

No. 92412-1

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COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II

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IN RE THE PERSONAL RESTRAINT  
PETITION OF

EDUARDO SANDOVAL,

Petitioner.  
NO. 47471-9-II

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**PETITIONER EDUARDO  
SANDOVAL'S REPLY BRIEF IN  
SUPPORT OF PERSONAL  
RESTRAINT PETITION**

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## I. INTRODUCTION

In its Response, the State fails to adequately address the majority of Mr. Sandoval's arguments. Most of the issues raised by the State are unsupported by law and fact, lack citations to law and/or to the record, and often have no relevance to the issues addressed in Mr. Sandoval's opening brief. Additionally, the majority of the State's citations to the record fail to support its position and should not be considered by this Court.

Mr. Sandoval has identified seven separate issues pertaining to assignments of error in this case. The State has not adequately or persuasively countered any of his arguments. Given the numerous errors at the trial level compounded by ineffective assistance of counsel during Mr. Sandoval's first appeal, Mr. Sandoval respectfully requests that the Court reverse his convictions and sentence and remand for a new trial.

## II. REPLY ARGUMENT

### A. **The Crime of Conspiracy to Commit Murder by Extreme Indifference is a Non-Existent Crime.**

An individual cannot be a co-conspirator to first-degree murder by extreme indifference. The mens rea for conspiracy is specific intent to kill while the mens rea for first-degree murder by extreme indifference is only an aggravated form of recklessness, which by definition is a less culpable state of mind and is incompatible with specific intent. This conviction and sentence should be reversed because Mr. Sandoval was convicted of a

non-existent crime and his right to due process was violated by the conviction. The State appears to claim that regardless of the mens rea issue raised by Mr. Sandoval, all that matters is that there was some type of plan. Resp. at 3. The State also fails to cite to a single case that supports a conviction of conspiracy to commit murder by extreme indifference. *See id.* at 3-4. In its Response, the State cites to two conspiracy cases, neither of which address conspiracy to commit murder by extreme indifference. *Id.* at 3:9-10. Additionally, the State cites to four murder by extreme indifference cases, none of which address conspiracy. *Id.* at 3:11-17. The State failed to cite to a single case to support its position that a person may be convicted of conspiracy to murder by extreme indifference. The crime does not exist and Mr. Sandoval's conviction and sentence should be reversed.

The State also failed to address *Dunbar* or attempt to distinguish it from this case. As the *Dunbar* court held, "first degree murder by creation of a grave risk of death will support an attempt charge only if the underlying murder statute requires the intent to kill as an element." 117 Wn.2d 587, 592. 817 P.2d 1360 (1991). Just as with the crime of attempt, the crime of conspiracy requires the State to show that the defendant intended for the underlying substantive crime to be committed. *See* RCW 9A.28.040(1). Although Washington courts have not yet addressed the

*Dunbar* holding to the crime of conspiracy, other jurisdictions have held that the crime of conspiracy to commit murder by extreme indifference does not exist. *See, e.g., State v. Borner*, 836 N.W.2d 383, 391 (N.D. 2013) (holding that “conspiracy to commit extreme indifference murder . . . is not a cognizable offense.”) As the *Borner* Court reasoned, “conspiracy to commit unintentional murder creates a logical inconsistency because ‘one cannot agree in advance to accomplish an unintended result.’” *Id.*; *see also State v. Baca*, 950 P.2d 776, 788 (N.M. 1997) (holding that conspiracy to commit depraved-mind murder does not exist). The State has failed to address or attempt to distinguish the cases cited by Mr. Sandoval on this issue and has not cited to a single case that supports its position.

The instruction given to the jury was reversible error because it is impossible for Mr. Sandoval to intentionally conspire to commit an unintended crime. Mr. Sandoval was only to be convicted of conspiracy if the jury found he made an “agreement with the intent that . . . conduct constituting the crime of murder in the first degree be performed.” CP 343. The Court’s instruction is unsupported by law because it is impossible to intentionally conspire to commit the unintentional crime of murder by extreme indifference. The State failed to counter Mr. Sandoval’s argument with any persuasive authority or argument. Petitioner’s

judgment and sentence on the conspiracy charge are invalid and should be reversed and remanded for a new trial.

**B. Mr. Sandoval's Accomplice Charge and Conviction Were for a Non-Existent Crime and Should Be Reversed.**

In order to be convicted as an accomplice to murder by extreme indifference, the State must prove the individual had “actual knowledge” that a homicide would occur. *State v. Allen*, 182 Wn.2d 364, 374, 341 P.3d 268, 273 (2015). The State *admits* in its response that “[a]n accomplice must have actual knowledge that other participants were engaging in the crime eventually charged.” *See* Resp. at 4; *see also State v. Allen*, 182 Wn.2d at 374 (holding an accomplice can only be convicted of murder where the State proves that the defendant “*actually knew*” that a homicide would be committed).

Here, the jury was improperly instructed that Mr. Sandoval could be convicted as an accomplice if he “knew of and disregarded the grave risk of death.” CP 335. The mens rea of aggravated recklessness is insufficient to convict Mr. Sandoval of being an accomplice to murder by extreme indifference. The State was required to prove that Mr. Sandoval had actual knowledge that the principal was engaged in the underlying crime of murder by extreme indifference.

Similar to Mr. Sandoval's argument regarding the mens rea of the conspiracy charge, the State again fails to adequately counter his argument regarding the accomplice charge. The State also fails to provide *any* legal authority to support its position or to counter the arguments raised by Mr. Sandoval. The improper instruction to the jury deprived Mr. Sandoval of his Sixth Amendment right to a jury trial, violated his right to due process, and lightened the burden of the State. *See Laird v. Horn*, 414 F.3d 419, 430 (3rd Cir. 2005) (finding that a jury instruction on accomplice liability erroneously permitted the jury to convict the defendant of first degree murder without finding the necessary intent which lightened the State's burden and violated the Due Process Clause). Mr. Sandoval's conviction of the nonexistent crime of accomplice liability for murder by extreme indifference is also grounds, on its own, for reversal and a new trial.

**C. The Prosecutor Committed Misconduct During Closing That Resulted in a Substantial Likelihood that the Misconduct Affected the Verdict.**

The State made improper, prejudicial, and inaccurate statements during its rebuttal closing that resulted in a substantial likelihood that its misconduct affected the verdict. Following the State's improper statements, Mr. Sandoval's counsel immediately objected and moved for a mistrial. The trial court overruled the objections, denied the motion for a

mistrial, and failed to give a curative instruction to the jury. The prosecutor's misconduct irreparably damaged Mr. Sandoval's chance for a fair trial and his conviction should be reversed and a new trial should be granted.

First, the State's continued references to Mr. Sandoval as an "OG" or "original gangster" were false, unsupported by testimony, and highly prejudicial. Second, the State twice misrepresented to the jury that Mr. Sandoval had driven his own car to Mr. Zuniga's house, when in fact Mr. Gonzalez drove him there. *Compare* RP 3736 and RP 3741 with RP 1192, 2037. Third, the State gratuitously referred to Mr. Sandoval as only having a "10th grade education," an assertion that lacks any basis in the record. RP 3742. Fourth, the State's improper reference to Mr. Sandoval's ethnicity appealed to the passion and prejudice of jurors, denying Mr. Sandoval a fair trial. When taken together, the State's repeated improper, prejudicial, and false statements during its rebuttal closing, denied Mr. Sandoval a fair trial.

**1. Mr. Sandoval was not an OG.**

The State has offered no factual support or legal authority to bolster its position that because Mr. Sandoval had some tattoos that affiliated him with the ELS that he was therefore an OG. In its Response, the State claims Mr. Sandoval was a "high-ranking member of the ELS

gang” and that he was a “senior member of the ELS gang,” citing to 10 RP 855 for these claims. *See* Resp. at 7:7, 10. The citation does not support the State’s claims whatsoever. The only mention of Mr. Sandoval on that page is as follows: (“Q. You indicated that you know Mr. Sandoval as Lalo; is that correct? A. Yes. Q. And do you see Mr. Sandoval’s picture up there? A. Yes. Q. Where is he?”) *See* 10 RP 855. Mr. Sandoval was not a high ranking member of the ELS and was not an “OG” as the prosecutor improperly argued.

The ELS was founded in 2001, when Mr. Sandoval was only nine years old. Mr. Sandoval joined the ELS in approximately 2005, when he was thirteen years old. In the ELS, an “OG” or “original gangster” is a founding member at the top of the gang’s hierarchy, and the word of an OG carries great importance and clout with the gang. *See* RP 2648-50 (discussion of hierarchy organized around OGs); RP 2123-24, 2543 (further explanation of term). Mr. Sandoval was not a founding member of the ELS and was not an OG. There was no testimony during the entire trial that he was an OG. Mr. Sandoval had not been an ELS member since its beginning and he was not involved in certain key discussions within the gang, including the planning and execution of Mr. Zuniga’s murder. He did not dictate what other members did and was not the person designated to take over the ELS after Mr. Zuniga was killed. The State has failed to

provide *any* evidence or legal authority to support its position that Mr. Sandoval was an OG or that the State did not prejudice him by testifying that he was an OG during closing argument. Given the prosecutorial misconduct in the State's rebuttal closing argument, Mr. Sandoval did not receive a fair trial and respectfully requests that his convictions be reversed and a new trial granted.

**2. The State's Improper Race Comment During Rebuttal Closing is Grounds for a New Trial.**

The State's response regarding its improper race statement is also, by itself, grounds for a new trial. During its rebuttal closing, the State discussed co-defendants, Mr. Salavea and Mr. Time, stating "[t]hey're Asian/Pacific Islander descent, and they're not members of the gang." RP 3737. In the State's Response, it claims that "only gang members, Hispanics, were allowed at the planning meetings." *See* Resp. at 7:22-23. It also claims that the State "was free to argue that as a Hispanic, the petitioner was an insider, with greater status than others; even though the non-members participated fully in the violent activities." *Id.* at 7:23-25. The State's reasoning fails on multiple levels. First, the ELS was not comprised solely of Hispanic members. For example, Mr. Taleafoa ("Goofy") is Samoan and was an ELS member. ("Q. What race is Goofy? A. Samoan. Q. And is it your understanding whether or not Mr. Time is

also Samoan? A. Yes. Q. How about Mr. Salavea? A. Also. Q. Were there other Samoans besides those three who associated with Mr. Zuniga? A. Yes.”)

Additionally, the State is wrong in stating that non-Hispanics or non-ELS members were not permitted at the meetings that occurred at Mr. Zuniga’s house before the shooting. *See* RP 938, 947, 1196-1997 (“Q. In fact, at the meetings we’ve talked about that happened on Saturday and Sunday, were there other Samoans there? A. I think so. Q. What makes you think so? A. Because there were more than the ones that were there.”); *see also* RP 818:1-6. (“You indicated that you weren’t a member. Did you actually attend these meetings? A. At times. Q. Were other associates allowed to attend these meetings as well? A. Yes.”)

Here, the State’s flagrant and intentional appeals to racial bias are per se inappropriate and require reversal “unless it appears beyond a reasonable doubt that the misconduct did not affect the jury’s verdict.” *State v. Monday*, 171 Wn.2d 667, 680, 257 P.3d 551 (2011). Here, the State’s misconduct and inappropriate racial comments are grounds for reversal and remand for a new trial.

**D. Mr. Sandoval was Entitled to an Instruction on the Lesser Included Offense of Manslaughter and Failure to Provide Such an Instruction was a Fundamental Defect, Which Resulted in Prejudice.**

- 1. When viewed in the light most favorable to Mr. Sandoval, the evidence supports a conclusion that the act was merely reckless.**

Mr. Sandoval's murder conviction must be reversed because the trial court improperly declined his request for a jury instruction on the lesser-included offense of manslaughter. A jury must be instructed on a lesser-included offense if two criteria are met: (1) the elements of the lesser offense are necessary to prove that charged offense; and (2) the evidence presented at trial supports a reasonable inference that the lesser offense was committed. *State v. Workman*, 90 Wn.2d 443, 584 P.2d 382 (1978). The State concedes that manslaughter is a lesser-included offense of murder by extreme indifference. Resp. at 8. Thus, Mr. Sandoval need only address the second prong of the *Workman* test: whether the evidence in the case supports an inference that the lesser crime was committed. If the evidence would permit a jury to rationally find a defendant guilty of the lesser offense and acquit him of the greater, a lesser-included offense instruction should be given. *See Beck v. Alabama*, 447 U.S. 625, 635, 100 S. Ct. 2382, 2388 (1980).

Here, the choice to convict Mr. Sandoval of first degree murder by extreme indifference or the lesser-included offense of manslaughter rests

on whether the shooting was committed with the mens rea of aggravated recklessness or the mens rea of recklessness. In denying Mr. Sandoval the opportunity to give an instruction on manslaughter, the trial court applied the incorrect legal standard, defining “recklessness” as a disregard of a substantial risk of causing a wrongful act. RP 3675. The proper question under current Washington State case law when determining if the mens rea was recklessness instead of aggravated recklessness, however, is whether the alleged criminal actions constituted a *disregard of a substantial risk that a homicide may occur* instead of an *extreme indifference that created a grave risk of death*. *State v. Henderson*, 2015 WL 847427 at \*5.

The evidence presented in this case supports an inference that the lesser crime may have been committed. The jury could have rationally found that Mr. Sandoval allegedly acted with a disregard of a substantial risk that a homicide might occur rather than an extreme indifference that created a grave risk of death. Because an instruction on manslaughter was not given, however, the jury was required to choose between convicting Mr. Sandoval of a greater offense or acquitting him. This precluded Mr. Sandoval from arguing his theory of the case. When the evidence supports an inference that the lesser-included offense was committed, the

defendant has a right to have the jury consider that lesser-included offense. *State v. Parker*, 102 Wn.2d 161, 166, 683 P.2d 189 (1984).

Here, under the correct legal standard for recklessness, “the definitions of the lesser... and the greater crime... are very close to each other – much closer than is typical.” *State v. Henderson*, 2015 WL 847427 at \*6. Because the definitions of the two requisite states of mind for manslaughter and murder by extreme indifference are nearly identical, there should be no question, when construed in the light most favorable to Mr. Sandoval, that a reasonable jury could find that the evidence presented in this case supports a conviction of the lesser offense of manslaughter. Mr. Sandoval’s unwavering theory in this case has been that neither he nor his co-defendants intended to kill. Contrary to the State’s assertions that the State proved an intentional act, the ELS’s plan was to retaliate against the Pirus in the same reckless manner under which Mr. Toleafoa was shot; the ELS never formed a plan to kill a member of the Pirus. RP 1924-25; App. A at 11. Refusal to give an instruction that prevents the defendant from presenting his theory that a killing was reckless is reversible error. *See State v. Jones*, 95 Wn.2d 616, 628 P.2d 472 (1981).

2. **Because the failure to give the instruction could have contributed to the verdict, Mr. Sandoval was actually and substantially prejudiced by the Court's refusal to provide the requested instruction.**

Not only has Mr. Sandoval shown that the trial court's refusal to give the instruction was an error, but he has also shown by a preponderance of the evidence that he was prejudiced for the reasons set forth above. Namely, because an instruction on manslaughter was not given, Mr. Sandoval was unable to present his theory of the case. The jury was given only two options: conviction of murder by extreme indifference or acquittal.

The evidence supports Mr. Sandoval's contention that had the jury received an instruction regarding the lesser-included offense of manslaughter, it would have reached a different conclusion. There is no evidence that Mr. Sandoval participated in a "hunting party" as the State alleges. *See* Resp. at 11. Rather, the evidence presented at trial merely shows that Mr. Sandoval attended ELS meetings following the shooting of Mr. Toleafoa in order to maintain appearances. *See* RP 1190-1191. At the meetings, Mr. Sandoval did not discuss stealing the van, nor did he discuss retaliation. RP 1925. The evidence supports Mr. Sandoval's position that he had no intention to participate in any retaliatory acts. Mr. Sandoval

failed to carry out his assignment, actively disobeying Mr. Zuniga in an effort to distance himself from any agreement or plan. RP 2046.

If given the option to convict Mr. Sandoval of the lesser-included offense of manslaughter, the evidence in this case supports a conclusion that a rational jury would have reached a different decision. The evidence does not support the State's contention that Mr. Sandoval agreed to and participated in an intentional killing, nor does the evidence prove that the shooting was committed with a mens rea of extreme indifference that created a grave risk of death rather than a disregard of a substantial risk that a homicide might occur.

**E. The Court's Refusal To Give A Cautionary Instruction Regarding Accomplice Testimony Is Reversible Error.**

The trial court committed reversible error by failing to give a cautionary instruction regarding accomplice testimony because the testimony presented at trial was not "substantially corroborated by testimonial, documentary or circumstantial evidence." *See State v. Harris*, 102 Wn.2d 148, 155, 685 P.2d 584 (1984), *overruled on other grounds by State v. Brown*, 111 Wn.2d 124, 761 P.2d 588 (1988). Although independent evidence is not needed to corroborate every part of the accomplice's testimony, corroborating evidence is not sufficient unless it

fairly connects the defendant with the crime. *See State v. Calhoun*, 13 Wn. App. 644, 648, 536 P.2d 668 (1975).

Here, without the State's cooperating witnesses, there is no independent corroborating evidence that fairly connects Mr. Sandoval to the crimes for which he is charged. The State contends that over 20 witnesses, including Joshua Love, testified. Resp. at 12. However, the State fails to point to any independent testimony that sufficiently connects Mr. Sandoval to the crime. The State further argues that the trial court went through an extensive review of the evidence and witnesses that corroborated the testimony of the accomplices. *Id.* The only witnesses relied upon by the trial court for independent corroboration, however, were Angelica Goble, Sheri Sorg, Jeffrey Maahs, John Scrivner, and Mr. Sandoval's police statement. 32 RP 3667.

None of the testimony cited to by the trial court supports a finding that Mr. Sandoval entered into an agreement or took a substantial step toward its commission, nor does it even connect Mr. Sandoval to the crime. Thus, the only arguable independent evidence that could support the trial court's refusal to give the cautionary instruction is Mr. Sandoval's own police statement.

Unlike in *State v. Johnson*, 40 Wn. App. 371, 699 P.2d 221 (1985), where the record included independent testimony regarding elements of

the crimes charged, the independent testimony relied on by the trial court failed to do so much as identify Mr. Sandoval as involved in the crime. Instead, the independent testimony is more akin to that presented in *State v. Calhoun*, where the court noted the only corroborating evidence connecting the defendant to the crime consisted of the fact that the defendant “had a gun and holster in a paper sack in the bedroom of the witness Smith’s house for a short period of time ...” *State v. Calhoun*, 13 Wn. App. at 648. Just as the court in *State v. Calhoun* found that the corroborating evidence was not sufficient to waive the cautionary instruction requirement, so should the Court find here.

Furthermore, the trial court misapplied *State v. Harris* in its refusal to provide the cautionary instruction, concluding that “The state of the law in this state is that this particular cautionary instruction requested by the defense is required where the testimony of the accomplice, or the accomplices in this case, is uncorroborated. So if the State is relying solely upon the testimony of the accomplices, then this instruction is required.” 32 RP 3666 (emphasis added). To the contrary, the trial court’s refusal to give the requested cautionary instruction is reversible error if, as here, the accomplice testimony is not substantially corroborated.

**F. Mr. Sandoval Had Ineffective Assistance of Counsel.**

Two days after sentencing, Mr. Sandoval filed a Notice of Appeal, identifying three specific issues for appeal: (1) prosecutorial misconduct; (2) the court's failure to instruct the jury on the lesser-included offenses; and (3) the court's failure to instruct the jury on accomplice testimony. *See* CP 397-400 (Application for Order of Indigency, filed with Notice of Appeal). The court assigned Sheri Arnold as appellate counsel for Mr. Sandoval and she failed to raise *any* of the identified grounds for appeal. The issues identified in his Notice of Appeal had merit and Mr. Sandoval was actually prejudiced by Ms. Arnold's failure to raise the issues.

Additionally, in its Response, the State *admits* that the evidence showed that Mr. Sandoval "was not present during the fatal shooting; but was several blocks away, hoping to stay out of it." Resp. 13:16-17. The State's admission supports Mr. Sandoval's various grounds for reversal in his present personal restraint petition. He was not present; he wanted to stay out of it; and he lacked the necessary mens rea to be convicted of the crimes for which he is now serving a 75-year prison sentence. His first appellate counsel failed to raise key issues on appeal, his subsequent appellate counsel failed to cure those defects, and cumulatively it resulted in ineffective assistance of appellate counsel for Mr. Sandoval.

**G. Mr. Sandoval's 904-month Sentence is in Violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.**

Mr. Sandoval's 904-month sentence is unconstitutional due to the disparity between his sentence and those given to his co-defendants.

While the State contends that Mr. Sandoval can challenge the length of the sentence only as violating the Eighth Amendment of the United States Constitution, or Article 1, §14 of the State Constitution, (*see Resp. at 15*), Mr. Sandoval also challenges his sentence under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

The disparity between the sentence he received and those sentences received by his more culpable co-defendants is unwarranted and in violation of the United States Constitution. There is no rational basis for imposing a lesser sentence on Mr. Saul Mex, the defendant who actually participated in the crime's actus reus.

An equal protection challenge to a sentence raised by a co-defendant is analyzed in two parts: (1) if a defendant can establish that he is similarly situated with another defendant by virtue of near identical participation in the same set of criminal circumstances, then the defendant will have established a class of which he is a member; and (2) if there is no rational basis for the differentiation among the various class members, the reviewing court will find an equal protection violation. *See State v.*

*Handley*, 115 Wn.2d 275, 290, 796 P.2d 1266 (1990); *see also State v. Turner*, 31 Wn. App. 843, 847, 644 P.2d 1224 (citing *State v. Bresolin*, 13 Wn. App. 386, 397, 534 P.2d 1394 (1975), *review denied*, 86 Wn.2d 1011 (1976)) (“The test for determining whether the disparity in coparticipants sentences violates equal protection is whether there is a rational basis for the differentiation.”).

Mr. Sandoval, the only co-defendant to plead not guilty and exercise his right to trial, received a sentence of 904 months – the maximum under the standard range guidelines for all three charges and 60 months per charge for a firearm enhancement. Mr. Sandoval’s co-defendants, including Mr. Mex, all received far lesser sentences: Mr. Mex received 421 months; Mr. Messer received 455 months; Mr. Time received 150 months; and Mr. Salavea received 130 months. 34 RP 3791-3810. Mr. Gonzalez, the individual who drove Mr. Sandoval both to the planning meetings and on the night of the Love shooting was not charged.

At the outset of this case, Mr. Sandoval and his four co-defendants – Mr. Mex, Mr. Messer, Mr. Time and Mr. Salavea – were all tried for murder by extreme indifference, assault, and conspiracy to commit murder by extreme indifference. However, because Mr. Sandoval’s co-defendants pleaded guilty in exchange for a reduced sentence, only Mr. Sandoval stood trial for the crimes alleged by the State.

At sentencing, Mr. Sandoval was found to have an offender score of three for Count I, Murder in the First Degree, and zero for Counts II and III, Conspiracy to Commit Murder in the First Degree and Assault in the First Degree. RP 3791-3792. Like Mr. Sandoval, Mr. Mex was also found to have an offender score of three with respect to the charge of Murder in the First Degree. RP 3798. He was also sentenced to 361 months plus a 60-month fire arm enhancement for this Count. RP 3798. Mr. Messer pleaded guilty to Murder in the First Degree, with an offender score of three, and Unlawful Possession of a Firearm in the First Degree, with an offender score of two. RP 3800. Mr. Time pleaded to leading organized crime, with an offender score of eight and a half. RP 3803. Mr. Salavea pleaded to leading organized crime, with an offender score of six and a half. RP 3807.

Because Mr. Sandoval has established that he is similarly situated with his co-defendants by virtue of near identical or lesser-alleged participation in the same set of criminal circumstances, he has satisfied the first prong of an equal protection challenge. *State v. Clinton*, 48 Wn. App. 671, 678-81, 741 P.2d 52 (1987) (equal protection guarantee is implicated where disparate sentences imposed on co-defendants who committed the *same* crimes).

Furthermore, the government's encouragement of plea bargains by affording leniency to those who enter pleas is unconstitutional to the extent there is an indication that the non-cooperating defendant has been retaliated against for exercising a constitutional right. *See United States v. Narramore*, 36 F.3d 845, 847 (9th Cir. 1994) (citing *Corbitt v. New Jersey*, 439 U.S. 212, 223-24, 99 S. Ct. 492, 58 L.Ed.2d 466 (1978)). The disparity between the sentences given to Mr. Sandoval and Mr. Mex is a bright-line indication of punishment or retaliation for exercising the right to a trial. There is no rational basis for the great disparities between the sentences given to Mr. Sandoval and his co-defendants. Nothing in the record shows that Mr. Sandoval was more culpable or more deserving of prosecution or a harsher sentence. In fact, he was the least culpable participant in the same set of criminal circumstances.

### III. CONCLUSION

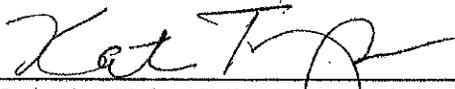
As shown in Mr. Sandoval's Personal Restraint Petition, Mr. Sandoval did not receive a fair trial, was punished for exercising his right to a trial, and was convicted of conduct that is not a criminal offense under Washington State law. For these reasons, Mr. Sandoval respectfully requests that the Court reverse his convictions and sentences for first-degree murder, first-degree assault, and conspiracy to commit first-degree

murder and remand for a new trial.

DATED this 3<sup>rd</sup> day of September, 2015.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP  
Attorneys for Petitioner Eduardo Sandoval

By   
Katharine Tylee, WSBA No. 40640  
Christine Hawkins, WSBA No. 44972

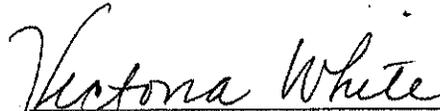
**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On this date I caused to be served via electronic and U.S. Mail a copy of the foregoing document on the following:

Kathleen Proctor  
Pierce County Prosecuting Attorney Office  
930 Tacoma Ave S Rm 946  
Tacoma, WA, 98402-2171

DATED this 3<sup>rd</sup> day of September, 2015.

  
Victoria White