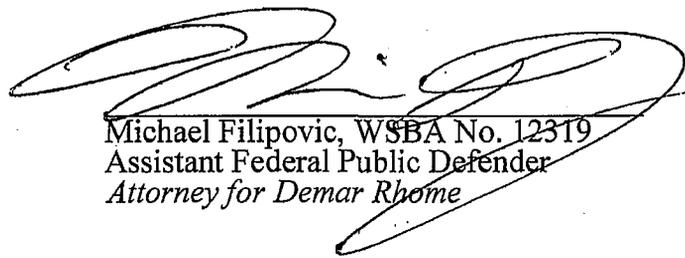
III. CONCLUSION

For the foregoing reasons, this Court is requested to grant the Petition and direct that Mr. Rhome be given a new trial.

Alternatively, Petitioner requests that this Court remand for a reference hearing.

DATED this 16th day of April, 2010.

Respectfully submitted,



Michael Filipovic, WSBA No. 12319
Assistant Federal Public Defender
Attorney for Demar Rhome

CERTIFICATE OF SERVICE BY MAIL

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Deborah H. Dwyer, Senior Deputy Prosecuting Attorney, King County Prosecuting Attorney, W554 King County Courthouse, 516 Third Ave., Seattle, WA 98104, containing a copy of Petitioner's Reply to State's Response to Personal Restraint Petition, Cause No. 83788-1, in the Supreme Court of the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of April, 2010.



Mary Pekich, Legal Assistant

APPENDIX

A

CASE EVENTS # 580728

Date	Item	Action	Participant	Event Detail
05/22/2009	Exhibit <i>Comment: 1 env returned to county ack let. rec. 06/03/09</i>	Sent by Court		Yes
12/31/2008	Disposed	Status Changed		
12/31/2008	Mandate	Filed		
12/02/2008	Court of Appeals case file (pouch) <i>Comment: from sc 1 coa 2 tcp</i>	Received by Court		
12/02/2008	Prv denied <i>Comment: ent 11/6/08</i>	Received by Court	SUPREME COURT	
05/12/2008	Memorandum <i>Comment: ie #81551-8</i>	Received by Court	SUPREME COURT	
05/06/2008	Court of Appeals case file (pouch) <i>Comment: to sc 1 coa 2 tcp</i>	Sent by Court		
03/18/2008	Petition for Review	Filed	LINK, GREGORY CHARLES	
03/05/2008	Cost Bill	Filed	DWYER, DEBORAH A.	
02/25/2008	Decision Filed	Status Changed		
02/25/2008 • 02/25/2008	Opinion • Trial Court Action	Filed • Not Required	ELLINGTON, ANNE	Yes
01/09/2008	Heard and awaiting decision	Status Changed		
01/09/2008	Oral Argument Hearing <i>Comment: 9:30 AM Baker William Grosse C. Kenneth Ellington Anne</i>	Scheduled		
12/19/2007 • 01/29/2008	Motion for Stay • Order on Motions	Filed • Filed	LINK, GREGORY CHARLES	Yes
11/28/2007	Set on a calendar	Status Changed		
11/28/2007	Oral Argument Setting Letter	Sent by Court		
08/27/2007	Screened	Status Changed		
08/22/2007 • 08/22/2007 • 08/24/2007	Appellants Reply brief <i>Comment: snt to prntr 9/27</i> • Motion to Extend Time to File • Ruling on Motions	Filed • Filed • Filed	APPELLATE PROJECT, WASHINGTON	Yes
07/09/2007	Ready	Status Changed	JOHNSON, RICHARD D	
07/09/2007 • 05/14/2007	Respondents brief <i>Comment: snt to prntr 8/20</i>	Filed • Filed	DWYER, DEBORAH A.	Yes

Event Data Screen

<ul style="list-style-type: none"> • 05/15/2007 • 06/14/2007 • 06/21/2007 • 07/05/2007 • 07/09/2007 • 08/20/2007 	<ul style="list-style-type: none"> • Motion to Extend Time to File <ul style="list-style-type: none"> • Ruling on Motions • Motion to Extend Time to File <ul style="list-style-type: none"> • Ruling on Motions • Motion to Extend Time to File <ul style="list-style-type: none"> • Ruling on Motions • Letter 	<ul style="list-style-type: none"> • Filed • Filed • Filed • Filed • Filed • Sent by Court 		
<ul style="list-style-type: none"> 07/06/2007 • 07/23/2007 • 07/17/2007 	Supplemental Designation of Clerk's Papers <ul style="list-style-type: none"> • Exhibit • Supplemental Clerk's Papers 	<ul style="list-style-type: none"> Filed • Filed • Filed 	DWYER, DEBORAH A.	<u>Yes</u>
<ul style="list-style-type: none"> 06/19/2007 • 06/19/2007 	Memorandum <i>Comment: Fwding letter for pro se motion filed in Supreme CT and trans. to COA</i> <ul style="list-style-type: none"> • Letter 	<ul style="list-style-type: none"> Received by Court • Filed 	SUPREME COURT	
06/04/2007	Letter	Filed	Rhome, Demar Shaunte	
06/01/2007	Letter	Filed	Rhome, Demar Shaunte	
05/22/2007	Letter	Filed	Rhome, Demar Shaunte	
05/18/2007	Letter	Filed	Rhome, Demar Shaunte	
05/01/2007	Report of Proceedings <i>Comment: 2/28/06-Hon. MacInnes Cr Girgus Rec 5/10</i>	Filed		<u>Yes</u>
05/01/2007	Supplemental Statement of Arrangements	Filed	DWYER, DEBORAH A.	<u>Yes</u>
04/23/2007	Letter	Filed	Rhome, Demar Shaunte	
<ul style="list-style-type: none"> 04/18/2007 • 04/18/2007 	Statement of Additional Grounds for Review <ul style="list-style-type: none"> • Letter 	<ul style="list-style-type: none"> Filed • Sent by Court 	Rhome, Demar Shaunte	<u>Yes</u>
04/17/2007	Notice of Appearance	Filed	DWYER, DEBORAH A.	
03/29/2007	Memorandum	Filed	Rhome, Demar Shaunte	
03/22/2007	Memorandum	Filed	Rhome, Demar Shaunte	

03/19/2007	Memorandum	Filed	Rhome, Demar Shaunte	
03/16/2007 • 03/30/2007	Supplemental Designation of Clerk's Papers • Supplemental Clerk's Papers	Filed • Filed	LINK, GREGORY CHARLES	Yes
03/13/2007 • 01/24/2007 • 02/02/2007 • 02/09/2007 • 04/06/2007	Appellants brief <i>Comment: Due 1/22-10 day ltr snt 1/24</i> • Court's Mot to Dismiss for Fail to file • Motion to Extend Time to File • Ruling on Motions • Clerk's Notice to Crim App Re Statement	Filed • Filed • Filed • Filed • Sent by Court	LINK, GREGORY CHARLES	Yes
03/02/2007	Memorandum	Filed	Rhome, Demar Shaunte	
01/25/2007	Memorandum <i>Comment: ie status of case</i>	Filed	Rhome, Demar Shaunte	
01/24/2007	Set for Motion Calendar	Status Changed	JOHNSON, RICHARD D	
01/11/2007	Memorandum <i>Comment: Documents titled "motion to be set free from prison; motion for case to be heard in asap; statement of cruelty physical mistreatment; argument statement of facts" placed in file</i>	Filed	Rhome, Demar Shaunte	
01/10/2007	Affidavit of Service <i>Comment: Declaration of Svc of VRP's on App</i>	Filed	APPELLATE PROJECT, WASHINGTON	
12/20/2006	Memorandum <i>Comment: Document titled "arguments for court to give new trial" placed in file</i>	Filed	Rhome, Demar Shaunte	
12/11/2006	Memorandum <i>Comment: ie "statement of facts"</i>	Received by Court	Rhome, Demar Shaunte	
12/08/2006	Motion Heard	Status Changed		
12/08/2006 • 12/12/2006	Motion - Other <i>Comment: "Motion to tell me if court will grant me a new trail"</i> • Ruling on Motions	Filed • Filed	Rhome, Demar Shaunte	Yes
12/07/2006 • 08/28/2006 • 09/01/2006 • 09/27/2006 • 09/29/2006	Report of Proceedings <i>Comment: 3/6, 3/7, 3/8, 3/9, 4/14/06-Hon. MacInnes**Due 10/30-10 day ltr snt 11/8 CR Girgus Rec 12/13</i> • Motion to Extend Time to File • Ruling on Motions • Motion to Extend Time to File	Filed • Filed • Filed • Filed		Yes

Event Data Screen

10/24/2006		Filed		
• 10/26/2006	• Ruling on Motions	• Filed		
• 11/08/2006	• Motion to Extend Time to File	• Filed		
• 12/12/2006	• Ruling on Motions	• Filed		
	• Court's Mot to Dismiss for Fail to file			
	• Ruling on Motions			
12/04/2006	Motion - Other	Filed	Rhome, Demar	<u>Yes</u>
• 12/12/2006	<i>Comment: "Motion to Find Out if Court Will Garnt New Trial Easily"</i>	• Filed	Shaunte	
	• Ruling on Motions			
12/01/2006	Letter	Filed	Rhome, Demar	
			Shaunte	
11/20/2006	Motion - Other	Filed	Rhome, Demar	<u>Yes</u>
• 12/12/2006	<i>Comment: Motion for Case not to be dismissed and given new attorney</i>	• Filed	Shaunte	
	• Ruling on Motions			
11/20/2006	Report of Proceedings	Filed		<u>Yes</u>
	<i>Comment: 3/1/06-Hon. MacInnes</i>			
	CR Girgus			
	Rec 11/21			
11/20/2006	Report of Proceedings	Filed		<u>Yes</u>
	<i>Comment: 2/22, 23, 27, 28/06-Hon. MacInnes</i>			
	CR Girgus			
	Rec 11/21			
11/17/2006	Memorandum	Received by Court	Rhome, Demar	
	<i>Comment: ie removal of counsel</i>		Shaunte	
11/08/2006	Memorandum	Received by Court	Rhome, Demar	
	<i>Comment: ie status of case placed in file w/o action</i>		Shaunte	
11/08/2006	Motion - Other	Filed	Rhome, Demar	<u>Yes</u>
• 11/16/2006	<i>Comment: Motion to Remove Counsel</i>	• Filed	Shaunte	
	• Ruling on Motions			
11/08/2006	Set for Motion Calendar	Status Changed	JOHNSON,	
			RICHARD D	
11/06/2006	Memorandum	Received by Court	Rhome, Demar	
	<i>Comment: ie status of case placed in file w/o action</i>		Shaunte	
11/02/2006	Memorandum	Received by Court	Rhome, Demar	
	<i>Comment: ie status of case placed in file w/o action</i>		Shaunte	
10/13/2006	Letter	Sent by Court		
	<i>Comment: Copy of Not. Rul. entered 9/29/06 snt 10/2/06 returned by PO marked as "return to sender-not deliverable as addressed-unable to forward"</i>			

	<i>placed in file w/o action</i>			
09/22/2006	Memorandum <i>Comment: ie status of case</i>	Received by Court	Rhome, Demar Shaunte	
08/31/2006	Other filing <i>Comment: "Report to Court"</i>	Filed	Rhome, Demar Shaunte	
08/22/2006	Report of Proceedings <i>Comment: 6/27, 8/30, 11/14/05, 2/2/06-Hon. Kessler</i> Taped Rec 8/24	Filed		<u>Yes</u>
08/22/2006	Report of Proceedings <i>Comment: 6/8/05-Hon. Canova</i> Taped Rec 8/24	Filed		<u>Yes</u>
06/23/2006	Statement of Arrangements	Filed	APPELLATE PROJECT, WASHINGTON	<u>Yes</u>
06/16/2006 • 06/22/2006	Designation of Clerks Papers • Clerk's Papers	Filed • Filed	APPELLATE PROJECT, WASHINGTON	<u>Yes</u>
05/11/2006	Perfection Letter	Sent by Court	JOHNSON, RICHARD D	
05/11/2006	Court's Mot to Dismiss for Fail to file <i>Comment: f/f svc on noa</i>	Filed	JOHNSON, RICHARD D	<u>Yes</u>
05/11/2006	Indigent Defense Counsel Assigned	Filed	APPELLATE PROJECT, WASHINGTON	
04/19/2006	Case Received and Pending	Status Changed		
04/14/2006	Judgment & Sentence	Filed	KING COUNTY SUPERIOR COURT	
04/14/2006	Order of Indigency in Superior Court	Filed	KING COUNTY SUPERIOR COURT	
04/14/2006 • 05/18/2006	Notice of Appeal • Affidavit of Service	Filed • Filed		

APPENDIX

B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,
Respondent,

v.

DEMAR RHOME,
Appellant.

No. 58072-8-I

MOTION TO
STAY

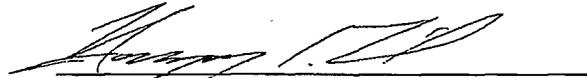
CO-1
D-1
1/12/2007

Appellant, Demar Rhome, through the undersigned counsel requests the Court to stay this case pending resolution in the United States Supreme Court of Indiana v. Edwards, 07-208.

On December 7, 2007, the Supreme Court granted a petition for certiorari in Edwards, on the question: "May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?" Because Mr. Rhome represented himself at trial following a contested finding of competency, the Court's resolution of Edwards may be relevant to the proper resolution of Mr. Rhome's appeal. A stay of the proceedings in this matter would permit additional briefing on the question of whether Mr. Rhome should have been permitted to represent himself in this matter despite the challenged finding of

competency. Thus, counsel asks this Court to stay this case pending the outcome of Edwards.

Respectfully submitted this 19th day of December, 2007.



GREGORY C. LINK – 25228
Washington Appellate Project - 91052

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SUPREME COURT
STATE OF WASHINGTON

10 APR 16 AM 9:30

BY RONALD R. CARPENTER

CLERK

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DECLARATION OF MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, a true copy of the document filed under **Court of Appeals No. 58072-8-I** to which this declaration is affixed/attached, was mailed or caused to be delivered to each attorney or party or record for respondent **Deborah Dwyer - King County Prosecuting Attorney**, appellant and/or other party, at the regular office or residence or drop-off box at the prosecutor's office.


MARIA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: December 19, 2007

ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

OFFICE RECEPTIONIST, CLERK

To: Mary Pekich
Subject: RE: In Re the Restraint of: Demar Rhome; No. 83788-1; Petitioner's Reply to State's Response to Personal Restraint Petition

Rec. 4-16-10

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Mary Pekich [mailto:Mary_Pekich@fd.org]
Sent: Friday, April 16, 2010 9:16 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: In Re the Restraint of: Demar Rhome; No. 83788-1; Petitioner's Reply to State's Response to Personal Restraint Petition

Attached for filing in the above-referenced matter are Petitioner's Reply to State's Response to Personal Restraint Petition and the appendices thereto.

Mary Pekich
Legal Assistant
Federal Public Defender
(206) 553-1100 - voice
(206) 553-0120 - fax
mary_pekich@fd.org