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WASHINGTON STATE
SUPREME COURT

Pierce County, No. 10-1-04055-4
COA Nos. 43039-8-II, 44780-1-II

No. 92412-1

SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT OF

Eduardo Sandoval,

Petitioner.

DECLARATION OF KATHARINE M. TYLEE
IN SUPPORT OF MOTION TO SUPPLEMENT RECORD

Katharine M. Tylee, WSBA No. 40640
Christine Hawkins, WSBA No. 44972
DAVIS WRIGHT TREMAINE, LLP
777 108th Avenue NE, Suite 2300
Bellevue, WA 98004-5149
(425) 646-6122 Phone
(425) 646-6199 Fax

Attorneys for Petitioner

FILED AS
ATTACHMENT TO EMAIL

 ORIGINAL

I, Katharine M. Tylee, declare as follows:

I am an attorney at Davis Wright Tremaine LLP and I represent Eduardo Sandoval in the above matter.

1. Attached hereto as Exhibit A is a copy of correspondence from Mr. Sandoval's appellate counsel, Mr. Eric Nielsen.

2. Attached hereto as Exhibit B is the Motion to Extend Time submitted in *State v. Darcus Allen*, No. 48384-0-II, filed September 19, 2016, and the Clerk's Ruling on that Motion, filed September 20, 2016.

3. During the pendency of this petition, I made efforts to obtain appellate counsel's complete file. Before submitting the personal restraint petition on April 17, 2015, our firm received Mr. Nielsen's file, but it did not contain any correspondence with Mr. Sandoval.

4. I did not receive copies of Mr. Nielsen's correspondence with Mr. Sandoval until September 15, 2016, when Mr. Sandoval mailed his copies of Mr. Nielsen's correspondence to me.

5. I did not receive the letters from Mr. Nielsen until September 15, 2016.

6. In reviewing the new documents, it became clear that there is correspondence between Mr. Sandoval and his prior appellate attorney that is relevant to his claim of ineffective assistance of counsel.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Executed this 11th day of October at Bellevue, Washington.

A handwritten signature in black ink, appearing to read "Kath T. J.", written over a horizontal line. The signature is cursive and includes a large loop at the end.

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by email and by First Class United States Mail, postage prepaid, one copy of this pleading on the following:

Mr. Thomas Roberts
trobert@co.pierce.wa.us
Pierce County Prosecutor's Office
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171

10/11/16
Date

Victoria White
Victoria White

LAW OFFICES OF
NIELSEN, BROMAN & KOCH P.L.L.C.

ERIC J. NIELSEN
ERIC BROMAN
DAVID B. KOCH
CHRISTOPHER H. GIBSON
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JENNIFER M. WINKLER
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OFFICE MANAGER
JOHN SLOANE

LEGAL ASSISTANT
JAMILA BAKER

OF COUNSEL
K. CAROLYN RAMAMURTI
ANDREW P. ZINNER

April 2, 2014

Mr. Eduardo Sandoval
242635
MCF-SCL
2305 Minnesota Blvd. S.E.
St. Cloud, MN 56304

RE: State v. Sandoval COA # 43039-8-II

Dear Mr. Sandoval:

I received your March 25, 2014 letter yesterday. You have requested a copy of the transcripts and briefs. According to our file you have been sent a copy of the briefs when they were filed. However, I will send you another copy along with this letter. I will send you a copy of the transcripts in a few days once we have had an opportunity to make a copy.

I understand you are unschooled in the law and you are serving a very lengthy sentence. You have also indicated that you discussed other issues in your case with Ms. Arnold that she determined not to raise. But, as I indicated in my last letter, I do not believe there are grounds for discretionary review and if you wish to request the Washington Supreme Court review your case you will need to do that yourself. I have enclosed a SAMPLE petition. This is just a sample and has nothing to do with your case or the issues in your case. I am sending so you get an idea of what a petition looks like. Also enclosed is a copy of RAP 13.4(b), which are the criteria the supreme court uses to determine whether to grant discretionary review.

You have asked about bringing up new arguments not raised in the appeal by Ms. Arnold. One way of doing that is through a Personal Restraint Petition. You filed one in conjunction with the appeal. I cannot advise you on all the procedural and legal implications of filing another Personal Restraint Petition.

Finally, you have asked that I help you with an extension to file a motion for discretionary review. I have enclosed a motion you can use. I do not know if it will be granted, and, if it is granted for how long the Court will give you. This motion requests an additional 30 days. If you sign and date it and send it back to me within the next few days I will file it for you and serve the prosecutor, or you can write your own and send it to me and I will file it. Otherwise you can file and serve it yourself or any other that you write. I suggest, however, that if you intend to file a motion for discretionary review that you attempt to do so as quickly as possible.

Sincerely,



Eric Nielsen

Enclosure

EXHIBIT A

LAW OFFICES OF
NIELSEN, BROMAN & KOCH P.L.L.C.

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ANDREW P. ZINNER

May 21, 2014

Mr. Eduardo Sandoval
242635
MCF-SCL
2305 Minnesota Blvd. S.E.
St. Cloud, MN 56304

RE: State v. Sandoval COA # 43039-8-II

Dear Mr. Sandoval:

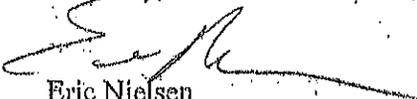
Enclosed is a copy of a document called a Mandate, which is the final word on your appeal. The Mandate states that review of your case has been terminated, and the Court's decision is now final. The Mandate ends your direct appeal in the Washington state courts, and this office will be closing your file.

This office was appointed only to represent you on your appeal in state court, and cannot really advise you about going to federal court or filing a personal restraint petition or other matters in state court. You should know, however, that most other ways you might use to attack your conviction in either state or federal court must be filed within one year of the Mandate.

It is a rule that you must "exhaust your state remedies" before your case can be considered in federal court. A claim is "exhausted" after the Washington Supreme Court has either issued a decision on it or denied review.

I want to emphasize that the explanation in this letter is meant only to alert you to the "exhausted remedies" rule and the one year deadline. However, this is likely the last correspondence you will receive from this office.

Sincerely,


Eric Nielsen

Enclosure

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,)	
Petitioner,)	No. 48384-0-II
)	
v.)	MOTION TO EXTEND
)	TIME
DARCUS ALLEN,)	
Respondent.)	
_____)	

I. IDENTITY OF MOVING PARTY AND RELIEF REQUESTED

Respondent Darcus Allen asks this Court to extend the time for filing the Brief of Respondent in this matter to October 7, 2016.

II. GROUND FOR RELIEF

The brief in this matter is presently due September 23, 2016 after a previous extension of time. The case concerns the State's purely academic effort to refile aggravated first degree murder charges against Mr. Allen despite a his being acquitted of those charges by a prior jury.

The responsive is largely completely. However counsel obligations in other matter will prevent is completion buy the present due date. Counsel is presenting oral argument in the Supreme Court in *State v. Ortiz-Abrego*, 92334-5, on September 22, 2016. Counsel is presenting oral argument in *State v. McCulley*, 74041-5-I, on

September 30, 2016.

Counsel spent a considerable amount of time over the last several months completing a brief in *State v. Linville*, 47916-8-II, a case with a record including nearly 6,000 pages of transcripts. The brief in that case was filed August 31, 2016. Counsel has also recently filed a brief in *State v. Ramirez*, , 75149-2-I

The Washington Supreme Court recently adopted Standards for Indigent Defense. Standard 3.2 requires a caseload that permit appointed counsel to give each case the time and effort necessary to ensure the effective assistance of counsel. To that end Standard 3.4 sets numerical caseloads. At present counsel's caseload, measured only from July 1, 2015, exceeds that standard by approximately 30% because of the extraordinary size of the records involved in many cases. As a result, counsel has been unable to complete the brief in this matter consistent with either the professional standards or his Sixth Amendment obligation to Mr. Allen. Moreover, at present there are no other attorneys in counsel's office to whom the case could be reassigned, as the remaining attorneys are either themselves burdened by large cases and have work in excess of the caseload standard, or do not have the requisite experience for such a complex case as

contemplated by the standard. As such, this matter must be extended in order to provide counsel such time as is necessary to complete the opening brief.

Further, excessive caseloads for appointed counsel result from systemic delays rather than ones attributable to counsel. These systemic failures negatively impact appointed clients. Moreover, these failures impeded this Court's functions. But as a systemic failure rather than the fault of counsel, counsel has no ability to alter those circumstances. Counsel's inability to comply with the previously set deadlines was not counsel's own doing, nor is it the fault of counsel's office. Instead, the failing lies in the absence of meaningful case weighting in the assignment of cases by the Office of Public Defense.

III. CONCLUSION

Counsel asks this Court to extend the time to file the opening brief to October 7, 2016.

DATED this 19th day of September, 2016.

GREGORY C. LINK - 25228
Washington Appellate Project – 91052
Attorneys for Appellant



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.

September 20, 2016

Jason Ruyf
Pierce County Prosecutor's Office
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2102
jruf@co.pierce.wa.us

Gregory Charles Link
Washington Appellate Project
1511 3rd Ave Ste 701
Seattle, WA 98101-3647
greg@washapp.org

CASE #: 48384-0-II

State of Washington, Petitioner v. Darcus D. Allen, Respondent

Counsel:

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

A RULING BY THE CLERK:

Appellant is granted a further extension of time to and including 10/07/16 to file the Appellant's Opening Brief. However, appellant's failure to file the brief by that date will result in the imposition of a sanction in the amount of \$200, RAP 10.2(i). In addition, the court will consider a Clerk's motion for further sanctions without oral argument if the brief is not filed by 10/11/16. The clerk would ordinarily forward any further continuance requests to the Chief Judge for consideration. However, the clerk wishes to address the continuing systemic delays referenced in counsel's motion should counsel require additional time or the deadline is missed. Clearly the referenced delay is a systemic failure that negatively impacts appointed clients. However, not all the blame for this failure belongs at the doorstep of the Office of Public Defense; the failure is truly systemic.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Ponzoha", is written over a circular stamp or mark.

David C. Ponzoha
Court Clerk

cc: Office of Public Defense (via email)

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, October 11, 2016 5:02 PM
To: 'White, Victoria'
Cc: trobert@co.pierce.wa.us; Tylee Herz, Katharine; Hawkins, Christine
Subject: RE: In re the Personal Restraint Petition Eduardo Sandoval; No. 92412-1

Received 10/11/16 at 4:53 pm.

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.

Questions about the Supreme Court Clerk's Office? Check out our website:

http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/

Looking for the Rules of Appellate Procedure? Here's a link to them:

http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP

Searching for information about a case? Case search options can be found here:

<http://dw.courts.wa.gov/>

From: White, Victoria [mailto:vickewhite@dwt.com]
Sent: Tuesday, October 11, 2016 4:53 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: trobert@co.pierce.wa.us; Tylee Herz, Katharine <KateTyleeHerz@dwt.com>; Hawkins, Christine <ChristineHawkins@dwt.com>
Subject: In re the Personal Restraint Petition Eduardo Sandoval; No. 92412-1

Dear Sir/Madame:

Enclosed for filing in the Washington State Supreme Court in *In re the Personal Restraint of Eduardo Sandoval*; Supreme Court No. 92412-1, is the **Petitioner's Motion to Supplement Record**. Thank you,

Victoria White | Davis Wright Tremaine LLP
Legal Assistant
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Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.