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THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Petitioner,

v.

RYAN PEELER,

Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SKAGIT COUNTY

---

*Respondent's*  
~~PETITIONER'S~~ SUPPLEMENTAL BRIEF

---

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 ORIGINAL

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A. INTRODUCTION.

The Skagit County prosecutor showed little interest in pursuing its case against Ryan Peeler. It knew Mr. Peeler was being held in custody in a nearby county but did not try to bring him to court. Mr. Peeler sent a written request for Skagit County to prosecute the case in compliance with RCW 9.98.010, explaining he was in the Department of Corrections' (DOC) custody. But by the time Skagit County asked DOC to bring Mr. Peeler to court, King County had obtained a transport order for previously filed charges. Skagit County treated the request as nullified because Mr. Peeler had moved to a county jail.

The Court of Appeals ruled that when the State received Mr. Peeler's request, it was obligated to either bring him to trial or obtain court permission to extend the trial date under the mandatory terms of RCW 9.98.010. Because the prosecution did neither, the Court of Appeals properly held that the State violated RCW 9.98.010.

B. ISSUE FOR WHICH REVIEW HAS BEEN GRANTED.

The Intrastate Detainer Act sets a firm deadline for the prosecutor to bring someone to trial when it receives a request from a person serving a prison sentence demanding final disposition of untried charges. Mr. Peeler filed a request for speedy disposition of a Skagit

County charge while serving a prison sentence in compliance with the Act. The prosecutor contends Mr. Peeler's request was void because he was taken to a court hearing in King County after he submitted his request. Did the Court of Appeals properly hold that the State was obligated to comply with Mr. Peeler's request to resolve an untried charge even if he was temporarily transferred to a county jail facility?

C. STATEMENT OF THE CASE.

The Skagit County prosecutor charged Ryan Peeler with second degree assault on January 28, 2011, for an incident that occurred 13 days earlier. CP 4, 23. It knew Mr. Peeler was in the Snohomish County jail, awaiting trial on other charges and had a King County warrant. *Id.*

Mr. Peeler remained at the Snohomish County jail until he was convicted, sentenced, and committed to DOC to serve a two-year prison sentence on September 20, 2011. CP 19, 33.

On October 7, 2011, Mr. Peeler submitted a formal request for final disposition of the untried Skagit County charge that complied in all respects with RCW 9.98.010. CP 18-19. DOC sent Mr. Peeler's written request and the necessary certification of inmate status to Skagit County, which it received on October 26, 2011. *Id.* In response, the prosecutor asked DOC to transport Mr. Peeler to Skagit County. CP 23.

In the interim, the King County prosecutor obtained an order to transport Mr. Peeler to resolve charges there. CP 23, 39, 44. DOC told the Skagit County prosecutor that Mr. Peeler was in King County for a court hearing. CP 44. Skagit County took no further steps to prosecute Mr. Peeler until after Mr. Peeler submitted a second request on January 20, 2012, which DOC certified on January 25, 2012. CP 21.<sup>1</sup> A few weeks after this second request, the prosecutor brought Mr. Peeler to court. CP 24. He was arraigned on February 16, 2012, with a trial date set for several months later. CP 85.

RCW 9.98.010 gives the State 120 days to bring a defendant to trial after it receives a written request for final disposition of untried charges from a person serving a prison sentence within this state. Mr. Peeler moved to dismiss the untried Skagit County charge due to the failure to satisfy the time for trial requirements in RCW 9.98.010. CP 13. The State received Mr. Peeler's request on October 26, 2011, and the 120-day period expired on February 23, 2012. RCW 9.98.010 permits a court to extend this deadline on a showing of good cause, but the State did not request an extension of time. CP 85.

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<sup>1</sup> Mr. Peeler returned to his DOC facility on December 30, 2011. CP 33.

The trial court found the State was not required to bring Mr. Peeler to trial after receiving his request to be tried because he had been taken from his DOC facility to King County. 8/22/12RP 32-33. The Court of Appeals reversed, holding that the State's failure to bring Mr. Peeler to trial within 120 days of receiving his request violated the plain terms of RCW 9.98.010. Opinion at 7-10.<sup>2</sup> It ruled that when a DOC inmate is temporarily unavailable to be transported, RCW 9.98.010 allows the court to extend the 120-day deadline only if the State proves there is good cause for a continuance. *Id.* As a result, the State could have but did not seek a continuance before the court lost jurisdiction to try the case under RCW 9.98.020. *Id.*

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<sup>2</sup> The unpublished Court of Appeals opinion in COA 69368-9-I is attached to the Petition for Review.

D. ARGUMENT.

**The Court of Appeals correctly ruled that the State violates RCW 9.98.010 when it holds an accused person in its custody, knowing his location, and fails to comply with his formal request for a timely trial**

1. *Mr. Peeler filed a proper request for speedy disposition of untried charges under the Intrastate Detainer Act*

The Intrastate Detainer Act provides that a person “shall be brought to trial within” 120 days of filing a request for final disposition of any untried charge when the accused person is serving a term of imprisonment in a penal or correctional institution of this state. RCW 9.98.010(1) (full text attached as Appendix A).

Mr. Peeler complied with the notice requirements of RCW 9.98.010(1). The Act applied to him because he had “entered upon a term of imprisonment in a penal or correctional institution of this state,” and he filed his written request for speedy disposition in Skagit County “during the continuance of the term of imprisonment.” RCW 9.98.010(1). He was sentenced to a prison term by the superior court in Snohomish County and was serving that sentence. CP 26, 36.

He “caused to be delivered” a request for final disposition of the pending charge in Skagit County by giving “written notice of the place of his or her imprisonment and his or her request for a final

disposition.” RCW 9.98.010(1); CP 18-19. His notice listed the cause number, charge, and county, as well as his location, and directed DOC to certify his status to the court and prosecution. CP 18-19.

DOC complied with its statutory responsibility to certify its custodial authority over Mr. Peeler and verify his “term of commitment,” “the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner,” and the inapplicability of the indeterminate sentence review board. RCW 9.98.010(1), (2); CP 19.

The court and prosecution received this written request on October 26, 2011. CP 84. The prosecutor obtained an order for DOC to transport Mr. Peeler to Skagit County, as authorized by RCW 72.68.020. CP 23. DOC telephoned the prosecutor and said Mr. Peeler was currently “out to court” on a King County matter and not immediately available for transport. CP 23-24, 84-85. Skagit County took no further action on this request from Mr. Peeler for final disposition of his untried charge. CP 85.

2. *Mr. Peeler's request was not voided because he was imprisoned in state custody, serving a term of commitment, when temporarily moved to King County on another pending matter.*

The trial court ruled that Mr. Peeler was “unavailable” and not in state custody when Skagit County asked DOC to bring him to court. 8/22/12RP 33. The Court of Appeals disagreed and correctly ruled that under the plain terms of RCW 9.98.010, the State must comply with a request for final disposition from a person serving a prison sentence within the state or timely seek a continuance. Opinion at 6-7. If the prosecution needs additional time to bring a person to trial due to his temporary unavailability for transport, RCW 9.98.010 requires it to ask the court for a good cause continuance before the expiration of the 120-day time for trial period. *Id.* at 8-9 (citing RCW 9.98.020, full text attached in App. A).

“The intrastate detainers statute specifically allows for ‘any necessary or reasonable continuance’ of the 120-day period ‘for good cause shown.’ *State v. Morris*, 126 Wn.2d 306, 314, 892 P.2d 734 (1995) (quoting RCW 9.98.010). The State knew where Mr. Peeler was and did not seek an extension of his time for trial before the 120-day

period expired as mandated by RCW 9.98.020. Opinion at 8-9. This Court should affirm the reasoning of the Court of Appeals.

DOC retains “formal custody” over a prisoner who is attending a mandatory court hearing. *State v. Swenson*, 150 Wn.2d 181, 192, 75 P.3d 513 (2003). When Mr. Swenson was sentenced to prison, he faced untried charges in King and Jefferson counties. *Id.* at 184-85. This Court explained that during the time Mr. Swenson was moved from a DOC facility to King County jail for his untried case, he remained “in the formal custody of the DOC, who had sent him to King County subject to return.” *Id.* at 192.

By written policy, DOC classifies taking a prisoner to a mandatory court hearing as a “special transport from prison.” DOC Policy 420.110 (Directive I (B)(5)). DOC considers a person as “out to court” when taken to a court hearing. CP 36, 84. By statute, DOC is prohibited from releasing any person from its custody “prior to the expiration of the sentence” unless a listed exception applies. RCW 9.94A.728. A person attending a court hearing has permission to leave the correctional facility temporarily, but he remains under DOC’s custody and control. RCW 9.94A.728(2).

For example, DOC's inmate information sheet for Mr. Peeler listed his "Body Status" as "Out – Court" when he was temporarily transferred to superior court. CP 36. Yet at the same time, it stated his "Location" as "WCC-RC – No Bed Assigned." CP 36. WCC is DOC's Washington Correction Center, where Mr. Peeler was housed at the time he filed his request for final disposition. CP 18, 24. DOC classified Mr. Peeler as an inmate in its custody and under its authority, serving a prison sentence at WCC, when he was "out to court." CP 36.

DOC controls where a sentenced inmate is confined, including prisons, work release facilities, or other facilities with whom DOC contracts. *In re Matteson*, 142 Wn.2d 298, 311, 12 P.3d 585 (2000). In *Matteson*, several inmates objected to being sent out of the state to serve their prison sentences due to overcrowding. This Court rejected these challenges because "persons convicted of felonies are not sentenced to a particular institution" and a prisoner has "no justifiable expectation he will remain in any particular prison" inside or outside the state. *Id.* Even if housed in an out-of-state facility pursuant to DOC's authority, that facility operates as an arm of the state and the inmate remains in DOC's custody. *State v. Chhom*, 162 Wn.2d 451, 464, 173 P.3d 234 (2007).

“Once sentenced, felons are under the jurisdiction of the Department, even if serving time in a county jail.” *State v. Law*, 110 Wn.App. 36, 40-41, 38 P.3d 374 (2002). A sentenced offender who escapes from the county jail is treated as a DOC escapee for purposes of prosecution. *Id.*; see *State v. Smeltzer*, 86 Wn.App. 818, 821, 939 P.2d 1235 (1997) (“after sentencing, all felons are under the jurisdiction of the state’s penal system, which includes even the county jails”).

As the Court of Appeals recognized, RCW 9.98.010 does not nullify an inmate’s request for final disposition based on his physical location. Opinion at 6-7. Mr. Peeler had “entered upon a term of imprisonment” and he was serving this term when he requested final disposition of the untried Skagit County charge. CP 36.

The right to receive final disposition of untried charges applies “whenever during the continuance of the term of imprisonment” there is an untried charge pending in this state. RCW 9.98.010 (1). The term “whenever” is expansive and this phrase indicates that any time “during the continuance of the term of imprisonment,” a prisoner may validly request trial on an uncharged crime. See *State v. Sutherby*, 165 Wn.2d 870, 880, 204 P.3d 916 (2009) (expansive dictionary definition of word “any” shows intent for broad application of phrase). Mr. Peeler’s term

of imprisonment was on-going when he made his request to bring an untried charge to trial, which is what the statute requires. *See, e.g., State v. Springer*, 406 S.W.3d 526, 537 (Tenn. 2013) (“phrase ‘serving a term of imprisonment’ denotes no more or less than that definable period of time during which a prisoner must be confined in order to complete or satisfy the Prison term or sentence which has been ordered,” quoting *United States v. Dobson*, 585 F.2d 55, 58–59 (3d Cir.1978)).

The State complains in its petition for review that Mr. Peeler’s request was deficient because it listed his place of imprisonment as the Washington Correction Center. CP 18. Mr. Peeler was at the Washington Correction Center when he completed his form. CP 18; CP 84. His “statement was accurate when made.” Opinion at 8. After he completed the form, he was transported to King County based on a request made by the King County prosecutor, not due to his own request. CP 39-42. Even though he was temporarily out to court, DOC provided a “Certificate of Inmate Status” affirming its “custodial authority” over Mr. Peeler. *Id.*

Mr. Peeler’s request and DOC’s certification of Mr. Peeler’s imprisonment were not incorrect. He remained in “the formal custody” of DOC. *See Swenson*, 150 Wn.2d at 192. The order of transport

required King County to return Mr. Peeler to DOC upon the completion of his King County case. CP 39. Mr. Peeler was serving his DOC sentence while taken to the King County jail, and he would be entitled to credit for his time incarcerated at the jail. *See In re Pers. Restraint of Salinas*, 130 Wn.App. 772, 779, 124 P.3d 665 (2005).

DOC's official "Body Status" designation for Mr. Peeler was "out – court," while his "Location" remained the Washington Correction Center. CP 36. DOC did not mistakenly certify that Mr. Peeler was in its custody or forget he was attending a court hearing in King County. CP 19. It correctly certified Mr. Peeler's custodial status and its authority over him because Mr. Peeler remained in DOC's custody and control when in another facility within the state due to a mandatory court hearing in King County.

3. *Established rules of statutory construction show Mr. Peeler complied with the speedy disposition statute.*

Under established principles of statutory construction, courts interpreting a penal statute must give plain meaning to the words of a statute and construe its terms in the defendant's favor when ambiguous. *State v. Jacobs*, 154 Wn.2d 596, 601, 115 P.3d 281 (2005); *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792, 795 (2003). The court may

not “add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” Opinion at 5 (*quoting Delgado*, 148 Wn.2d at 727).

As the Court of Appeals explained, the language of RCW 9.98.010 is plain and unambiguous. Opinion at 6-8. When a person serving a prison sentence makes a request for a final disposition, which is received by the prosecution and courts, the State must comply. The “statute’s plain text” does not require that the person “must be available for transport on the date the prosecuting attorney and superior court receive” a disposition request. *Id.* at 8. The legislature used broad language that triggers the statute’s application whenever a person is serving a term of imprisonment within this state. RCW 9.98.010 (1).

The only circumstance in which the legislature stated that a validly made request is void is when the prisoner escapes from custody. RCW 9.98.010(4). The legislature did not nullify a request when the prison does not immediately comply with the transport order. If the State needs additional time to bring a person to trial, it may request a continuance. RCW 9.98.010(1).

This Court has looked at parallel provisions in the Interstate Agreement on Detainers (IAD) when construing the Intrastate Detainer

Act because the acts contain “nearly identical” rules governing speedy dispositions. *Morris*, 126 Wn.2d at 311, (citing RCW ch. 9.100). The IAD explicitly dictates that the scheme “shall be liberally construed so as to effectuate its purposes.” RCW 9.100.010 (Article IX). Its purposes are “to encourage the expeditious and orderly disposition” of untried charges and provide cooperative procedures to do so. RCW 9.100.010 (Article I). This language underscores the Legislature’s intent that the State resolve uncharged offenses expeditiously, within the time limits set by statute, and casts doubt on the State’s claim that it may disregard a person’s request for a speedy disposition when the custodial authority of the inmate has not changed but there is an obstacle to immediate transport.

The Skagit County prosecutor and court received notice of Mr. Peeler’s sentence, location, and demand for timely disposition of his untried charge. CP 84. The prosecutor knew he was temporarily housed at the King County jail and she acknowledged she could have asked King County directly to bring Mr. Peeler to Skagit County. 8/22/12RP 30. But the prosecutor made no efforts to bring him to court until Mr. Peeler filed another request, months later, repeating his sentence, location, and demand for timely disposition. CP 21-22.

The State makes what the Court of Appeals characterized as an “undue, hypertechnical argument” that strict compliance with RCW 9.98.010 requires up-to-the-minute information about the inmate’s location while in custody. Opinion at 7. Mr. Peeler’s official place of imprisonment was with DOC, even if temporarily out to court, as demonstrated by DOC’s own tracking of his movements and by statute requiring DOC to maintain custody over the inmate. CP 36; RCW 9.94A.728(2). Had Mr. Peeler filed a request for final disposition from the King County jail, DOC would have provided the same certification listing his facility as “WCC,” because that is the location it assigned to him. CP 19, 36.

Furthermore, the State’s “strict compliance” theory is drawn from cases involving whether the court and prosecutor received the inmate’s request for final disposition. Petition for Review at 11. Here, the court and prosecutor received the request, as the trial court found. CP 84. Mr. Peeler and DOC complied with the required notice provisions of the statute and triggered the State’s obligation to bring him to trial within 120 days under RCW 9.98.010.

4. *The State was required to either bring Mr. Peeler to trial within 120 days or obtain a court order sanctioning further delay.*

As the Court of Appeals recognized, RCW 9.98.010 anticipates there will be occasions when the State is unable to immediately bring a defendant to trial who has requested a final disposition of charges. Opinion at 8-9. The statute directs the prosecutor to ask the court for additional time based on “good cause” when this situation arises. RCW 9.98.010(1). This request must be made before the expiration of the 120-day period because the statute’s language is mandatory and the court loses jurisdiction over the case if the 120-day time for trial expires without the State taking action. Opinion at 6; RCW 9.98.020.

The prosecutor knew where Mr. Peeler was being held from the time it filed its charges in January 2011. It admitted it could have filed an order to transport Mr. Peeler from another county jail to Skagit County. 8/22/12RP 29-30. It could have asked the court to give it more time to bring Mr. Peeler to trial. Opinion at 9. Yet the State did not seek an extension within the 120-day period or set the case for trial within the 120-day period. *Id.* Had it done so, it would have complied with the requirements of RCW 9.98.010 and would not have lost jurisdiction under RCW 9.98.020. *Id.*

This Court does not need to consider any of the excuses raised by the prosecution for its failure to bring Mr. Peeler to trial after his request for final disposition. As the Court of Appeals held, “Our record fails to show why the State took no further action,” after it received Mr. Peeler’s first request and learned he had been taken to King County jail for resolution of another charge. Opinion at 9. The State “still could have requested an additional ‘reasonable and necessary’ length of time in which to prepare for trial, but did not,” and its lack of compliance caused the court to lose jurisdiction under RCW 9.98.020. *Morris*, 126 Wn.2d at 314-15.

*5. Mr. Peeler satisfied the plain requirements of RCW 9.98.010 and is entitled to the benefit of a speedy disposition as statutorily mandated when the State shows little hurry in prosecuting its case.*

When Mr. Peeler was sentenced to serve a term in prison, he was committed to the custody of DOC with no control over his location. *See* CP 278; RCW 9.94A.728 (“No person ... committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence” unless a listed exception applies). DOC determines his

placement, monitors his movements, and tracks the time he must remain incarcerated. CP 36. He cannot bring himself to a court hearing.

The prosecution could always obtain his presence by asking the court to issue a transport order. RCW 72.68.020(1). Yet as demonstrated by its indifference to moving the case forward, it faces few consequences from delaying disposition of charges when a person is in custody on other matters. The speedy trial clock does not start until a defendant's arraignment, and once started, the clock is tolled when an accused person is in custody on other charges. CrR 3.3(d)(1), (e)(2). Mr. Peeler had not been arraigned on the Skagit County charges and the CrR 3.3 speedy trial clock had not started when he filed his request for a speedy disposition of his charge.

The purpose of the Intrastate Detainer Act is aid an incarcerated inmate's resolution of untried charges. RCW 9.98.010; RCW 9.98.020. Otherwise, outstanding warrants cause a person in prison to lose access to rehabilitative programs and face heightened security restrictions. *State v. Morris*, 74 Wn.App. 293, 297-98, 873 P.2d 561 (1994), *aff'd on other grounds*, 126 Wn.2d 306, 892 P.2d 734 (1995); *see State v. Bishop*, 134 Wn.App. 133, 139, 139 P.3d 363 (2006), *rev. denied*, 159 Wn.2d 1023 (2007). An incarcerated defendant who has not even been

arraigned or appointed a lawyer has little ability to speak to witnesses or gather evidence needed to defend against the charges, hampering his ability to defend himself as time passes. The delay is also prejudicial because he loses the opportunity to argue for partially overlapping, concurrent sentences. *Chhom*, 162 Wn.2d at 451. The Intrastate Detainer Act forces the State to proceed with charges that it has not pressed forward, serving society's interests in timely resolution of criminal charges, access to rehabilitation, and just punishments.

Mr. Peeler accurately informed the prosecution of his whereabouts and requested final disposition of the pending charge against him in Skagit County. He was unable to control his movements while in DOC custody but the prosecution knew his precise location and had the ability to either bring him to court or request as much additional time as it needed under RCW 9.98.010(1). Its failure to comply with the plain terms of RCW 9.98.010 leads to mandatory dismissal under RCW 9.98.020.

E. CONCLUSION.

The Court of Appeals correctly construed the clear language of RCW 9.98.010 and concluded that the State's failure to act on Mr. Peeler's request for final disposition under the time limits set forth by statute requires dismissal of the prosecution.

Alternatively, Mr. Peeler is entitled to a new trial based on the trial court's failure to instruct the jury on an available lesser included offense. The Court of Appeals did not reach this issue or his sentencing challenge and the case should be remanded for further proceedings.

DATED this 19th day of November 2014.

Respectfully submitted,



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NANCY P. COLLINS (WSBA 28806)  
Washington Appellate Project (91052)  
Attorneys for Respondent

**APPENDIX A**  
(Text of RCW 9.98.010 and RCW 9.98.020)

RCW 9.98.010 provides:

(1) Whenever a person has *entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term* of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he or she shall be brought to trial within one hundred twenty days after he or she shall have *caused to be delivered* to the prosecuting attorney and the superior court of the county in which the indictment, information, or complaint is *pending written notice of the place of his or her imprisonment and his or her request for a final disposition* to be made of the indictment, information, or complaint: PROVIDED, That for good cause shown in open court, the prisoner or his or her counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner *shall be accompanied by a certificate of the superintendent having custody of the prisoner*, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the prisoner to the *superintendent having custody of him or her, who shall promptly forward* it together with the certificate to the appropriate prosecuting attorney and superior court by certified mail, return receipt requested.

(3) The superintendent having custody of the prisoner shall promptly inform him or her in writing of the source and contents of any untried indictment, information, or complaint against him or her concerning which the

superintendent has knowledge and of his or her right to make a request for final disposition thereof.

(4) Escape from custody by the prisoner subsequent to his or her execution of the request for final disposition referred to in subsection (1) of this section shall void the request.

(emphasis added).

RCW 9.98.020 provides:

In the event that the action is not brought to trial within the period of time as herein provided, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 ) NO. 90068-0  
 v. )  
 )  
 RYAN PEELER, )  
 )  
 Petitioner. )

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 19<sup>TH</sup> DAY OF NOVEMBER, 2014, I CAUSED THE ORIGINAL **PETITIONER'S SUPPLEMENTAL BRIEF** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2014.

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## OFFICE RECEPTIONIST, CLERK

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**Subject:** 900680-PEELER-SUPPLEMENTAL BRIEF

To the Clerk of the Court:

Please accept the attached document for filing in the above-subject case:

**Supplemental Brief of Petitioner**

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