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WASHINGTON STATE  
SUPREME COURT

**Supreme Court No. 91905-4  
(Court of Appeals No. 71383-3-I)**

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

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**In re PERSONAL RESTRAINT PETITION**

**of**

**HECTOR SERANO SALINAS, Respondent.**

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**STATE'S SUPPLEMENTAL BRIEF**

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 **ORIGINAL**

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**A. ISSUES PRESENTED**

1. Whether petitioner actively pursued and participated in, and thereby invited, the right to public trial error he alleges by proposing a questionnaire three times that called for private voir dire, to occur not in open court, where the prosecutor did not request private voir dire and did not propose such a questionnaire, where the questionnaire given permitted jurors to request to speak in private regarding sensitive matters, where defense did not object at the time the judge inquired if anyone in the courtroom objected to in chambers voir dire, and where defense actively participated in and benefited from the private voir dire.
2. Whether appellate counsel provided ineffective assistance of counsel by failing to assert a right to public trial violation based on the in chambers voir dire where the record indicates defense invited that violation by seeking private voir dire that would occur in a closed setting, by failing to object when the judge inquired if anyone objected to the private voir dire occurring in chamber, and actively participating in and benefiting from the private voir dire.
3. Whether a reference hearing should be ordered to address material issues of disputed fact as to how and why the decision was made to have private voir dire in a closed setting and as to whether appellate counsel, who failed to raise the right to public trial issue on appeal, provided ineffective assistance of counsel where petitioner did not file an affidavit from appellate counsel and where the decision not to raise the issue may have been made for strategic reasons at the time it was made due to the invited error doctrine, and where the State asserts defense invited the right to public trial violation and petitioner asserts he did not.

**B. STATEMENT OF THE CASE**

**1. Procedural Facts.**

Hector Salinas was convicted of three counts of Rape in the First Degree and one count of Kidnapping in the First Degree, and was sentenced as a persistent offender to life without possibility of release.

App. A.<sup>1</sup> Salinas appealed and filed an overlength brief on June 29, 2011 asserting numerous, substantive issues, contesting the search and seizure of various articles of clothing and effects, contesting the dog track, defense counsel's failure to request an instruction regarding the dog track evidence, the victim's in-court identification of Salinas, and a number of sentencing issues related to double jeopardy and the same criminal conduct, and regarding the proof, and the manner of proof, related to the persistent offender finding. The Court of Appeals affirmed Salinas' convictions, but remanded for a determination as to whether the rapes constituted the same course of criminal conduct and for vacation of the first degree kidnapping conviction. State v. Salinas, 169 Wn. App. 210, 224, 279 P.3d 917 (2012), *rev. den.*, 176 Wn.2d 1002 (2013)<sup>2</sup>.

Within a year of the mandate from that decision, Salinas filed the current personal restraint petition. Salinas did not file an affidavit from his appellate counsel, Ms. Susan Wilk, along with his petition explaining why she had failed to assert the issue in the first direct appeal. The record from the first direct appeal included a complete transcription of jury voir dire. (See Record in No. 65527-2-I).

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<sup>1</sup> All references to appendices refer to the documents appended to the State's response to Salinas's personal restraint petition.

<sup>2</sup> After remand from the direct appeal, Salinas filed another appeal which was denied. Div. I No. 70125-8-I.

## 2. Substantive Facts.

On January 25, 2010, prior to a scheduled trial date, Salinas's defense counsel filed a proposed jury questionnaire that informed prospective jurors (hereinafter "jurors"):

Some of these questions may call for information of a personal nature that you may not want to discuss in public. If you feel that your answer to any question may invade your right to privacy or might be embarrassing to you, you may so indicate on the form that you would prefer to discuss your answer in private. You will find instructions on this on the questionnaire.

App. B at 2. Question 26 then asked whether the juror would prefer to discuss the answer to any of the questions "*privately rather than in open court,*" and asked them to identify the questions by number. App. B at 7 (emphasis added). A number of the questions asked about jurors' experience with sexual abuse or misconduct. App. B at 5-6.

Defense counsel filed two more proposed juror questionnaires, once on March 3<sup>rd</sup>, 2010 and again on March 4<sup>th</sup>, before the rescheduled trial date. App. C, D. Both of those questionnaires provided the same advisement to jurors as the January one did, asked similar questions about sexual abuse or misconduct, and asked whether the jurors would prefer to discuss their answers to some questions "*privately rather than in open court.*" App. C, D. The prosecutor did not file a proposed juror

questionnaire, did not agree with some of the questions in the defense questionnaire and did not request private voir dire. App. F.

On March 8<sup>th</sup>, the juror questionnaire given to the jurors was filed in open court. App. E. While the questionnaire included many of the same questions defense counsel had proposed regarding experience with sexual abuse or misconduct, the questionnaire advised:

... if your answer to any of the following questions is of such a "sensitive nature" that you would like to discuss it 'privately', please identify those questions by number here: \_\_\_\_\_

App. E.

At one point during pre-trial motions on March 8<sup>th</sup>, the judge referenced the juror questionnaire and noted that seven of the jurors had indicated they wanted to speak in private. 3/8/10 RP 151-52. The judge suggested the jurors be sworn in and they could address those who wanted to speak individually first, before the rest of voir dire. 3/8/10 RP 152. At the end of pre-trial motions the next day, defense counsel<sup>3</sup> suggested:

I have a suggestion to help the jury here. I don't know if the Court is willing to do this is (sic) that we take a break now and bring the jury up here, get them sworn, and let the ones go that don't want to talk in private.

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<sup>3</sup> Mr. Salinas was represented by Starck Follis and Thomas Fryer.

3/9/10 PTRP 69-70<sup>4</sup>. The judge stated that was sort of what he had in mind, to swear the jury in and go through the basic qualifications. 3/9/10 PTRP 70. The prosecutor stated: "...when you're talking about taking them in privately ...," to which the judge responded: "I'm going to ask if there's anybody in the courtroom who has an objection, otherwise we have to do it in open courtroom." 3/9/10 PTRP 70.

Later that day, after inquiring whether all the prospective jurors had filled out the questionnaire, the judge informed the venire:

As you can see by that, this is a case that might involve some matters which might be of a sensitive nature.

In this case, I'm going to offer an opportunity to those who have indicated that they wish to speak in private about some issues the chance to do that. That is the first thing we will undertake, and then we will go through the general process of picking a jury which will start this afternoon...

3/9/10 VDRP 3. After reviewing some preliminary matters, the judge noted that some jurors had requested to speak in private, and then inquired:

Is there anyone in this group or *anyone* in this courtroom at this time *who has any objection* whatsoever to the Court conducting a short interview with each of those jurors, potential jurors with counsel and the defendant *in my chambers* all on the record to determine what their concerns are and be able to have them answer those questions or tell them what their concerns are *in private*? Is there anyone here that has any objection to that?

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<sup>4</sup> There are two report of proceedings for March 9<sup>th</sup>. PTRP refers to the "Pre-Trial CrR 3.5 Hearing and Pre-Trial Motions" one and VDRP to the "Jury Voir Dire" one.

3/9/10 VDRP 12-13 (emphasis added). The court then directed the jurors who wished to speak privately to return at 1:30 p.m. and the remainder to return at 2:30 p.m. 3/9/10 VDRP 13, 23. After the recess, the court inquired again:

I would ask if anyone has an objection to us speaking to them *in private* with us and counsel and defendant and the court reporter? Then I will go into chambers. Counsel will come in. The attorneys will come with me. The court reporter will set up, and Ms. Ortner will bring you in one at a time.

3/9/10 VDRP 23.

During in chambers voir dire, jurors discussed their, and/or family members', criminal history and experiences with sexual abuse. 3/9/10 VDRP 23-51. At one point defense counsel asked questions beyond those the jurors had indicated they wished to speak about privately and inquired into a juror's vocation as a certified riding instructor. 3/9/10 RP 38-40. As a result of the individual voir dire, three of the jurors were excused for cause. 3/9/10 VDRP 51.

### **C. ARGUMENT**

The Court of Appeals granted Salinas's personal restraint petition finding that appellate counsel had been ineffective in failing to assert a violation of his right to public trial based on the questioning of seven prospective jurors in chambers without weighing the Bone-Club factors on

the record. It granted a new trial pursuant to In re Morris<sup>5</sup>. In doing so, the Court rejected the State's assertion that Salinas' claim was precluded by the invited error doctrine because defense counsel filed a juror questionnaire proposing that jurors be questioned in private, not in open court, and actively participated in and benefited from the private voir dire. The Court of Appeals misconstrued the invited error doctrine by requiring the judge to have conducted a full Bone-Club analysis on the record in order to find the invited error doctrine applicable. The invited error doctrine only requires that a party set up the error s/he claims on appeal. Salinas's counsel did just that by proposing, via the questionnaire, that individual voir dire of jurors who wished to speak privately on sensitive questions occur in a closed setting and not objecting when the judge inquired into whether anyone objected to the in chambers voir dire. Salinas is precluded from asserting a violation of right to public trial because he actively pursued and engaged in the in chambers voir dire.

The presumption of prejudice set forth in In re Morris regarding ineffective assistance of appellate counsel is not applicable here because even if appellate counsel had raised the issue, it would have been precluded by the invited error doctrine. Moreover, Appellate counsel's representation is strongly presumed to be effective and Salinas has failed

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<sup>5</sup> In re Morris, 176 Wn.2d 157, 288 P.3d 1140 (2012).

to present specific evidence as to why that presumption should not apply. Should this Court determine that the current record does not establish that defense invited the alleged right to public trial error, the State requests this Court remand for a reference hearing to determine how and why the judge permitted private voir dire in the manner it did. The State also requests that such a reference hearing address the issue of why appellate counsel did not raise a right to public trial violation, an issue she would have been aware of, where there's nothing in the record to explain why she didn't.

- 1. Defense invited the very error Salinas claims by proposing individual voir dire to occur outside of court, failing to object when the court inquired whether anyone objected to that questioning occurring in chambers and actively participating in the private voir dire.**

Under the invited error doctrine all that is necessary is for the defense to have set up below the error it alleges on review. Here defense proposed private voir dire in its questionnaire, voir dire that would not occur in open court, and the State did not. Defense did not object when the court inquired if anyone in the courtroom objected to questioning the seven jurors in chambers, and actively participated in and even expanded the scope of that voir dire. In pursuing closed individual voir dire and not objecting to it occurring in chambers, Salinas affirmatively assented to the closure and materially contributed to it. He also benefited from it.

The invited error doctrine “prohibits a party from setting up an error ... and then complaining about it on appeal.” In re Thompson, 141 Wn.2d 712, 723, 10 P.3d 380 (2000). This is a “strict rule.” State v. Studd, 137 Wn.2d 533, 547, 973 P.2d 1049 (1999). As noted by one court, “... when a defendant in the procedural setting of a criminal trial makes a tactical choice in pursuit of some real or hoped for advantage, he may not later urge his own action as a ground for reversing his conviction even though he may have acted to deprive himself of some constitutional right.” State v. Lewis, 15 Wn. App.172, 177, 548 P.2d 587, *rev. den.* 87 Wn.2d 1005 (1976). The doctrine applies even in the context of constitutional error<sup>6</sup> and in the context of violations of the right to public trial. Studd, 137 Wn.2d at 546, 548; In re Coggin, 182 Wn.2d 115, 119, 340 P.3d 810 (2014). This rule recognizes that “[t]o hold otherwise would put a premium on defendants misleading trial courts.” State v. Henderson, 114 Wn.2d 867, 868, 792 P.2d 514 (1990).

The doctrine requires some affirmative action on the part of the defendant. Thompson, 141 Wn.2d at 724. Generally, where the defendant

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<sup>6</sup> The doctrine has been applied to constitutional claims regarding missing elements in to-convict instructions. *See, City of Seattle v. Patu*, 147 Wn.2d 717, 58 P.3d 273 (2002) (defendant could not raise issue of essential element of obstruction of justice offense missing in to-convict instruction because he proposed the instruction); State v. Summers, 107 Wn. App. 373, 28 P.3d 780 (2001) (defendant could not raise claim regarding missing knowledge element in unlawful possession of firearm to-convict instruction because he proposed an instruction that was identical to the one the court gave).

takes knowing and voluntary actions to set up the error, the invited error doctrine applies; where the defendant's actions are not voluntary, it does not. *Id.* In determining whether a defendant's actions constitute invited error, the court considers whether the defendant "affirmatively assented to the error, materially contributed to it, or benefited from it." *In re Coggin*, 182 Wn.2d at 119.

In concluding that Salinas did not invite error, the Court of Appeals distinguished *Momah*<sup>7</sup> and *In re Copland*<sup>8</sup> on the grounds that the trial courts in those cases had "fully and effectively considered the Bone-Club factors on the record" and found this case more comparable to *In re Coggin*. This misinterprets the invited doctrine and adds an additional condition not previously required by the doctrine. *Momah* did not present a "classic case" of the invited error doctrine, but the court did not find a public trial violation because the defendant affirmatively assented to the closure, actively participated in the closure and effectively weighed the Bone-Club factors. *Momah*, 167 Wn.2d at 155-56; *In re Coggin*, 182 Wn.2d at 118. The effective, on-the-record, weighing of the Bone-Club factors was important in *Momah* precisely because it did not present a "classic case" of invited error.

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<sup>7</sup> *State v. Momah*, 167 Wn.2d 140, 217 P.3d 321 (2009)

<sup>8</sup> *In re Copland*, 176 Wn. App. 432, 309 P.3d 626 (2013).

In re Copland was the first case in which a court denied a claim of a right to public trial violation, in part, because defense had invited the error. In re Copland, 176 Wn. App. 432, 309 P.3d 626 (2013). The court found the case presented a stronger invited error argument than that in Momah. Id. at 442-43. In considering whether the petitioner had invited the error, the court considered whether the petitioner had “affirmatively assented to the error, materially contributed to it, or benefited from it.” Id. at 442. Defense counsel had asked the trial court to close the courtroom to the media in order to avoid contamination of the jury pool. After an objection by the state, the judge denied defense counsel’s motion to close the courtroom during the entire voir dire, but ultimately agreed to allow certain jurors to be questioned privately. Id. at 443. Defense counsel then gave the judge a list of jurors for private questioning and actively participated in that questioning. Id. On review the court concluded that it could dismiss the petition based on invited error because petitioner had “actively pursued and participated in the very error that he complain[ed] of in his petition” by initiating the closure, seeking a full closure, and benefiting from the closure where the closure permitted him to ascertain the jurors’ potential biases. Id.

Nowhere in In re Copland’s application of the invited error doctrine did the court require an on-the-record weighing of the Bone-Club

factors. In determining that there hadn't been a violation of the *public's* right to open proceedings, the court found the judge had effectively addressed the five Bone-Club factors on the record even though the judge did not refer to them as such. *Id.* at 446-48. Relying upon Momah, the court then concluded there had not been a violation of the public's right to open proceedings or the defendant's right to a public trial. *Id.* at 450.

The focus of the invited error doctrine is on the *defendant's* actions in setting up the claimed error. The question, under In re Copland, is whether the defendant actively pursued and participated in the error he asserts. Where defense counsel initiates and seeks a closure of voir dire and benefits from that closure by permitting the defendant a greater chance to discover jurors' potential biases, the defendant invites a claimed right to public trial error.

Here, the process of private voir dire was exactly what was contemplated by the defense questionnaire: individual questioning of those jurors who indicated they would prefer to answer some of the sensitive questions outside of the courtroom. When the judge inquired of the entire courtroom if anyone objected to in-chambers questioning of those jurors who wished to speak privately on sensitive issues, defense counsel did not object. The judge made it clear to counsel that if anyone objected, the voir dire would have to occur in an open courtroom. Defense counsel actively

pursued and participated in the in-chambers questioning and even expanded it beyond those issues identified by the jurors. Three of the jurors were excused for cause. Salinas affirmatively assented to the closure, materially contributed to it and benefited from it. He invited the very error he now asserts.

The facts of this case are not more comparable to those in In re Coggin, as the Court of Appeals found. On the contrary, the facts relied upon by the In re Coggin court in concluding there was no invited error were that it was the *prosecutor* who prepared the questionnaire that offered jurors a closed hearing, and defense counsel “did not actively participate in designing the trial closure, ” although he had agreed to the questionnaire. In re Coggin, 182 Wn. 2d at 118. The court concluded therefore Coggin did not invite the error where he “merely assent[ed] to the State’s juror questionnaire” and it was the judge’s decision to hold the individual voir dire in chambers. *Id.* at 119.

Here, defense initiated the closed voir dire process by filing the questionnaire that contemplated such. The State did not file a questionnaire and did not request jurors be questioned in private. Defense counsel did actively participate in designing the closure of the courtroom that the judge ultimately employed. In doing so, he invited the very error he alleges in his petition.

**2. Salinas cannot establish ineffective assistance of appellate counsel because he would not have prevailed on direct appeal since he invited the right to public trial error he alleges.**

Under an ineffective assistance of appellate counsel claim, Salinas must demonstrate that if the right to public trial violation he now asserts had been raised on direct appeal, it would have been successful. He cannot because he would have been precluded from asserting it on direct appeal because it was invited error.<sup>9</sup> Salinas has not shown that if appellate counsel had raised a claim of violation of the right to public trial that the appellate court would have reversed his conviction.

In order to successfully raise an ineffective assistance of appellate counsel claim, the defendant must demonstrate the merit of the legal issue that appellate counsel was allegedly ineffective in failing to raise, in addition to showing prejudice. In re Netherton, 177 Wn.2d 798, 801, 306 P.3d 918 (2013). In order to demonstrate prejudice, the petitioner must show that the issue the petitioner claims should have been raised would have resulted in reversal of the conviction. In re D'Allesandro, 178 Wn. App. 457, 314 P.3d 744 (2013), *rev. den.*, 182 Wn.2d 1021, 345 P.3d 784 (2015). A successful showing of prejudice under the *Strickland* standard satisfies a petitioner's obligation to demonstrate actual and substantial

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<sup>9</sup> Salinas has not asserted that trial defense counsel was ineffective in seeking partial closed voir dire.

prejudice in a collateral attack. In re Crace, 174 Wn.2d 835, 846-47, 280 P.3d 1102 (2012).

Salinas cannot demonstrate prejudice from appellate counsel's failure to raise the right to public trial violation he alleges. If counsel had raised the violation, the State would have responded that he was precluded from raising it on appeal because he invited the error. In re Morris therefore does not control here. The facts of In re Morris demonstrate that the court employed the closed voir dire procedure it did on its own initiative. In re Morris, 176 Wn.2d at 161-62. There are no facts set forth in that case that would give rise to an invited error argument. Salinas can't demonstrate that his conviction would have been reversed if appellate counsel had raised the public trial right violation.

Even if Salinas could establish prejudice, that does not mean appellate counsel was ineffective in not asserting the violation. Even with claims of ineffective assistance of appellate counsel, courts still apply a strong presumption that appellate counsel's representation was reasonable. Charbonneau v. United States, 702 F.3d 1132, 1136 (8<sup>th</sup> Cir. 2013). Review is particularly deferential when reviewing a claim of ineffective assistance of *appellate* counsel regarding failure to raise an issue on direct appeal. *Id.* (emphasis added). "Ineffective assistance of counsel is a fact-based determination that is 'generally not amenable to per se rules.'" State

v. Grier, 171 Wn.2d 17, 34, 246 P.3d 1260 (2011); *see also*, Jones v. Barnes, 463 U.S. 745, 752-53, 103 S. Ct. 3308, 3313, 77 L. Ed. 2d 987 (1983) (constitution does not support per se rule in ineffective assistance of counsel claim for failure to raise every nonfrivolous issue suggested by client); Strickland v. Washington, 466 U.S. 668, 696, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) (principles regarding ineffective assistance of counsel do not establish mechanical rules, focus is on fairness of the proceeding). “[F]ailure to raise a constitutional issue on direct appeal—even one that may be classified as “structural error”—does not necessarily mean that counsel's performance was constitutionally deficient.” Charboneau, 702 F.3d at 1137. Thus, unless there is contrary evidence, a reviewing court will assume that appellate counsel’s failure to raise an issue was sound appellate strategy. *Id.* at 1136-37.

Salinas has not provided contrary evidence, so the presumption of effectiveness of counsel should apply. It is a petitioner’s obligation to provide evidence to support his petition. In re Rice, 118 Wn.2d 876, 885-86, 828 P.2d 1086 (1992). If the factual allegations are based on knowledge in the possession of others, the petitioner “may not simply state what he thinks those others would say, but must present their affidavits or other corroborative evidence.” *Id.* at 886. The State must meet the petitioner’s allegations with its own competent evidence, and if the

produced evidence establishes material issues of disputed fact, a reference hearing is ordered pursuant to RAP 16.12 to resolve the factual questions. Id. at 886-87.

The State here answered Salinas's allegations regarding his right to public trial violation with evidence that the defense counsel initiated and desired the private voir dire that occurred. Salinas did not provide any affidavit from his appellate attorney, Ms. Susan Wilk, as to why she did not raise his alleged violation of the right to public trial. The State asserts that Ms. Wilk should have been aware and was aware of the developing law regarding private voir dire and a defendant's right to public trial.<sup>10</sup> Salinas also provided no affidavit from his trial counsel. Due to attorney client privilege, he was in the best position to provide such affidavits.

The Court of Appeals held that appellate counsel should have been aware of the case of In re Orange, and, without further elaboration, mechanically applied the presumption of prejudice set forth in Morris. Again, the State is not asserting that appellate counsel was unaware of the existing jurisprudence regarding the right to public trial. At the time of briefing in June 2011, the Supreme Court had also issued opinions in

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<sup>10</sup> Susan Wilk was also assigned appellate counsel in State v. Tyler Hawker, COA No. 61479-7. A right to public trial issue was asserted on appeal in that case that resulted in reversal. The opening brief in Hawker was filed on November 19, 2008, and the State filed a petition for review on April 22, 2011, just a couple months before the opening brief in Salinas was filed, on June 29, 2011.

Momah and Strode.<sup>11</sup> That being said, a number of the Court of Appeals opinions subsequent to those decisions essentially tried to determine whether the facts of the case were more like those in Momah or those in Strode. See e.g., State v. Bowen, 157 Wn. App. 821, 831, 239 P.3d 1114 (2010) (“We conclude that the circumstances in this case are more similar to those in Strode than those in Momah.”). Moreover, the invited error doctrine existed prior to those cases and had previously been held to apply to constitutional errors.

Without knowing in fact why appellate counsel failed to raise the issue, the presumption of effective assistance of counsel should apply in this case where appellate counsel filed an overlength brief, raising numerous issues, and where she could have, within the norms of competent representation, reasonably have chosen not to assert the violation because of the doctrine of invited error.

**3. If the record is deemed insufficient to demonstrate invited error, the Court should remand this matter for a reference hearing.**

There are two material issues in which the parties dispute the facts:  
1) whether the trial court permitted closed voir dire of individual jurors because trial counsel for Salinas requested it, as the State alleges, or whether the trial court utilized the private voir dire process on its own

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<sup>11</sup> State v. Strode, 167 Wn.2d 222, 217 P.3d 310 (2009).

initiative, as Salinas alleges, and 2) whether appellate counsel's failure to raise the alleged violation of the right to public trial on appeal was strategic, as the State alleges, or due to ineffectiveness, as Salinas alleges.

The record strongly supports the inference that but for defense request for private voir dire of jurors, the court would not have conducted individual voir dire of jurors in a closed setting. However, if the record is deemed insufficient to demonstrate invited error, the State requests this Court remand for a reference hearing. The fact that the prosecutor did not agree with parts of the defense questionnaire and the questionnaire given was not the one defense filed with the court logically implies there was an off-the-record discussion regarding the questionnaire sometime between when defense filed its questionnaire on March 3<sup>rd</sup>/4<sup>th</sup> and when the jurors were given the questionnaire on the 8<sup>th</sup>. In fact, the questionnaire given to jurors did not promise that private voir dire would occur "out of court" as defense counsel's did. The contents of this discussion, or other testimony regarding how the questionnaire was revised and how the procedure the court employed regarding private voir dire was decided upon, would resolve any disputed fact as to whether the closed voir dire occurred at the initiation of defense counsel or not.

The second disputed issue of material fact is whether appellate counsel strategically chose not to raise the issue of the right to public trial

violation. The evidence available thus far indicates that defense counsel sought private voir dire of jurors, the prosecutor did not and defense counsel did not object when the judge inquired of the courtroom if anyone objected. Given this record and the state of the law regarding the right to public trial at the time the opening appellate brief was filed, appellate counsel could have strategically chosen not to raise the public trial issue. The question is whether given the information and caselaw appellate counsel was aware of, and should have been aware of at the time, she reasonably could have chosen not to assert the right to public trial violation because of concerns related to invited error. Salinas failed to file an affidavit from his appellate counsel, and appellate counsel's representation should be presumed effective until shown to the contrary.

**D. CONCLUSION**

For the reasons set forth above, the State respectfully requests that this Court reverse the Court of Appeals and deny Salinas's personal restraint petition or, in the alternative, remand for a reference hearing.

Respectfully submitted this 10<sup>th</sup> day of June, 2016.

  
HILARY A. THOMAS, WSBA No. 22007  
Appellate Deputy Prosecutor  
Whatcom County Prosecuting Attorney

CERTIFICATE

I CERTIFY that on this date I placed in the U.S. mail with proper postage thereon, or otherwise caused to be delivered, a true and correct copy of the document to which this Certificate is attached to this Court and appellant's counsel, addressed as follows:

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LEGAL ASSISTANT

JUNE 10, 2016  
DATE

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**Subject:** RE: PRP Salinas No. 91905-4

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**Attached please find State's Supplemental Brief.**