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SUPREME COURT NO. 91268-8

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re the Personal Restraint Petition Of:

JERRY SWAGERTY,

Petitioner

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

The Honorable Kathryn J. Nelson, Judge

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SUPPLEMENTAL BRIEF OF PETITIONER

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A. INTRODUCTION AND ISSUES IN SUPPLEMENTAL BRIEF

By order dated December 9, 2015, this Court granted petitioner Jerry Swagerty's motion for discretionary review and motion to appoint counsel.

The order

directs all the parties to address in supplemental briefing the procedure under which the Court of Appeals addressed the statute of limitations and what remedies if any, are available if a court determines that the statute of limitations had expired on three of four charges before the personal restraint petition entered into the agreement.

Order dated December 9, 2015.

1. Do State v. Knight and In re Stoudmire provide a persuasive analytical framework showing why the appropriate remedy is vacation of counts II, III, and IV, followed by remand for resentencing solely on count I?
2. Did the Court of Appeals err in failing to appoint counsel for Swagerty once it was clear that Swagerty's PRP had arguable merit?

B. SUPPLEMENTAL STATEMENT OF THE CASE

1. Trial Court Proceedings<sup>1</sup>

On May 22, 2012, the state charged Swagerty with two counts: first degree rape of a child and first degree child molestation. The alleged

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<sup>1</sup> This summary relies in large part on the appendices to the state's response in the Court of Appeals. Exhibits 1-4 attached to this supplemental brief are copies of documents in the superior court file. Exhibits 5-8 were provided by this Court as copies of the Court of Appeals file and this Court's file.

offenses occurred February 14, 2004, more than ten years before the charge. The state's declaration for a determination of probable cause discussed the DNA testing procedures that led the state to suspect Swagerty. App. B.

The bench warrant for Swagerty's arrest was returned on June 27, 2012. The court entered an order directing a competency evaluation, and on September 28, 2012, found Swagerty competent. On December 5, 2012, the state filed a "persistent offender notice" informing Swagerty of the possibility of a sentence of life without parole if he had been convicted on two prior occasions of "most serious offenses."

On January 4, 2013, the state filed an amended information charging four counts, each committed on February 14, 2004: I – third degree rape of a child (RCW 9A.44.079); II – Luring (RCW 9A.40.090); III – second degree burglary (RCW 9A.52.030(1)); IV – intimidating a witness (RCW 9A.72.110(2)). Each of the charged counts included language stating that both parties stipulated to an exceptional sentence.<sup>2</sup> Ex. 1.

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<sup>2</sup> The state's oddly drafted charging language stated: "pursuant to RCW 9.94A.535(2)(e), the defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act, and/or pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance[.]"

Swagerty pled guilty on January 4, 2013. The plea form set out the elements of the charges and the standard ranges for the offenses. Standard plea form waiver language was included,<sup>3</sup> informing Swagerty that he waived his right to a speedy and public trial, the right to remain silent at trial, the right to hear and confront witnesses, the right to testify and present evidence, the presumption of innocence, and “[t]he right to appeal a finding of guilt after a trial as well as other pre-trial motions such as time for trial challenges and suppression issues.” App. C, Plea Form ¶ 5.

The plea form informed Swagerty that the state would recommend, and the parties stipulated to, an exceptional sentence of 30 years, reached by running the statutory maximum sentences consecutively.<sup>4</sup> The form notified all parties that the judge did not have to follow anyone’s sentence recommendation. *Id.*, ¶ 6(h). The form confirmed that the amended information did not charge a most serious offense, and therefore struck the persistent offender notification. *Id.*, ¶ 6(p).

In his personal statement, Swagerty acknowledged there were sufficient facts in the original probable cause declaration to support the

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<sup>3</sup> See e.g., CrR 4.2, 5(a) – (f).

<sup>4</sup> Count I – 5 years; count II – 5 years; count III – 10 years; and count IV – 10 years.

original count I (first degree rape of a child). He pled guilty to the four amended counts to “take advantage of the State’s offer to reduce the charges and allow me to be sentenced to an amount of time other than life in prison without possibility of parole.” He further acknowledged he had reviewed the evidence and believed there was a substantial likelihood he would be convicted at trial as charged.

An addendum clarified that Swagerty entered an Alford/Newton<sup>5</sup> plea to count II and acknowledged the original probable cause declaration provided a factual basis for that charge. Swagerty entered an In re Barr<sup>6</sup> plea to counts I, III, and IV, clarifying that he pled guilty to crimes he did not commit to take advantage of the state’s offer. He acknowledged there was a factual basis for the charges filed in the original information. App. C.

The state drafted a separate statement where it asked the court to allow the amended information because Swagerty admitted the original count I allegation, and concerns about the victim supported resolution of the case with a 30-year stipulated exceptional sentence. Ex. 2. The prosecutor also drafted another stipulation, by which Swagerty admitted prior convictions for

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<sup>5</sup> North Carolina v. Alford, 400 U.S. 25, 36, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970); State v. Newton, 87 Wash.2d 363, 372, 552 P.2d 682 (1976).

<sup>6</sup> In re Restraint of Barr, 102 Wash.2d 265, 684 P.2d 712 (1984).

second degree robbery (King County, 1989) and first degree burglary (Oregon, 1986). Ex. 3.

Four weeks later, at the sentencing hearing held February 8, 2013, the state presented yet another separately drafted addendum to the plea form. This addendum clarified that the parties stipulated to two alleged aggravating circumstances. Swagerty again acknowledged he was taking advantage of the state's offer to avoid a potential sentence as a persistent offender. Swagerty elected to proceed with the "stipulated joint recommendation for an exceptional sentence of 30 years." Ex. 4, ¶ 11 (emphasis added).

The state drafted the court's findings and conclusions for the exceptional sentence. The court found exceptional sentences were warranted based on the victim's vulnerability (RCW 9.94A.535(3)(b)) and on the stipulation by both parties (RCW 9.94A.535(2)(a)). The court found that Swagerty had been informed of his right to a jury determination of aggravating circumstances and that he waived that right. App. D, ¶ 10 (citing Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004)). The court concluded a 30-year exceptional sentence was justified, and entered maximum sentences for all four counts to run consecutively.

Despite drafting several separate addenda to the plea form, as well as the court's finding that Swagerty waived his rights under Blakely, the state did not secure a waiver of Swagerty's rights under the statute of limitations,

and has offered no proof that Swagerty ever knowingly waived those rights.<sup>7</sup>

2. Personal Restraint Petition

Swagerty signed his initial PRP on January 20, 2014. It was received by the Court of Appeals on January 24, 2014. A letter filed with the PRP requested the appointment of counsel, and attached correspondence to trial counsel and the superior court clerk that requested assistance in procuring necessary parts of the record.

The PRP ostensibly raised four main grounds for relief, although numerous subclaims appear under the larger grounds.<sup>8</sup> The third ground asserts that prosecutorial misconduct resulted in double jeopardy and avoided the tolling of the statute of limitations. The argument cited, inter alia, “State v. Peltier, Wash. App. Div.I 2001.” PRP, at 13-14. Swagerty asserted he should be resentenced to standard concurrent sentences within the guidelines,

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<sup>7</sup> Undersigned counsel was appointed by order dated December 9, 2015. Counsel has conferred with counsel for the state, who confirmed the state’s belief that there were no other plea agreement conditions. Undersigned counsel also has conferred with Swagerty’s trial counsel, who reviewed their files and confirmed there were no other plea agreement conditions that might constitute a waiver of the statute of limitations. Swagerty’s counsel therefore has not sought authorization for the preparation of transcripts from the plea or sentencing proceedings.

<sup>8</sup> The pro se PRP is not a model of clarity.

or have his conviction reversed. PRP at 13. He requested the appointment of counsel. PRP at 16.

An amended PRP filed March 21, 2014, contained additional exhibits but largely mirrored those claims. In a ruling dated March 28, 2014, Commissioner Bearse accepted the amended petition for filing.

The state responded to the PRP on May 30, 2014. The response argued against several of Swagerty's claims, and recognized that Swagerty "does not challenge his plea agreement" and "is not seeking withdrawal of his plea." Response, at 8, 9.

Swagerty filed a reply on June 13, 2014. The reply raised numerous claims, many of which are not easy to decipher. The reply again pointed out the difficulties Swagerty was having in procuring the exhibits necessary to fully litigate his claims.

On August 6, 2014, Commissioner Bearse entered a ruling directing the state to file "a supplemental response addressing the impact of the statute of limitation for each offense charged." Ex. 5.

On August 11, the state moved to stay the PRP pending this Court's decision reviewing Division One's decision in State v. Peltier, 176 Wn. App. 732, 309 P.3d 506 (2013), reversed, 181 Wn.2d 290, 332 P.3d 457 (August 21, 2014). The state recognized that Swagerty had claimed the state "manipulated charges to avoid the statute of limitations." Motion to Stay, at

2.<sup>9</sup> The state properly conceded the statute of limitations had run for counts II, III, and IV. It asserted the original charges were not barred, nor was count I of the amended information.

On August 20, 2014, Swagerty filed a response that ostensibly supported the state's request for a stay. Swagerty also requested the court to direct the state to provide the records relevant to Swagerty's various PRP claims. A letter dated August 20 further discussed the problems Swagerty was having in his pro se efforts to present his claims. The letter reiterated Swagerty's belief that the state had manipulated the charges to avoid the statute of limitations. The concluding paragraph included this line: "So State v. Peltier or bust if that what it takes." Ex. 6, at 3.

The state's supplemental response was filed September 17, 2014. The state again conceded the statute of limitations had run for counts II, III, and IV, and any prosecution for those offenses was time-barred. Supp. Resp., at 2 (citing Peltier). The state asserted the count I charge was not time-barred, and the court "should remand this matter for further proceedings to correct this issue." Id.

However, for the first time, the state argued that that Swagerty then could "elect to withdraw his guilty plea and go to trial on the original charges

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<sup>9</sup> See also, State's Response, at 15.

or execute an express waiver to the statute of limitations on the amended charges to correct the issue.” Id. The state further asserted that Swagerty’s election to withdraw his plea must apply to all of the charges because “[t]his was an indivisible, “package deal[.]” Supp. Resp., at 3 (citing State v. Turley, 149 Wn.2d 395, 69 P.3d 338 (2003)). The state asserted that should Swagerty withdraw his plea, “then the matter will be reset for trial on the original charges.” Supp. Resp., at 3.

In a reply filed October 1, 2014, Swagerty noted the statute of limitations violation and asked the court to also address his other claims, including an “actual innocence” claim. He again asked the court to direct the state to provide necessary parts of the record to allow him to litigate his claims.

In a reply filed October 24, 2014, Swagerty argued that 3 of the 4 charges and convictions were invalid because the trial court had exceeded its authority. The 360-month sentence should be vacated and the matter remanded for resentencing on count I. Ex. 7, at 2. In a letter filed October 23, 2014, Swagerty further clarified his argument that the state lost the ability to declare judgment on counts II, III, and IV, and there was no authority to force him “to sign a waiver to correct the issue.” Ex. 8, at 2. In a “final amended reply” filed October 27, Swagerty discussed Peltier and argued there was no waiver of the statute of limitations. The state must abide by the

plea agreement, remand for resentencing on count I, and vacate the other three counts. Final Am. Reply, at 2. The reply reiterated Swagerty's other claims.

On January 21, 2015, Division Two filed its decision. The court concluded the statute of limitations claim was dispositive and did not address Swagerty's other claims. Slip. Op. at 1.

The court first determined that convictions entered in violation of the statute of limitations implicate the "complete miscarriage of justice" standard, and therefore merit relief from personal restraint. Slip. Op. at 2 (citing In re Restraint of Stoudmire, 141 Wn.2d 342, 355, 5 P.3d 1240 (2000)). "[E]xpiration of the statute of limitations deprives a trial court of authority to permit prosecution or enter judgment on the time-barred offense." Id., at 3 (citing Stoudmire, at 355).

The court accepted the state's concession that prosecution on counts II, III, and IV was time-barred. But the court rejected Swagerty's argument that the appropriate remedy was to remand for resentencing solely on count I.

The court instead adopted the state's position that the plea was an indivisible "package deal." And because the other three counts were already time-barred, Swagerty could not waive the statute of limitations under Peltier. Slip op. at 4.

The court's remedy was to vacate all of Swagerty's convictions and remand for an order of dismissal. The court authorized the state to then refile any charges for which the statute of limitations had not yet expired. Slip op., at 5. The court helpfully noted the statute had not run on the original charges, which were "most serious offenses," the refiling of which would again place Swagerty at risk for a sentence of life without parole. Id., at 5 n.2.

On February 5, 2015, Swagerty moved to reconsider and asked the court to address all of his claims. The motion was denied by order dated February 23, 2015.

On February 23, 2015, Swagerty filed a motion for discretionary review. He argued, inter alia, that the remedy for the Peltier claim was to resentence him on count 1 and dismiss the remaining counts. MDR at 1-2, 8-10. He argued the state and Court of Appeals violated his due process rights by failing to provide the record necessary to allow him to raise his claims, and by failing to remand for reference hearings. MDR at 4, 7, 10-11, 13-14. He asserted the Court of Appeals erred by failing to address the other claims raised in his petition and briefing. MDR at 15-16.

C. SUPPLEMENTAL ARGUMENT

1. BECAUSE SWAGERTY SEEKS ONLY TO VACATE THE TIME-BARRED CONVICTIONS, THE COURT OF APPEALS ERRED WHEN IT ALSO VACATED COUNT I AND ALLOWED THE STATE TO REFILE OTHER CHARGES ON REMAND.

The Court of Appeals properly accepted the state's concession that counts II, III, and IV were barred by the statute of limitations. The court erred, however, when it also vacated count I and allowed the state to file any other charge not barred by the statute of limitations.

- a. Swagerty Did Not Waive His Rights Under the Statute of Limitations.

Although a guilty plea waives many rights, it does not waive claims “which go to ‘the very power of the State to bring the defendant into court to answer the charge brought against him[.]’” State v. Knight, 162 Wn.2d 806, 811, 174 P.3d 1167 (2008) (quoting Blackledge v. Perry, 417 U.S. 21, 30, 94 S.Ct. 2098, 40 L.Ed.2d 628 (1974)).<sup>10</sup> In Peltier, this Court recently reiterated that the expiration of the statute of limitations “deprives a court of *authority* to enter judgment.” State v. Peltier, 181 Wn.2d 290, 297, 332 P.3d 457 (court's emphasis, quoting In re Restraint of Stoudmire, 141 Wn.2d 342,

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<sup>10</sup> See also State's Response to PRP at 13 (conceding that a guilty plea does not waive claims that challenge “the government's power to prosecute regardless of factual guilt,” citing In re Restraint of Reise, 146 Wn. App. 772, 782, 192 P.3d 949 (2008)).

355, 5 P.3d 1240 (2000)). A conviction entered in violation of the statute of limitations satisfies the “complete miscarriage of justice” standard, and therefore merits relief from personal restraint. Stoudmire, at 355. Vacation is the proper remedy for a conviction barred by the statute of limitations, even when the conviction results from a guilty plea to multiple offenses. Stoudmire, at 354-55, 357.

In the Court of Appeals, the state properly conceded that counts II, III and IV were time-barred. Pro se, Swagerty argued the remedy is to vacate those three counts and remand for resentencing on Count I. The Court of Appeals contrarily concluded that vacation of all counts was appropriate because the plea agreement was indivisible, and allowed the state to refile the original charges on remand. This Court granted review on the limited question of the proper remedy for the conceded violation.

b. This Court Answered the Remedy Question in State v. Knight.

This Court answered the question on similar facts in State v. Knight, 162 Wn.2d 806, 174 P.3d 1167 (2008). The state initially charged Knight with five counts, and in an indivisible plea agreement she later pled guilty to three: conspiracy to commit second degree robbery, conspiracy to commit first degree burglary, and second degree murder. Knight, 162 Wn.2d at 809.

She appealed the judgment, arguing the two conspiracies violated double jeopardy because they constituted a single unit of prosecution. The Court of Appeals agreed and vacated the burglary conspiracy conviction. Knight, 162 Wn.2d at 809-10.

The state sought review, arguing Knight could not “withdraw” her plea to a single count because the plea agreement was “indivisible.” Knight, at 812-13 (citing State v. Turley, 149 Wn.2d 395, 402, 69 P.3d 338 (2003)).<sup>11</sup>

This Court unanimously rejected the state’s claim because Knight did not seek to withdraw her plea. She instead sought to enforce her double jeopardy rights. Because Knight had not waived double jeopardy protections in her guilty pleas or in the plea agreement, “the indivisibility of the plea agreement has no bearing” on the analysis. Knight, 162 Wn.2d at 812-13.<sup>12</sup>

Knight is on point and persuasive. The double jeopardy clause bars multiple prosecutions for the same offense. Knight, at 811-12. The statute of limitations similarly “bars prosecution of charges commenced after the period prescribed in the statute[.]” Stoudmire, 141 Wn.2d at 355. The state did not secure Knight’s waiver of her double jeopardy rights, and it did not

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<sup>11</sup> This Court granted review “to determine if a single conviction can be vacated for a double jeopardy violation without rejecting an indivisible plea agreement.” Knight, at 810.

secure Swagerty's waiver of limitations rights. Vacation is the remedy for a conviction barred by the statute of limitations, Stoudmire, at 354-55, 357, as it is for a double jeopardy violation. Knight, at 813. The state's belief that the plea agreement is "indivisible" has no bearing on the analysis. Following Knight and Stoudmire, this Court should vacate the three counts and remand for resentencing on count I.

In response, the state may complain it is unfair to allow Swagerty to assert his limitation rights, but still hold the state to its bargain. The state raised the same complaint in Knight,<sup>13</sup> and this Court was unswayed. Rights exist to protect people from the government, not to protect the government from people. While some government lawyers may grumble about "double

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<sup>12</sup> See also, In re Francis, 170 Wn.2d 517, 531, 242 P.3d 866 (2010) (reaffirming the remedy in Knight).

<sup>13</sup> The state argued the Court of Appeals decision in Knight "is unfair to the State and a clear disincentive for the State to enter into plea bargains. The State negotiated a plea bargain with the defendant. Now, the Court of Appeals has chiseled away at the plea bargain so that the defendant receives a more favorable sentence and the State receives *nothing* in exchange for this reduction. This situation is not plea bargaining, it is the Court of Appeals enforcing a less advantageous plea bargain on the State." State v. Knight, No. 79236-4, Petition for Review at 7, <http://www.courts.wa.gov/content/Briefs/A08/792364%20prv.pdf> (last accessed 2/24/16).

standards,” there are two standards. People have rights; the government does not.<sup>14</sup>

The state’s protection against any risk of unfairness is its own basic competence when entering a plea agreement. In Peltier, for example, the state timely secured Peltier’s waiver of any statute of limitations objection should he later challenge the convictions. Peltier, at 292-93.<sup>15</sup> This level of competence is neither novel nor unreasonable in Washington’s prosecutorial community. After all, the state drafted Peltier’s agreement in July 2003. Peltier, at 293.

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<sup>14</sup> Const. art. 1, § 1 (“All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights”); U. S. Const. amends. 1-10, 13, 14, 15, 19, 24, 26; see generally, Giles v. California, 554 U.S. 353, 376 n.7, 128 S.Ct. 2678, 171 L.Ed.2d 488 (2008) (recognizing the “asymmetrical” nature of constitutional rights); State v. Gunwall, 106 Wn.2d 54, 66-67, 720 P.2d 808 (1986); Richard Sanders, Battles for the State Constitution: a Dissenter's View, 37 Gonz. L. Rev. 1 (2002).

<sup>15</sup> In pertinent part, the state-drafted waiver in Peltier provides: *If the defendant violates any other provision of this agreement, the State may either recommend a more severe sentence, file additional or greater charges, or re-file charges that were dismissed. The defendant waives any objection to the filing of additional or greater charges based on pre-charging or pre-trial delay, statutes of limitations, mandatory joinder requirements, or double jeopardy.* Peltier, at 293 (court’s emphasis).

Nor did Peltier blindside the state. Though the state argued to the Court of Appeals that Peltier had not yet been decided,<sup>16</sup> the controlling rules were set forth in Stoudmire (2001) and Knight (2008) – long before the state commenced this prosecution and entered this plea agreement. To the extent that pre-Peltier authority might have influenced the state’s draftsmanship here it should have made the state more careful, because prior precedent held that statutes of limitations are jurisdictional. Peltier, at 295-97.

Swagerty has no duty to protect the state. This is an adversary proceeding and he openly pled guilty “to take advantage of the state’s offer.” Although he agreed to recommend a stipulated exceptional sentence, his agreement could not bind the sentencing judge.<sup>17</sup> In short, Swagerty could not guarantee the state what it wanted. He had no obligation to protect the state from errors it might make when entering a plea agreement.

The remedy set forth in Knight and Stoudmire is settled and fair. Although the Court of Appeals correctly held that the convictions for counts II, III, and IV were time-barred, it erred when it remanded for vacation of all four counts. This Court should reverse the Court of Appeals remedy, and remand for resentencing solely on count I.

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<sup>16</sup> State’s Supp’l Response, at 2-3.

<sup>17</sup> RCW 9.94A.431(2).

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The remedy set forth in Knight and Stoudmire is settled and fair. Although the Court of Appeals correctly held that the convictions for counts II, III, and IV were time-barred, it erred when it remanded for vacation of all four counts. This Court should reverse the Court of Appeals remedy, and remand for resentencing solely on count I.

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<sup>16</sup> State’s Supp’l Response, at 2-3.  
94A.431(2).

2. THE COURT OF APPEALS ERRED IN FAILING TO APPOINT COUNSEL FOR SWAGERTY.

The order granting review also directs the parties to discuss “the procedure under which the Court of Appeals addressed the statute of limitations.”

As discussed in the statement of facts, Swagerty’s PRP raised the limitations claim and on several occasions he requested the assistance of counsel. The Division Two Commissioner properly recognized the limitations claim had arguable merit and directed the state to file a supplemental response. The state then conceded that three counts were time-barred, but argued for a remedy that placed Swagerty in jeopardy of a sentence of life without possibility of parole.

When reviewing a PRP, the Court of Appeals initially determines whether the claims raised are “frivolous.” RAP 16.11(b); In re Restraint of Ruiz-Sanabria, 184 Wn.2d 632, 641, 362 P.3d 758, 762 (2015). This Court recently held that “a personal restraint petition is frivolous where it fails to present an arguable basis for collateral relief either in law or in fact, given the constraints of the personal restraint petition vehicle.” In re Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015).

Swagerty’s limitations claim had arguable merit when the Commissioner requested supplemental response, and certainly when the state

conceded the error. Division Two was obligated to appoint counsel to assist Swagerty at that point. RCW 10.73.150(4); In re Restraint of Bonds, 165 Wn.2d 135, 143, 196 P.3d 672, 677 (2008). The failure to do so deprived Swagerty of his right to counsel. It also likely led to this Court's otherwise unnecessary review, because competent counsel would have: (1) shepardized Turley and found Knight; (2) read Peltier and found Stoudmire; then (3) made the pedestrian stroll between those cases and arrived at argument 1 set forth supra.

The Court of Appeals also should have addressed Swagerty's remaining claims. RAP 16.11(b); see e.g., Khan, at 693-94.

D. CONCLUSION

Swagerty's petition should be granted and the matter remanded to the trial court for the vacation of counts II, III, and IV, and for resentencing solely on count I.

DATED this 25<sup>th</sup> day of February, 2016.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



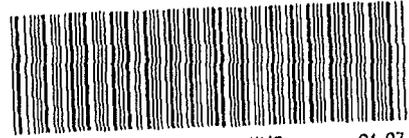
ERIC BROMAN, WSBA 18487

OID No. 91051

Attorneys for Petitioners

Petitioner's Exhibit 1

91268-8



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY,

AMENDED INFORMATION

Defendant.

DOB: 6/5/1965

SEX : MALE

RACE: WHITE

PCN#:

SID#: UNKNOWN

DOL#: FL S263-432-65-205-0

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JERRY LEE SWAGERTY of the crime of RAPE OF A CHILD IN THE THIRD DEGREE, committed as follows:

That JERRY LEE SWAGERTY, in the State of Washington, on or about the 14th day of February, 2004, did unlawfully and feloniously, being at least 48 months older than S.M.B., engage in sexual intercourse with S.M.B., who is at least 14 years old but less than 16 years old and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.079, and the crime was aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance, and/or pursuant to RCW 9.94A.535(2)(a), the defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JERRY LEE SWAGERTY of the crime of LURING, a

AMENDED INFORMATION- I

1 crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts  
 2 connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect  
 3 to time, place and occasion that it would be difficult to separate proof of one charge from proof of the  
 4 others, committed as follows:

5 That JERRY LEE SWAGERTY, in the State of Washington, on or about the 14th day of  
 6 February, 2004, did unlawfully and feloniously order, lure or attempt to lure a minor child or a person  
 7 with a developmental disability, S.M.B., into an area or a structure that is obscured from or inaccessible to  
 8 the public or into a motor vehicle and the defendant did not have consent from the minor's parent or  
 9 guardian or of the guardian of the person with a developmental disability to do so, and the defendant was  
 10 unknown to the child or developmentally disabled person, contrary to RCW 9A.40.090, and the crime  
 11 was aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(b), the defendant knew  
 12 or should have known that the victim of the current offense was particularly vulnerable or incapable of  
 13 resistance, and/or pursuant to RCW 9.94A.535(2)(a), the defendant and the state both stipulate that justice  
 14 is best served by the imposition of an exceptional sentence outside the standard range, and the court finds  
 15 the exceptional sentence to be consistent with and in furtherance of the interests of justice and the  
 16 purposes of the sentencing reform act, and against the peace and dignity of the State of Washington.

#### 17 COUNT III

18 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 19 authority of the State of Washington, do accuse JERRY LEE SWAGERTY of the crime of BURGLARY  
 20 IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same  
 21 conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or  
 22 so closely connected in respect to time, place and occasion that it would be difficult to separate proof of  
 23 one charge from proof of the others, committed as follows:

24 That JERRY LEE SWAGERTY, in the State of Washington, on or about the 14th day of  
 February, 2004, did unlawfully and feloniously, with intent to commit a crime against a person or  
 property therein, enter or remain unlawfully in a building other than a vehicle or a dwelling, located at  
 1112 S. M. Street, Tacoma, WA, contrary to RCW 9A.52.030(1), and the crime was aggravated by the  
 following circumstances: pursuant to RCW 9.94A.535(2)(a), the defendant and the state both stipulate  
 that justice is best served by the imposition of an exceptional sentence outside the standard range, and the  
 court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and  
 the purposes of the sentencing reform act, and/or pursuant to RCW 9.94A.535(3)(b), the defendant knew  
 or should have known that the victim of the current offense was particularly vulnerable or incapable of  
 resistance, and against the peace and dignity of the State of Washington.

COUNT IV

1  
2 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
3 authority of the State of Washington, do accuse JERRY LEE SWAGERTY of the crime of  
4 INTIMIDATING A WITNESS, a crime of the same or similar character, and/or a crime based on the  
5 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
6 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
7 proof of one charge from proof of the others, committed as follows:

8 That JERRY LEE SWAGERTY, in the State of Washington, on or about the 14th day of  
9 February, 2004, did unlawfully and feloniously direct a threat to a former witness, to-wit: S.M.B.,  
10 because of the witness's role in any official proceeding, contrary to RCW 9A.72.110(2), and the crime  
11 was aggravated by the following circumstances: pursuant to RCW 9.94A.535(2)(a), the defendant and the  
12 state both stipulate that justice is best served by the imposition of an exceptional sentence outside the  
13 standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the  
14 interests of justice and the purposes of the sentencing reform act, and/or pursuant to RCW  
15 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was  
16 particularly vulnerable or incapable of resistance, and against the peace and dignity of the State of  
17 Washington.

18 DATED this 24th day of December, 2012.

19 TACOMA POLICE DEPARTMENT  
20 WA02703

21 MARK LINDQUIST  
22 Pierce County Prosecuting Attorney

23 aw

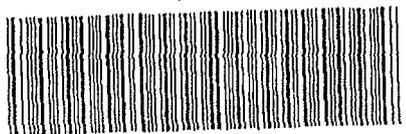
24 By:



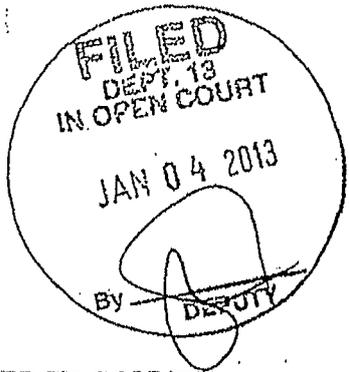
25 ANGELICA WILLIAMS  
26 Deputy Prosecuting Attorney  
27 WSB#: 36673

Petitioner's Exhibit 2

91268-8



12-1-01B77-6 39778899 STPATTY 01-07-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY,

PROSECUTOR'S STATEMENT  
REGARDING AMENDED  
INFORMATION

Defendant.

The State requests the Court to consider accepting a plea to the filing of an Amended Information pursuant to RCW 9.94A.431 for the following reasons: The defendant is making a factual admission to the underlying facts of rape of a child in the first degree and stipulating to an exceptional sentence of 30 years in prison. The victim is severely developmentally disabled. This incident still causes her significant trauma. In speaking with the victim's guardian, although the victim recalls this incident, it would be traumatic for her to details the facts during a trial. This resolution avoids the possibility of re-traumatizing the victim while holding the defendant accountable with a lengthy prison sentence.

12/24/12  
Date

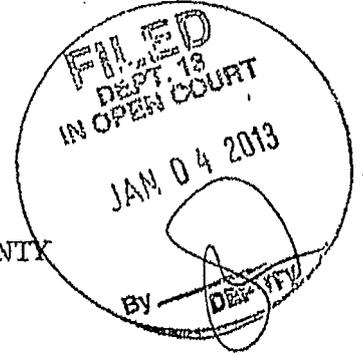
[Signature]  
ANGELICA WILLIAMS  
Deputy Prosecuting Attorney  
WSB # 36673

Petitioner's Exhibit 3

91268-8



12-1-01877-6 39778901 STPPR 01-07-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY,

STIPULATION ON PRIOR RECORD AND  
OFFENDER SCORE  
(Plea of Guilty)

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge RAPE OF A CHILD IN THE THIRD DEGREE; LURING; BURGLARY IN THE SECOND DEGREE; INTIMIDATING A WITNESS, the defendant JERRY LEE SWAGERTY, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
CHARGE UNKNOWN	UNKNOWN	CLALLAM, WA	02/28/81	J				FELONY
THEFT 2 <sup>ND</sup>	11/18/81	CLALLAM, WA	04/12/81	J				FELONY
BURGLARY 2 <sup>ND</sup> DEGREE	11/18/81	CLALLAM, WA	04/26/81	J				FELONY
BURGLARY 2 <sup>ND</sup> DEGREE	12/03/86	KING, WA	02/09/84	A				FELONY
BURGLARY 2 <sup>ND</sup> DEGREE	10/29/86	CLALLAM, WA	03/08/84	A				FELONY
ROBBERY 2 <sup>ND</sup> DEGREE	10/19/89	KING, WA	07/12/89	A				FELONY
ROBBERY 2 <sup>ND</sup> DEGREE	10/19/89	KING, WA	07/12/89	A				FELONY

STIPULATION ON PRIOR RECORD -1  
jsprior.dot

1									
2	ATTEMPTED RESIDENTIAL BURGLARY	02/19/93	KING, WA	12/30/92	A				FELONY
3	THEFT 1 <sup>ST</sup> DEGREE	01/29/97	SPOKANE, WA	02/22/96	A				FELONY
4	THEFT 1 <sup>ST</sup> DEGREE	01/29/97	SPOKANE, WA	02/22/96	A				FELONY
5	UPCS - METH	02/15/02	CLARK, WA	12/04/00	A				FELONY
6	THEFT 1 <sup>ST</sup> DEGREE	02/15/02	CLARK, WA	12/21/00	A				FELONY
7	PSP 2 <sup>ND</sup> DEG	02/15/02	CLARK, WA	12/21/00	A				FELONY
8	12-1-01877-6 LURING	OTHER CURRENT	PIERCE, WA	02/14/04	A				FELONY
9	12-1-01877-6 BURGLARY 2 <sup>ND</sup> DEGREE	OTHER CURRENT	PIERCE, WA	02/14/04	A				FELONY
10	12-1-01877-6 INTIMIDATING A WITNESS	OTHER CURRENT	PIERCE, WA	02/14/04	A				FELONY
11	UPGLM	11/14/83	PORT ANGELES, WA	10/05/83	A	MISD			MISD
12	NEG DRIVING	UNKNOWN	CLALLAM, WA	12/23/90	A	MISD			MISD
13	MISD TRAFF VIOLATION	03/05/91	PORT ANGELES, WA	10/20/91	A	MISD			MISD

Concurrent conviction scoring:

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
BURGLARY 1 <sup>ST</sup> DEGREE	02/24/86	YAMHILL, OR	11/03/83	A				FELONY

Concurrent conviction scoring:

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	VI	60 MONTHS		60 MONTHS	5 YRS/ \$10,000
II	9+	UR	0 - 12 MONTHS		0 - 12 MONTHS	5 YRS/ \$10,000
III	9	III	51 - 68 MONTHS		51 - 68 MONTHS	10 YRS/ \$20,000
IV	9+	VI	77 - 102 MONTHS		77 - 102 MONTHS	10 YRS/ \$20,000

\* (F) Firearm. (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom. See RCW 46.61.520. (JP) Juvenile present.

The defendant further stipulates:

- Pursuant to Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
- That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;
- That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

Stipulated to this on the 4 day of January, 2012.

  
 ANGELICA WILLIAMS  
 Deputy Prosecuting Attorney  
 WSB # 36673

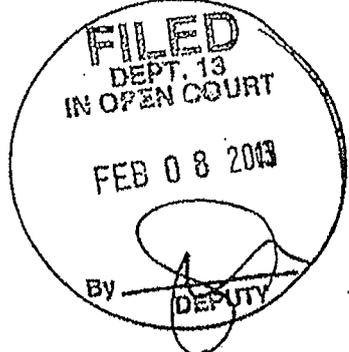
  
 JERRY LEE SWAGERTY  
  
 DAVID S. SHAW  
 WSB # 13994

mlld

Petitioner's Exhibit 4

91268-8

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY.

Defendant.

ADDENDUM TO PLEA FORM  
REGARDING STIPULATED EXCEPTIONAL  
SENTENCE

DOB : 06/05/1965      SEX : MALE      RACE : WHITE  
PCN# :                      SID# : 12428205      DOL# : fl s263-65-205-0

1. On January, 4, 2012, the defendant pled guilty to the following four counts: (1) Rape of a Child in the Third Degree; (2) Luring; (3) Burglary in the Second Degree, and (4) Intimidating a Witness.
2. Each count in the State's amended information including the following two aggravating circumstances: (1) pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistances, and (2) pursuant to RCW 9.94A.535(2)(a), the defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court

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finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purpose of the sentencing reform act;

3. Prior to the plea, the State provided to the defendant a copy of the information containing all four amended counts with both aggravating circumstances.
4. The amended information was explained to the defendant by defense counsel and all questions were answered.
5. On January 4, 2012, the court accepted the statement of defendant on plea of guilty which did not include the second aggravating circumstance noted above even though the amended information filed contemporaneously included both aggravating circumstances.
6. The plea agreement entered into on January 4, 2012 was intended to include both aggravating circumstances, and the absence of the second aggravating factor in the defendant's statement of defendant on plea of guilty was an inadvertent omission.
7. The defendant acknowledges that this plea agreement allows the defendant to avoid possible sentencing as a persistent offender.
8. The defendant agrees that on January 4, 2012, it was his intention to enter into a plea agreement with two aggravating circumstances for each of the four counts.
9. That page five of the statement of defendant on plea of guilty accurately reflects the plea agreement between the State and defendant for a stipulated recommendation of a 30 year exceptional sentence.
10. That on page eight of the statement of defendant on plea of guilty, statement 7. "I plead guilty to count(s) 1, II, III, IV in the amended information" includes both aggravating circumstances contained in the amended information.

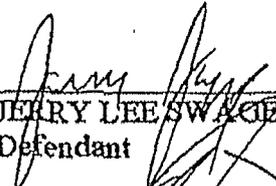
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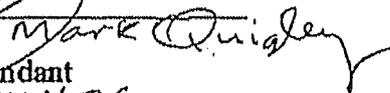
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- 11. The defendant has discussed this inadvertent omission with both his attorneys, understands all of his options, and elects to proceed forward with the stipulated joint recommendation for an exceptional sentence of 30 years.
- 12. The defendant makes this choice freely and voluntarily.

DATED this 8 day of Feb., 2013

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 \_\_\_\_\_  
 JERRY LEE SWAGERTY.  
 Defendant

~~DAVE SHAW~~   
 \_\_\_\_\_  
 Attorney for Defendant  
 WSB #13994-17496

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Petitioner's Exhibit 5

91268-8



Washington State Court of Appeals  
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

August 6, 2014

Jerry Lee Swagerty (via USPS)  
#903395  
Coyote Ridge Corrections Center  
PO Box 769  
Connell, WA 99326

Kimberley Ann DeMarco (via email)  
Pierce County Prosecutor's Office  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2102

CASE #: 45862-4-II  
Personal Restraint Petition of Jerry Lee Swagerty

Mr. Swagerty & Counsel:

On the above date, this court entered the following notation ruling:

**A RULING BY COMMISSIONER BEARSE:**

The State is directed to file a supplemental response addressing the impact of the amended information on the statute of limitation for each offense charged. This response is due within 30 days of the date of this order.

Very truly yours,

David C. Ponzoha  
Court Clerk

Petitioner's Exhibit 6

91268-8

Jerry Swagerty #903395  
BB-11-1L  
Coyote Ridge Corrections Center  
P.O. Box 769  
Connell, Wa. 99326

August 15th, 2014

Case #: 45862-4

Court of Appeals, Division II  
ATTN: Commissioner Bearse  
950 Broadway, Suite 300  
Tacoma, Wa. 98402-4454

RECEIVED  
AUG 20 2014  
CLERK OF COURT  
STATE OF WASHINGTON

Dear Commissioner Bearse,

I am writing this letter and submitting a response to State's response to your Order to file a supplemental response addressing the impact of the amended information on the statute of limitations for each offense charged in my case. [Motion to Stay PRP]

1st of all I would like to say that in my previous filings, I had to rely on another offender to type up my briefs and was limited to the information I could write, as well as the nature of my rebuttal argument pursuant the charges against me. That has all changed now that I have my own typewriter, although Law Library time to complete any document under rule constraints is a continuing dilemma geared around the over-crowding situations at this facility.

The facts are is as it is. There was no d.n.a. evidence of mine taken directly from the victim at the time of the alleged incident. The suspect was described as no where matching my description. And no-one could identify me as being anywhere near the area where the alleged incident occurred. The only evidence of a real crime was that "an adolescent child followed a male subject out of a Safeway Store; a crime no more than luring, a class c felony! This still is my prima facie argument whereas I have repeatedly asked this Honorable Court to adhere RAP 16.9 and Order respondent to produce all relevant material of "my"

argument supported by case Law pursuant "an actual innocence claim". There is everything proving "I am not the suspect" whereas a co-defendant may exist in a single suspect incident included. Notwithstanding not ever in my entire criminal history has this type of crime been any part of my personality and/or persona. In all honesty I sincerely believe it is downright disgusting to lick the pee of little girls, boys, it's, animals, or aliens. Seriously, I'm truly offended that I am even alleged to be such an offender!!!

Anyways, I have every confidence that this Honorable Court of Appeals, Division II & The Washington State Supreme Court all decisions grounded in the U.S. Constitution and Legal precedence foremost based on facts & matters at hand. However, when the lower courts manipulate truths like supressing real evidence to convict innocent people who are less affluent & illiterate of the Law and circumstances they are in. Not only is justice blinded by deception. It is entirely perpetrated by those very individuals in our society who proclaim to be the best choice to uphold the Rule of Law being more criminal than those they hold power over...

#### ORAL ARGUMENT

The only specious evidence the State via the Pierce County Prosecutor's Office may have against me is the crime of luring; a class c felony with a statute of limitations of 3 years whereas it has been 8.2 years since the alleged incident occurred whereof Assistant Prosecutor Kimberley Ann Demarco did in fact manipulate false charges to avoid the statute of limitations! And then to top

it off. This alleged upholder of the Law charge me twice for a single incident calling into action a double jeopardy violation just to make sure she got a "conviction for her record" pursuant any plea bargain. The "real facts doctrine" is there in black & white whereupon I reviewed every bit of it because for two very simple reasons:

1. I WAS NOT THERE TO BE WITNESS TO ANYTHING.
2. SO MY ONLY SOURCE IS THAT OF WHICH I CONSISTENTLY WITHOUT HESITATION PROCLAIM THAT MY ONLY SUBJECTIVE OBJECTIVE IS TO PROMULGATE ALL THE TRUTHS OF THIS CASE SO THAT I WILL BE FULLY VINDICATED OF ANY WRONGDOING!!!

footnote:

I sincerely have spent 9 1/2 years since my last incarceration in 2003 not committing any crime so I could be clean of all my past as I attempted to get into the entertainment business with my copywrite screenplay & radio-television show you can see for yourself if you Google --->>> THE INDI DEMO REPO SHOW . So State v. Peltier or bust if that what it takes. I just want to get back to my correcting all the wrongs I really did as a petty criminal against the good citizens of Washington State by bringing about showing our Washatonian weathered pride off to everyone everywhere on the Planet.

ps: sorry 'bout type-o's, I'm trying to get this done so I can watch our Superbowl heros in pre-season.....

Respectfully Submitted,

Petitioner's Exhibit 7

91268-8

Jerry Swagerty #903395  
B-11-1L  
Coyote Ridge Corrections Center  
P.O. Box 769  
Connell, Wa. 99326

October 18th, 2014

RECEIVED  
OCT 24 2014

Court of Appeals, Division II  
ATTN: Commissioner Bearse  
950 Broadway, Suite 300  
Tacoma, Wa. 98402-4454

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

Dear Commissioner Bearse,

INFORMAL PREJUDICE COMPLAINT

I, Pro Se Petitioner, Jerry Lee Swagerty, Case #45862-4-II, am hereby stating that I was prejudiced in the "Supplemental filing on the impact of the amended information on the statute of limitations for each offense charged", and herein state the following:

1. The last letter I received was dated August 25th, 2014 stating the State's request for stay was denied, and that State's supplemental Brief was due within 30 days of the date of that ruling. And that this Court declined to rule on the request for relief included in Petitioner's response to State's motion at that time.
2. Within a few weeks, I recieved an empty envelope stating contents were not marked legal. At that time, I wrote a letter to respondent asking if they sent me something I was supposed to have, and then explained that if the envelope is not marked legal, said materials deemed legal are opened up without recipient present. A few days later the contents "Respondent's Supplemental Brief" was delivered to me without an envelope or explanation.

3. I then took the "Respondent's Supplemental Brief" to the Law Library to look up the decision of State v. Peltier, SC #89502-3, and was unable to locate the official opinion on the west law computers, nor was the case on-line when the Mr. Zwicky, the legal librarian looked on the Wa State Supreme Court web-site. At that time, I only then discovered that Petitioner's Reply to State's Supplemental Brief was due on October 16th, 2014. And with only the Respondent's Brief, and no availability to review the actual opinion of the Supreme Court decision in Peltier, supra, I, Pro Se Petitioner, Jerry Lee Swagerty, was forced to prepare & file an un-complete Reply to State's Brief.

A. Formal translation of Petitioner's Reply to State's Supplemental

The State provided a "package deal" that included charges where 3 of the 4 convictions were in violation of the Statute of Limitations at the time the plea bargain was signed, sealed, and completed, that under Peltier, State lacked the statutory authority to enter judgement which defendant cannot wave by entering guilty plea. Evidentially the Supreme Court upheld this Ruling grounded in Stoudmire, 141 Wn. 2d 342, 5 P.3d 1240, "Where a trial court imposes a sentence after the statute of limitations has run, the court exceeds the authority given it"; thus 3 of the 4 charges are null & void, and the State must abide by the plea agreement, and Amend the sentence from 360 months to 60 months for the remaining charge of 3rd Degree Child Rape, and then Amend that sentence so that the "combination of confinement & community custody does not exceed the statutory maximum" under In Re Brooks, 166 Wn. 2d 664, pursuant In Re Swagerty, COA-II Case #45862-4-II.

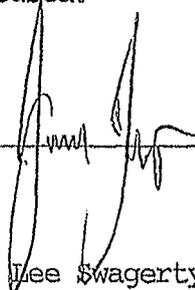
\*\*\*\*\*Petitioner's Reply to Respondent's Supplemental Brief in all other words still stands true & correct that this case should be decided on other actual "statute of limitations violations pursuant primary evidence that vindicates Jerry Lee Swagerty of any crime under actual innocence".

[State exaggerating more serious crimes 1st degree in nature to avoid statute of limitations where primary evidence only supports a crime 3rd degree in nature constitutes prosecutorial misconduct]

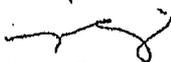
AFFIDAVIT

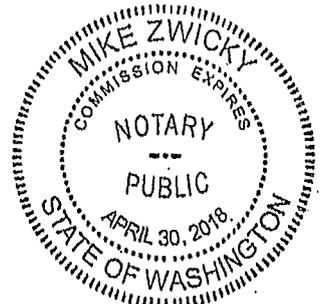
I, Pro Se Petitioner, Jerry Lee Swagerty, Case #45862-4-II, claim that I was prejudiced in violation of due process concerning the filing of a "Reply to Respondent's Supplemental Brief on the impact of the amended information on the statute of limitations for each offense charged," and herein state the following:

1. I, Jerry Swagerty was not given notice of the time line to file herein above state brief, in violation of due process under the Law.
2. I, Jerry Swagerty was not provided access to the decision of the controlling case to file herein above stated brief in violation of equal protection under the Law.
3. I, Jerry Swagerty am subject to a process where legal mail is opened without my presence whereas in the instant above matter, legal mail was not delivered with the envelope, but a few days later with no explanation or recourse of an action that violates the rights of an accused.

Signed  and dated this 21<sup>st</sup> day of October 2014

I, Jerry Lee Swagerty, dipose and say, that I am the Petitioner Pro Se, and that this letter constitutes an informal complaint, and that the contents are true and correct to the least of my abilities.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at: Connell WA  
My appointment expires: April 30 2018



.cc: File

Petitioner's Exhibit 8

91268-8

Jerry Swagerty #903395  
BB-11-1L  
Coyote Ridge Corrections Center  
P.O. Box 769  
Connell, Wa. 99326

FILED  
COURT OF APPEALS  
DIVISION II  
2014 OCT 23 PM 1:18  
STATE OF WASHINGTON  
BY: ICL  
DEPUTY

October 18th, 2014

Court of Appeals, Division II  
ATTN: Judges, Commissioner, Clerks  
950 Broadway, Suite 300  
Tacoma, Wa. 98504-4454

IN RE: Case No. 45862-4-II

Dear Honorables,

This letter is a Formal Commentary on the processes of which I as a Petitioner am succumbed to, whereof the respondent was not in concerns of the supplemental filings in the above stated case.

I, Pro Se Petitioner, Jerry Lee Swagerty, was not able to review the decision of the Supreme Court in State v. Peltier, #89502-3 --P.3d- (Wash. Aug. 21, 2014) whereof the respondent obviously was because it is from respondent's letter to me that I did receive the previous herein stated. I also did not recieve a letter from Commissioner Bearse in regards to the time line I must adhere in my Reply to Respondent's Supplemental Brief. What I did receive was an empty envelope from the respondent, where a few days later, I did receive the contents of that empty letter; Respondent's supplemental. I then prepared my Reply where my only resource was the letter from the respondent geared around my prima facie argument because the Law Library was also closed the last week my Reply to respondent's supplemental was due, in which, I was not informed.

The fact is that I have been prejudiced in this process although I believe I was able to be more clear than ever in my brief that the

Judges, Deputy prosecutors, and both assigned counsel in my case were and still are negligent in their duties and oaths as attorney's in and of the State of Washington.

To be perfectly clear, in respondent's supplemental it is clear:

1. Petitioner received a plea "package deal" where deputy prosecutor provided an agreement where they -- not the defendant -- went outside the guidelines & elements to sentence Petitioner to the rest of his natural life until the age of 67 for the crime of allegedly licking the private parts of an adolescent girl where there is no primary evidence whatsoever to support such a claim. Of course notwithstanding that the "package deal" has the appearance completely outside elements that defendant broke into a house, lured a child outside, raped that child, then threatened said child into not telling.

\* As a man who has always fought for the protection of women & children, I find this totally disrespectful. And it is a sad day for Pierce County's Superior Court system that legal representatives would do such a disgraceful thing with the expertise of their professions.

2. Since Petitioner received a "package deal" where Peltier is well grounded in Stoudmire (2010), the State deprived itself of the right to pass judgement & sentence on 3 of the 4 charges, and said State cannot now claim ignorance of the Law saying that Jerry Swagerty must sign a waiver to correct the issue. Jerry Swagerty refuses to sign any waiver of plea deal, and Jerry Swagerty absolutely refuses to go to trial before "corrupt legal personnel in and of the Pierce County Superior Court system". And the language is clear that there must be an express waiver of the statute of limitations for a guilty plea on charges outside the statute of limitations.

\* As a man who is "actual innocent" of the original charges, I would like to affirm that the only option of the State is to Amend the current sentence of 360 months to 60 months and then Amend said sentence so that the combination of confinement & community custody does not exceed statutory maximum of 3rd Degree Child Rape.

ORAL ARGUMENT

I, Pro Se Petitioner, Jerry Lee Swagerty, state for the record that these proceedings are concerning a "cold" case that no-one cares about except the deputy prosecutor & police who only want to save face, not have justice be served. The alleged victim won't even testify at a trial where said person must be at least 18 years of age now. A legal adult who cannot claim because of age. I, Pro Se Petitioner proclaim that the reason is because the crime never happened. And the facts of this case are that both assigned counsel were totally deficient on purpose to allow the deputy prosecutor to commit misconduct that was also supported by a biased Judge in favor of the State, and herein state the following:

Cannedy v. Adams, 706 F.3d 1148 at 1162 (9th Cir. 2013), "counsel's ineffective assistance cannot be excused as strategic when counsel fails to conduct a thorough investigation". See also Howard v. Clark, 608 F.3d 563 at 570 (9th Cir. 2010).

State v. Miller, 324 F.3d 791, "it's a fundamental defect to not sentence a defendant to concurrent sentences -- even for serious violent offenses -- when mitigating circumstances exist" such as no character or criminal history to support type of crime, no primary evidence to convict person of said alleged crime, where defendant has gone over 9 years crime free, inter alia. See also In Re Mulholland, 161 Wn. 2d 322.

Hurles v. Ryan, 752 F.3d 768 (9th Cir. 2014), "Court abuses discretion in denying Judicial bias claim without evidentiary hearing" in review of "Stanley v. Schriro, 598 F.3d 612 (9th Cir. 2010), "Petitioner is entitled to evidentiary hearing on 6th Amendment violation claim".

\*\*\*\*\*prosecutorial misconduct goes here? In Re Swagerty, (Wa. App. 2014) "prosecutorial misconduct exists when the State charges a defendant with exaggerated crimes not supported by primary evidence to avoid statute of limitations".

Respectfully Submitted,

## OFFICE RECEPTIONIST, CLERK

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**To:** Eric Broman  
**Cc:** Brent Hyer; [tnichol@co.pierce.wa.us](mailto:tnichol@co.pierce.wa.us)  
**Subject:** RE: No. 91268-8, In re Restraint of Swagerty

Received on 02-25-2016

Supreme Court Clerk's Office

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:** Eric Broman [<mailto:BromanE@nwattorney.net>]  
**Sent:** Thursday, February 25, 2016 4:43 PM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Cc:** Brent Hyer <[bhyer@co.pierce.wa.us](mailto:bhyer@co.pierce.wa.us)>; [tnichol@co.pierce.wa.us](mailto:tnichol@co.pierce.wa.us)  
**Subject:** RE: No. 91268-8, In re Restraint of Swagerty

Oops. Attorney error strikes again. Thank you.

---

**From:** OFFICE RECEPTIONIST, CLERK [<mailto:SUPREME@COURTS.WA.GOV>]  
**Sent:** Thursday, February 25, 2016 4:41 PM  
**To:** Eric Broman  
**Subject:** RE: No. 91268-8, In re Restraint of Swagerty

There is nothing attached

Supreme Court Clerk's Office

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:** Eric Broman [<mailto:BromanE@nwattorney.net>]  
**Sent:** Thursday, February 25, 2016 4:41 PM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Cc:** Brent Hyer <[bhyer@co.pierce.wa.us](mailto:bhyer@co.pierce.wa.us)>; [tnichol@co.pierce.wa.us](mailto:tnichol@co.pierce.wa.us)  
**Subject:** No. 91268-8, In re Restraint of Swagerty

Dear Supreme Court Clerk:  
Attached is petitioner's supplemental brief and attached exhibits. A copy is being served on counsel for the respondent by cc to this email.

Thank you for your consideration and assistance.

---  
Eric Broman, WSBA 18487  
Nielsen, Broman & Koch PLLC  
1908 E. Madison  
Seattle, WA 98122  
206-623-2373

**OFFICE RECEPTIONIST, CLERK**

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**To:** Eric Broman  
**Cc:** Brent Hyer; tnichol@co.pierce.wa.us  
**Subject:** RE: No. 91268-8, In re Restraint of Swagerty

Received on 02-26-2016

Supreme Court Clerk's Office

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**From:** Eric Broman [mailto:BromanE@nwattorney.net]  
**Sent:** Friday, February 26, 2016 10:00 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Brent Hyer <bhyer@co.pierce.wa.us>; tnichol@co.pierce.wa.us  
**Subject:** RE: No. 91268-8, In re Restraint of Swagerty

Dear Supreme Court Clerk:

Attached is a corrected page 17 for the petitioner's supplemental brief. Footnote 17 was somehow shortened in the version filed yesterday.

Thank you for your consideration and assistance.

---  
Eric Broman, WSBA 18487  
Nielsen, Broman & Koch PLLC  
1908 E. Madison  
Seattle, WA 98122  
206-623-2373