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SUPREME COURT NO. 89693-3
COURT OF APPEALS NO. 59995-0-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT OF ROLAND SPEIGHT

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SAN JUAN COUNTY

The Honorable Alan R. Hancock

SUPPLEMENTAL BRIEF OF PETITIONER

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 ORIGINAL

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A. ISSUES DISCUSSED IN SUPPLEMENTAL BRIEF

This Court accepted the court of appeals' certification of petitioner's case on the following issues:

Whether the personal restraint petitioners in these cases suffered violations of their rights to a public trial, and if so, whether they must establish actual and substantial prejudice stemming from such violations before they are entitled to relief.

Order of Certification, attached as Appendix A; Ruling Accepting Certification attached as Appendix B.¹

B. SUPPLEMENTAL STATEMENT OF FACTS

1. Procedural Facts

Following a jury trial in May 2005, Speight was convicted of two counts of second degree rape. Supp. Brief of Petitioner, Appendix B. In 2005, Speight appealed his convictions and was represented by undersigned counsel. See November 27, 2006 unpublished opinion in case no. 56760-8-I (Supp. Brief of Petitioner at Appendix E).

The trial court ruled on the parties' motions in limine in chambers in the presence of only the judge, counsel, petitioner, court clerk, court reporter and a sheriff's deputy. Supp. Brief of Petitioner at 2-3, Appendix G, 4-28. Likewise, the court conducted individual voir dire in chambers in the presence of only the same individuals. Supp. Brief of Petitioner at 3-4,

Appendix H, at 10-72. The court did not analyze the Bone-Club² factors before conducting private rulings and voir dire. Id.

On Speight's direct appeal, the public trial issue was not raised despite the fact that a courtroom closure was clearly prohibited by existing case law. In re Personal Restraint of Morris, 176 Wn.2d 157, 167, 288 P.3d 1140 (2012) (lead opinion) and 174 (Chambers, J., concurring); see also November 27, 2006 unpublished opinion in case no. 56760-8-I. The court affirmed Speight's convictions. Id.

Having failed to raise the public trial issue on Speight's direct appeal, and recognizing it should have been raised under then-existing case law, undersigned counsel filed this personal restraint petition on May 7, 2007 – challenging the court's closure of pre-trial rulings, as well as voir dire, as violating Speights' public trial rights. Supp. Brief of Petitioner.

The claims raised by undersigned counsel were guided by the holding of In re Personal Restraint of Orange, 152 Wn.2d 795, 100 P.3d 291 (2004) for the proposition that Speight was entitled to relief based on the trial court's error, as well as undersigned counsel's failure to raise the

¹ This Court also accepted certification of In re Personal Restraint Petition of Richard Coggin, pursuant to the same orders.

² State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 629 (1984).

issue on direct appeal, notwithstanding any ineffectiveness claim. Supp. Brief of Petitioner at 8 (citing Orange, 152 Wn.2d at 814).

Following this Court's decisions in State v. Momah, 167 Wn.2d 140, 217 P.3d 321 (2009), and State v. Strode, 167 Wn.2d 222, 217 P.3d 310 (2009), the court ordered supplemental briefs, which were filed in April 2010. Appendix C.

In September 2010, the court stayed Speight's petition pending In re Morris, 176 Wn.2d 157 (2012). Appendix D. Following this Court's decision, the court ordered supplemental briefs addressing Morris, as well as this Court's decisions in State v. Wise³ and State v. Paumier,⁴ which were filed in June 2013. Appendix E.

Speight's petition thereafter was stayed pending In re Personal Restraint of Hartman, No. 81225-0, but subsequently certified to this Court following the dismissal of Hartman's petition. Appendix A, F.

2. Facts Pertaining to Courtroom Closure

At a pre-trial telephonic conference held May 23, 2005, the parties and court discussed a jury questionnaire, apparently provided by the court:

THE COURT: Okay. Thank you very much, counsel.

³ State v. Wise, 176 Wn.2d 1, 288 P.3d 1113 (2012).

⁴ State v. Paumier, 176 Wn.2d 29, 288 P.3d 1126 (2012).

Let me just ask, since I know you've inquired about it informally, do counsel plan to have a written questionnaire for the jury panel?

MS. KENIMOND [defense counsel]: Your Honor, I have it in my hand, and it is agreed to. Shall I give it to the clerk to ask that it be reproduced?

THE COURT: Well, we'd like to have counsel make the necessary copies of it, if possible.

MR. SILVERMAN [prosecutor]: I believe it was provided by the Court and defense attorney indicates she feels it's appropriate. I've looked it over, Your Honor. I have no objection to it. Since it is an alleged sexual assault, sometimes having a questionnaire make it easier for the jurors, if you find that appropriate.

THE COURT: Yes. I think it is appropriate to have a written questionnaire like this. I do want to make sure there's something in there that indicates that the person answering the questions can be interviewed individually and not in the presence of other members of the panel. Is there something like that in there?

MR. SILVERMAN: I believe that Your Honor has a cover sheet that says to prospective witnesses that I believe covers those issues, and we'll make sure that that cover sheet accompanies the questionnaire.

IRP (5/23/05) 5-6 (emphasis added).

The court's cover page provided in relevant part:

Some of these questions may call for information of a personal nature that you may not want to discuss in public. If you feel that your answer to any questions may invade your privacy or be embarrassing to you, you may so indicate on the form that you would prefer to discuss your answer in private. The court will give you an opportunity

to explain your request for confidentiality outside the presence of the other jurors.

See Cover Sheet and Questionnaire, attached as Appendix G. The cover sheet was signed solely by the judge. Appendix G.

At the end of the questionnaire, jurors were asked:

If you have answered "Yes" to any of the above questions, would you prefer that the attorneys question you individually in court, or would you be comfortable discussing your answers in front of others?

I request individual questioning.

I do not request individual questioning.

Appendix G (emphasis added).

On May 24, 2005, while the jury was filling out the questionnaires, the parties and the judge went privately into chambers, whereupon the judge ruled on several pretrial motions. Supp. Brief of Petitioner at 2-3, Appendix G, 4-28.

The judge thereafter reviewed the jurors' responses, identified those who requested individual questioning, and sent the clerk to bring back the first of the 14 jurors who would be questioned privately in the judge's chambers. Supp. Brief of Petitioner, Appendix H at 9-10. The court, the prosecutor and defense counsel subsequently inquired individually of juror 3, as well as jurors 5, 7, 8, 10, 22, 15, 21, 24, 28, 45,

23,⁵ 13 and 38. Supp. Brief of Petitioner, Appendix H at 10-72. Jurors 3, 5, 10, 22, 15 and 38 were excused for cause during this private in-chambers questioning. Supp. Brief of Petitioner, Appendix H at 14, 17, 35, 40, 43, 72.

There is no indication the trial judge advised Speight of his right to open voir dire or expressly afforded him the chance to object to private questioning. There is no indication the judge ever considered Speight's right to a public trial.

Indeed, the court's comments indicate its primary concern was to protect the jurors' privacy. To juror 3, the court stated:

We're gathered here in chambers, as you know, because you had requested to be questioned outside the presence of the other jurors, and we'll certainly honor that request. I want you to know we're going to keep these as private as possible. It is required that the attorneys and the defendant be present for this process. So we're doing the best we can, ma'am.

Supp. Brief of Petitioner, Appendix H at 10. With the exception of juror 23, the court offered this same explanation to all other jurors who were questioned individually in chambers. Supp. Brief of Petitioner, Appendix H at 15, 18, 22, 27-28, 37, 42, 44, 49, 53, 56, 62, 66.

⁵ Juror 23 was questioned in chamber, but not because of her answers to the questionnaire. She forgot to check the box on her juror profile indicating she did not have a felony conviction. SBOP, Appendix H at 60-61.

C. SUPPLEMENTAL ARGUMENT

1. SPEIGHT'S CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL WAS VIOLATED BY THE COURT'S PRIVATE RULINGS AND INDIVIDUAL VOIR DIRE CONDUCTED IN CHAMBERS.

Because the trial court did not analyze the Bone-Club factors before conducting private rulings and private voir dire, Speight's right to a public trial was violated. Under both the Washington and United States Constitutions, a defendant has a constitutional right to a speedy and public trial. Const. art. 1, § 22; U.S. Const. amend. VI. Additionally, the public and the press have an implicit First Amendment right to a public trial. U.S. Const. amend. 1; Waller v. Georgia, 467 U.S. 39, 46, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984).

The temporary full closure of pre-trial proceedings can violate a defendant's constitutional right to a public trial. See Bone-Club, 128 Wn.2d 254 (1995) (temporary full closure of suppression hearing during officer's testimony required new trial). Improper closure of even a portion of jury voir dire can likewise violate a defendant's constitutional public trial right. Orange, 152 Wn.2d at 812.

At the outset, it should be noted the state concedes the individual questioning of jurors in chambers was closed to the public. Response to Pers. Rest. Petition at 5. At the time of initial briefing, the state argued the

court's in-chambers rulings was not closed. Id. Since then, however, this Court has held that a member of the public would not recognize a judge's chambers as a public place he or she could enter. Wise, 176 Wn.2d at 12 (closure occurred when the trial court questioned prospective jurors in chambers, because the questioning occurred in a room that is ordinarily not accessible to the public) (citing State v. Strode).⁶ Any argument the proceedings were not closed therefore should be rejected.

As this Court recently reconfirmed in Wise and Paumier, private questioning of jurors in chambers in the absence of consideration of the Bone-Club⁷ factors – as here – is structural error that is presumed prejudicial and requires reversal of the conviction. In Wise, the judge instructed the jurors that if there was anything they did not feel comfortable discussing in a group setting to let the court know and they could be questioned privately in chambers. Ten jurors were questioned in chambers, two at the jurors' request and eight at the court's direction, due

⁶ State v. Strode, 167 Wn.2d 222, 217 P.3d 310 (2009) (in chambers questioning of jurors and for cause challenges in absence of consideration of Bone-Club factors violated defendant's right to a public trial).

⁷ The five criteria that a trial court must consider on the record in order to close trial proceedings to the public are: (1) proponent must make some showing of compelling interest, and where that need is based on right other than accused's right to fair trial, proponent must show serious and imminent threat to that right; (2) anyone present when closure motion is made must be given opportunity to object; (3) proposed method for curtailing open access must be least restrictive means available for protecting threatened interests; (4) court must weigh competing interests of proponent and the public; and (5) order must be no broader in its application or duration than necessary to serve its purpose. Bone-Club, 128 Wn.2d at 258-61.

to the jurors' responses to questions by the court. The record reflected that the trial judge, the prosecutor and defense counsel were present in chambers for the questioning. Of the ten jurors, six were excused for cause. Wise, 176 Wn.2d at 6-8.

Before going into chambers, the court did not consider the right to a public trial, alternatives to closure or other Bone-Club factors. The record did not reflect whether any members of the public were present in the courtroom besides the venire. Neither the state nor the defense objected to conducting a portion of voir dire in the judge's chambers. The questioning in chambers was recorded and transcribed just like the portion of voir dire done in the open courtroom. Wise, 176 Wn.2d at 8.

But because the trial court did not consider the Bone-Club factors before closing the proceeding, the in-chambers questioning of jurors violated Wise's public trial right. Wise, Wn.2d at 12-13. Importantly, this Court found no basis to distinguish Wise's case from the other cases in which it had found a violation based on the trial court's failure to expressly consider the Bone-Club factors on the record:

We do not find any discussion by the trial court in the record that would allow us to distinguish this case like we did in Momah¹⁸¹ based on constructive consideration of

⁸ State v. Momah, 167 Wn.2d 140, 152, 217 P.3d 321 (2009) (although de factor closure occurred, private questioning of jurors did not violate Momah's right to a public trial, as trial court was aware of right to public trial, implicitly considered Bone-Club factors and

the Bone-Club factors. See Strode, 167 Wn.2d at 233, 217 P.3d 310 (Fairhurst, J., concurring) (“The record [in Momah] shows that safeguarding Momah’s rights to an impartial jury and a fair trial required the closure that occurred, and that all the attorneys, the defendant, and the trial court knew that all the proceedings were presumptively open and public.”).

Wise, 176 Wn.2d at 13, n.5.

In contrast to the trial court in Momah, the trial court in Wise’s case “simply decided to privately question individual prospective jurors and indicated to all that this is the regular practice.” Wise, at 13. Moreover, this Court declined to “comb through the record or attempt to infer the trial court’s balancing of competing interests where it is not apparent in the record. Wise, at 12.

Relying on Strode and United States Supreme Court precedent, this Court concluded the error was structural. Wise, 176 Wn.2d at 13 (citing inter alia, Waller v. Georgia, 467 U.S. 39 (1984)). Again, this Court distinguished Momah, in which it held not all closures are structural error:

Momah was distinguishable from other public trial violation cases on two principal bases: (1) more than failing to object, the defense affirmatively assented to the closure of voir dire and actively participated in designing the trial closure and (2) though it was not explicit, the trial court in Momah effectively considered the Bone-Club factors.

Wise, 176 Wn.2d at 14.

defense counsel affirmatively sought individual counseling in private and sought to

This Court also held to its longstanding rule that a defendant does not waive his right to a public trial by failing to object to a closure at trial. Id. Although Wise did not object when the trial court moved part of the voir dire proceedings into chambers, his silence was not sufficient to constitute a waiver of his public trial right. Id.

Finally, considering the importance of the public's scrutiny in ensuring the defendant a fair trial, and because it would be "impossible to show whether the structural error of deprivation of the public trial right is prejudicial," the court held a presumption of prejudice was appropriate to protect a defendant's public trial right. Wise, 176 Wn.2d at 17-19.

The facts of Paumier were similar to those in Wise. During voir dire, the trial judge individually questioned four potential jurors in chambers. The trial judge sua sponte offered to privately question any juror on sensitive matters if a juror so chose. Specifically, the court directed that if there was anything the jurors would prefer not to discuss in a group setting to let the court know, and they would be questioned privately in chambers, "because we don't want to embarrass you in any way." Paumier, 176 Wn.2d at 33.

The private matters discussed included personal health issues, criminal history, and familiarity with the defendant or the crime. The

expand the number of jurors subject to such private questioning).

prosecution, defense counsel, and Paumier were present for the questioning and offered no objections. Further, the in-chambers questioning was recorded and transcribed by the court. But the trial judge never conducted a Bone-Club analysis prior to privately questioning the potential jurors. Of the four privately questioned, two were excused. Paumier, 176 Wn.2d at 33. For the reasons already articulated in Wise, this Court affirmed the court of appeals reversal of Paumier's convictions, based on the public trial right violation. Paumier, 176 Wn.2d at 35-37.

As in Wise and Paumier, the record here lacks any hint the trial court ever considered Speight's public trial right or the other Bone-Club factors before deciding to close the courtroom. As in Wise and Paumier, there is no basis to distinguish Speight's case from the others in which this Court found a violation based on the trial court's failure to expressly consider the Bone-Club factors on the record.

First, unlike the circumstances in Momah, there is no evidence the court was aware of Speight's public trial right. It was never mentioned. Second, unlike the trial court in Momah, the trial court here was not concerned with ensuring Speight's right to a fair trial. Rather, the court was concerned with protecting the jurors' privacy.

Finally, this is not a situation where defense counsel affirmatively assented to the closure of voir dire and actively participated in designing

the closure. Rather, as the telephonic conference indicates, it was the court's prerogative to provide jurors with an opportunity to request private questioning. It was the court's cover sheet that indicated jurors could be questioned privately if there was information of a personal nature "that you may not want to discuss in public." Appendix G. The questionnaire itself, which was agreed upon by the parties, merely gave jurors the opportunity to request individual questioning "in court." As in Wise, the court simply decided to question individual jurors in chambers. See also In re Personal Restraint of D'Allesandro, ___ Wn. App. ___, 314 P.3d 744, 754 (2013) (no waiver where record arguably showed defense counsel did not ask the trial court to exclude the public from individual voir dire; rather, defense counsel asked that the individual voir dire simply take place apart from the remaining prospective jurors).

As this Court acknowledged, Momah represents a unique set of facts the likes of which will not likely be repeated. Wise, 176 Wn.2d at 15. They have not been repeated here. Under this Court's decisions in Bone-Club, Wise and Paumier, the in-chambers pretrial rulings and questioning of potential jurors violated Speight's right to a public trial. Although he did not object, he did not waive his public trial right by virtue of his silence.

2. COURTROOM CLOSURE IS STRUCTURAL ERROR FOR WHICH PREJUDICE IS PRESUMED ON COLLATERAL REVIEW.

As this Court recently stated, a petitioner's burden on collateral review has evolved over the years. In re Personal Restraint of Stockwell, ___ Wn.2d ___, 316 P.3d 1007, 1012 (2014). In In re Personal Restraint of Hagler, 97 Wn.2d 818, 650 P.2d 1103 (1982), this Court discussed the origin of PRPs in the state's habeas corpus remedy under article IV, § 4 of the Washington State Constitution and noted that a PRP is not a substitute for a PRP. Id. at 823. Based on principles of finality and federal habeas standards, this Court concluded that for PRPs challenging *trial* error, the petitioner must show that the errors worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions. Id. at 825 (citing United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982)).

In In re Personal Restraint of Cook, 114 Wn.2d 802, 810, 792 P.2d 506 (1990), this Court held that "in the context of a *constitutional* error, a petitioner must satisfy his threshold burden of demonstrating actual and substantial prejudice." Id. (emphasis added) (citing In re Pers. Restraint of Haverty, 101 Wn.2d 498, 504, 681 P.2d 835 (1984)). As this Court noted in Stockwell, however, this Court in several cases thereafter presumed prejudice on collateral review when the error would never be harmless on

direct appeal. Stockwell, 316 P.3d at 1012 (citing *inter alia*, In re Personal Restraint of Boone, 103 Wn.2d 224, 233, 691 P.2d 964 (1984); and In re Pers. Restraint of Richardson, 100 Wn.2d 669, 679, 675 P.2d 209 (1983)).

In Richardson, the error involved a conflict of interest arising from Richardson's attorney's representation of a witness who was called at trial. Id. at 678. While this Court acknowledged ordinarily one raising an error in a PRP must also demonstrate prejudice, this Court concluded that the error, if proved, would provide automatic proof of prejudice. Id. at 679. In Boone, this Court interpreted Richardson as suggesting certain constitutional errors that are never harmless on direct appeal will be presumed prejudicial on collateral review. Boone, 103 Wn.2d at 233.

In In re Pers. Restraint of St. Pierre, however, this Court clarified that constitutional errors that are never harmless on appeal are not *ipso facto* presumed prejudicial on collateral review:

[W]e have previously suggested constitutional errors which can never be considered harmless on direct appeal will also be presumed prejudicial for the purposes of personal restraint petitions. We now reject this proposition.

In re Pers. Restraint of St. Pierre, 118 Wn.2d 321, 328, 832 P.2d 492 ((1992) (citing Boone, 103 Wn.2d at 233)).

But the Court did not reject the notion that in fact, there are some constitutional errors that will be presumed prejudicial for the purposes of personal restraint petitions:

Therefore, we decline to adopt any rule which would categorically equate per se prejudice on collateral review with per se prejudice on direct review. Although some errors which result in per se prejudice on direct appeal will also be per se prejudicial on collateral attack, the interests of finality of litigation demand that a higher standard be satisfied in a collateral proceeding.

St. Pierre, 118 Wn.2d at 329 (emphasis added).

The possibility that some errors which result in pre se prejudice on direct appeal will also be per se prejudicial on collateral attack remains good law. Stockwell, 316 P.3d at 1013.⁹ In Stockwell, this Court adhered to its non-categorical approach by distinguishing the presumptively prejudicial error at issue in Richardson with the non-presumptively prejudicial error in Stockwell's case:

Unlike the error in Richardson, deprivation of counsel, the error here is a misstatement of sentencing consequences. Following St. Pierre, this court has addressed the burden to show actual and substantial prejudice arising from an incorrect statement of sentencing consequences.

Stockwell, 316 Wn.2d at 1013.

⁹ This conclusion was recognized in the concurring opinion. Stockwell, 316 Wn.2d at 1016 (Gordon McCloud, J., concurring) (the rule "that errors which are presumptively prejudicial on direct appeal will *generally* be presumed prejudicial in a PRP – is still good law.") (emphasis in original).

Courtroom closure is one of those constitutional errors that results in per se prejudice on direct appeal for which prejudice will also be presumed on collateral review. In re Orange, 152 Wn.2d 795 (2005); see also Stockwell, 316 P.3d at 1019 (Gordon McCloud, J., concurring) (courtroom closure is structural error resulting in automatic reversible error for personal restraint petitioner).

In Orange – decided many years after St. Pierre – this Court afforded the petitioner the same remedy for the courtroom closure as he would have been entitled to had he raised the issue on direct appeal:

As to the remedy for the violation of Orange’s public trial right, we granted the defendant in Bone-Club, a new trial, stating that “[p]rejudice is presumed where a violation of the public trial right occurs.” . . . Thus, had Orange’s appellate counsel raised the constitutional violation on appeal, the remedy for the presumptively prejudicial error would have been, as in Bone-Club, remand for a new trial. Consequently, we agree with Orange that the failure of his appellate counsel to raise the issue on appeal was both deficient and prejudicial and therefore constituted ineffective assistance of counsel.

Orange, 152 Wn.2d at 814 (citations omitted).

From this passage, it appears the Court is basing its decision on ineffective assistance of counsel. However, when viewed in its entirety, the decision does not appear so simple, because no explicit ineffective assistance of counsel claim was made by petitioner, and because this Court in the earlier portion of its opinion stated: “The petitioner bears the

burden of establishing prejudice by a preponderance of the evidence, but that burden ‘may be waived where the error gives rise to a conclusive presumption of prejudice.’” Orange, 152 Wn.2d at 804 (quoting Pierre, 118 Wn.2d at 328). Thus, this Court appears to be relying – at least in part – on a presumption of prejudice.¹⁰

Such would be in keeping with federal caselaw on the issue. In a collateral attack filed in federal court, violations of the Sixth Amendment right to a public trial “are structural errors, [and] they warrant habeas relief without a showing of specific prejudice.” United States v. Withers, 638 F.3d 1055, 1066 (9th Cir. 2011) (citing Waller, 467 U.S. at 49-50). Even on habeas review, “once a petitioner demonstrates a violation of his Sixth Amendment right to a public trial, he need not show that the violation prejudiced him in any way.” Judd v. Haley, 250 F.3d 1308, 1315 (11th Cir. 2001).

As a violation of the right to a public trial is structural error, Judd need not show that he was prejudiced by the closing of the courtroom. All he must demonstrate is that the trial court did not comply with the procedure outlined in Waller prior to its decision to completely remove spectators from the courtroom. Judd has successfully demonstrated that the closure of the courtroom in his case was not conducted in conformity with the standards articulated in

¹⁰ But cf. In re Pers. Restraint of Morris, 176 Wn.2d 157, 166, 288 P.3d 1140 (2012) (“We need not address whether a public trial violation is also presumed prejudicial on collateral review because we resolve Morris’s claim on ineffective assistance of appellate counsel grounds instead.”).

Waller; therefore, he is entitled to relief on his Sixth Amendment claim.

Id. at 1319; see also Walton v. Briley, 361 F.3d 431, 433 (7th Cir. 2004) (where error is exclusion of public from portion of trial, “Walton need not show specific prejudice”).

Similarly, in Owens v. United States, 483 F.3d 48, 56 (1st Cir. 2007), the federal defendant lost his direct appeal and then filed a habeas petition. The court rejected the notion that a habeas petitioner needs to prove that the failure to hold a public trial caused actual prejudice. Id. at 63-64. Noting that the Supreme Court has said “it is impossible to determine whether a structural error is prejudicial,” the court reasoned, “[w]e will not ask defendants to do what the Supreme Court has said is impossible.” Id.

Similarly, this Court should not require Speight to do what the Supreme Court has already ruled impossible. This Court should affirm that courtroom closure is one of those constitutional errors for which prejudice is presumed on collateral review.

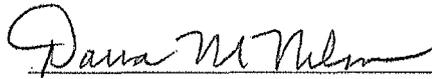
D. CONCLUSION

The violation of Speight's public trial rights is presumptively prejudicial and entitles him to relief. If this Court disagrees, however, Speight is entitled to relief under Orange and Morris because his appellate attorney failed to raise the issue on direct appeal. Third Supp. Brief of Petitioner at 12-15. This Court should reverse Speight's convictions and remand for a new trial.

Dated this 21st day of February, 2014.

Respectfully submitted,

NIELSEN, BROMAN & ASSOCIATES



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APPENDIX A

APPENDIX B

FILED
ST. SUPERIOR COURT
2013 DEC 21 P 12:01
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:

ROLAND ARTHUR SPEIGHT.

SUPREME COURT
NO. 89693-3

COURT OF APPEALS
NO. 59995-0-I

RULING ACCEPTING
CERTIFICATION

By order dated December 20, 2013, this matter was certified to this court by Division One of the Court of Appeals pursuant to RCW 2.06.030. Having reviewed the Court of Appeals file, I agree that the case warrants direct review under the cited statute. Certification is therefore accepted. Court of Appeals Cause No. 59995-0-I, in its entirety, is hereby transferred to this court for determination on the merits.

ACTING COMMISSIONER

December 24, 2013

681/24

APPENDIX C

RICHARD D. JOHNSON,
Court Administrator/Clerk

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of the
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TDD: (206) 587-5505

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MAR 22 2010

Nielsen, Broman & Koch, P.L.L.C.

March 22, 2010

Dana M Lind
Nielsen Broman & Koch PLLC
1908 E Madison St
Seattle, WA, 98122-2842

Philip James Buri
Buri Funston Mumford PLLC
1601 F St
Bellingham, WA, 98225-3011

CASE #: 59995-0-1
Personal Restraint Petition of Roland Arthur Speight

Counsel:

The following notation ruling by Commissioner James Verellen of the Court was entered on March 15, 2010:

Because the Washington Supreme Court has resolved the motions for reconsideration in State v. Momah No. 81096-6 and State v. Strode No. 80849-0, the petitioner and the respondent shall each file and serve a supplemental brief by April 23, 2010, not to exceed 10 pages addressing the impact of Momah and Strode.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

law

APPENDIX D

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
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September 14, 2010

Dana M Lind
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Philip James Buri
Buri Funston Mumford PLLC
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Bellingham, WA, 98225-3011

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SEP 14 2010
Nielsen, Broman & Koch, P.L.L.C.

CASE #: 59995-0-1
Personal Restraint Petition of Roland Arthur Speight

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on September 14, 2010:

This personal restraint petition is stayed pending a decision by the Supreme Court in In re Pers. Restraint of Morris, No. 84929-3.

Sincerely,



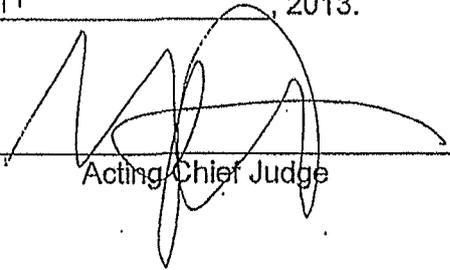
Richard D. Johnson
Court Administrator/Clerk

law

APPENDIX E

proceedings herein, after which the petition will be resubmitted to the Acting Chief Judge for determination.

Done this 12th day of April, 2013.



Acting Chief Judge

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 APR 12 PM 2:57

APPENDIX F

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
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December 19, 2013

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CASE #: 59960-7-1
Personal Restraint Petition of William Richard Coggin
CASE #: 59995-0-1
Personal Restraint Petition of Roland Arthur Speight

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on December 19, 2013:

The personal restraint petitions of Richard Coggin, No. 59960-7, and Roland Speight, No. 59995-0 were stayed pending In re Personal Restraint of Hartman, No. 81225-0, in the Washington State Supreme Court. In October, 2013, the Supreme Court granted a stipulated motion to dismiss Hartman's petition. Accordingly, the stays in these petitions are lifted.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

law #

APPENDIX G

MAY 24 2005

MARY JEAN CAHILL ✓
SAN JUAN COUNTY, WASHINGTON

TO PROSPECTIVE JURORS

This questionnaire is designed to elicit information with respect to your qualifications to sit as a juror in a pending case. This questionnaire will substantially shorten the process of jury selection.

This questionnaire is part of the jury selection process. You must answer the questions to the best of your ability and you must fill out the questionnaire by yourself. As you answer the questions that follow, please keep in mind that there are no right or wrong answers, only complete and incomplete answers. Complete answers are far more helpful than incomplete answers because they make long questioning unnecessary and by doing that, they shorten the time that it takes to select a jury.

Please make every effort to answer each one of the questions. During the questioning by the attorneys and the court, you will be given an opportunity to explain or expand any answers if necessary. If you wish to make further comments regarding any of your answers, or if you feel that there is something important that we failed to ask, please include this information on the final sheet of the questionnaire.

Some of these questions may call for information of a personal nature that you may not want to discuss in public. If you feel that your answer to any questions may invade your privacy or be embarrassing to you, you may so indicate on the form that you would prefer to discuss your answer in private. The court will give you an opportunity to explain your request for confidentiality outside the presence of the other jurors.

After you have completed the questionnaire, please hand it to the Bailiff.

Thank you for your cooperation.

5/24/05



Hon. Alan R. Hancock, Judge
San Juan County Superior Court

28
AW

JUROR QUESTIONNAIRE

Juror Number: _____

Introduction

The purpose of this questionnaire is to allow you to answer questions about your personal experiences that may relate to the current trial and to do so in a way that reduces embarrassment and maintains some privacy. The attorneys in the case may ask you about your answers to the questions in individual voir dire, without the public and other jurors present, to further maintain your privacy if you prefer. Please answer these questions as fully and honestly as you would any other voir dire questions.

Fill out the questionnaire and hand it to the bailiff when you are done. If a question does not apply, please indicate "N/A".

1) a) Have you ever been charged with, or arrested for, any sex crime or crime committed with "sexual motivation"?
Yes ___ No ___

b) If yes, please list the crime(s) below.

c) How was the case above closed (e.g., charges dropped, arrested but never charged, acquitted at trial, found guilty at trial, case being appealed, etc.)?
.....
.....

d) If the charges were dropped or not filed, why?

e) How do you feel about the above experience?

2) a) Have you ever been privately accused of a sexual assault or other sexual impropriety (e.g., sexual harassment, etc.)?
Yes ___ No ___

b) If yes, please describe the circumstances below.

c) Was any legal action suggested or mentioned by anyone on the matters in 2)b)?

Yes ___ No ___ Please explain below.

d) How was the accusation resolved (e.g., accuser left town, I denied it, got fired, accuser's parents kept it quiet, etc.)?

e) How do you feel about the above experience?

3) a) Do you personally know anyone who has been accused of any sex crime or other sexual impropriety, either officially or privately?

Yes ___ No ___

b) Please describe the circumstances below.

c) What do you think about the above circumstances?

4) a) If you answered yes to any of the above, do you think that you could be fair in deciding similar issues in this case?

Yes ___ No ___ Please explain below.

5) a) Are you ever concerned that someone would accuse you or a friend or loved one?

Yes ___ No ___ Do not know ___

b) Why?

6) a) Are you concerned that a sexual offense may be committed against you, a friend, or a loved one?
Yes ___ No ___

b) Why?

7) Do you believe that these topics should be kept more private?
Yes ___ No ___ Do not know ___ Please explain below.

8) Have you ever been the victim of a sexual assault; rape or other sexual impropriety?
Yes ___ No ___

9) If the answer to #8 is yes, do you know who committed the act?
Yes ___ No ___

10) If the answer to #9 is yes, was the act committed by a relative of the victim (please specify) _____
a friend of the victim _____
an acquaintance of the victim _____
a stranger to the victim _____

11) If you were sexually assaulted, etc., please indicate how old you were at the time. Age _____

12) If you were sexually assaulted, etc., please indicate if you were assaulted more than once and/or if by more than one person.

13) If you were sexually assaulted, etc., did you report the incident to anyone (e.g., a parent, counselor, friend or the police).
Yes ___ No ___

14) If the answer to #13 is yes, to whom did you report the incident and what were the circumstances of your disclosure?

15) If you did report the act, was anyone ever prosecuted?
Yes ___ No ___

16) If they were prosecuted, were they convicted?
Yes ___ No ___ Please explain below.

17) If you were sexually assaulted, etc., did you suffer any physical injury as a result of the incident?
Yes ___ No ___

18) If you were sexually assaulted, etc., did you suffer any emotional distress as a result of the incident?
Yes ___ No ___

19) If you were sexually assaulted, etc., and if you did report the incident, do you believe you were treated fairly or reasonably by those to whom you reported the assault (e.g., relatives, friends, counselors, the police, etc.)?
Yes ___ No ___

20) Do you know if any friend, relative or acquaintance of yours has ever been sexually assaulted, raped or subjected to any sexual impropriety?
Yes ___ No ___ Please explain below.

21) If the answer is yes, do you know who committed the assault?
Yes ___ No ___

22) If the answer is yes, was the assault committed by
a relative of the victim _____
a friend of the victim _____
an acquaintance of the victim _____
a stranger to the victim _____

23) How old was the victim when he or she was sexually assaulted?

24) Do you know if the victim of the sexual assault, etc. was assaulted more than once and/or by more than one person?
Yes ___ No ___ Do not know ___

25) Was the sexual assault reported to anyone?
Yes ___ No ___ Do not know ___

26) Was the perpetrator of the sexual assault ever prosecuted?
Yes ___ No ___ Do not know ___

27) Was the perpetrator of the sexual assault ever convicted?
Yes ___ No ___ Do not know ___

28) Was the victim of the sexual assault physically injured?
Yes ___ No ___ Do not know ___

29) a) Did the victim of the sexual assault suffer emotional distress?
Yes ___ No ___ Do not know ___ Please explain below.

30) Do you believe the victim of the sexual assault was treated fairly and reasonably by the authorities?
Yes ___ No ___ Do not know ___ Please explain below.

31) Do you believe you have any special training, knowledge or expertise in the subject matter of sexual assaults?
Yes ___ No ___ Please explain below.

32) If you were the victim of a sexual assault, etc., and/or if you know a relative, friend or acquaintance who was a victim of sexual assault, etc., do you believe you would tend to favor or be prejudiced against either party to this case?
Yes ___ No ___ Please explain below.

33) Have you ever contacted or had Child Protective Services, the police, or any social welfare agency come to your home regarding a child?
Yes ___ No ___

34) Have you ever participated in any juvenile court proceeding involving a child?
Yes ___ No ___

35) Do you belong to any organizations involved in protecting the rights of abused children or parents of abused children?
Yes ___ No ___

If you have answered "Yes" to any of the above questions, would you prefer that the attorneys question you individually in court, or would you be comfortable discussing your answers in front of others?

___ I request individual questioning.
___ I do not request individual questioning.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re Personal Restraint Petition of)	
Roland Speight,)	
)	
STATE OF WASHINGTON,)	
)	NO. 89693-3
Respondent,)	
)	
vs.)	
)	
ROLAND SPEIGHT,)	
)	
Petitioner.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 21ST DAY OF FEBRUARY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ROLAND SPEIGHT
DOC NO. 863245
AIRWAY HEIGHTS CORRECTIONS CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

SIGNED IN SEATTLE WASHINGTON, THIS 21ST DAY OF FEBRUARY, 2014.

x *Patrick Mayovsky*

OFFICE RECEPTIONIST, CLERK

From: Patrick Mayovsky <MayovskyP@nwattorney.net>
Sent: Friday, February 21, 2014 3:07 PM
To: OFFICE RECEPTIONIST, CLERK; Philip Buri
Subject: In re Personal Restraint of Roland Speight, No. 89693-3
Attachments: Roland Speight - Supplemental Brief of Petitioner.pdf

Attached for filing today is a supplemental brief of petitioner for the case referenced below.

State v. Roland Speight

No. 89693-3

Supplemental Brief of Petitioner

Filed By:
Dana Nelson
206.623.2373
WSBA No. 28239
nelsond@nwattorney.net