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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

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IN RE THE PERSONAL RESTRAINT OF

Eduardo Sandoval,

Petitioner.

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MOTION TO SUPPLEMENT RECORD

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FILED AS  
ATTACHMENT TO EMAIL

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**Rules**

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### **I. IDENTITY OF MOVING PARTY**

Petitioner Eduardo Sandoval (hereinafter, "Mr. Sandoval"), through his attorneys, seeks the relief designated in Part II.

### **II. RELIEF SOUGHT**

Mr. Sandoval seeks to supplement the evidence in support of his Personal Restraint Petition with (1) the attached correspondence from Mr. Sandoval's appellate counsel, Mr. Eric Nielsen; and (2) the attached 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.

### **III. GROUNDS FOR RELIEF AND ARGUMENT**

Because Mr. Sandoval's allegations of appellate ineffective assistance of counsel are based on matters outside of the existing record, he must demonstrate that he had competent, admissible evidence to establish facts that entitle him to relief in order to be entitled to a reference hearing. *In re Rice*, 118 Wn.2d 876, 828 P.2d 1086 (1992). If Mr. Sandoval's evidence is based on knowledge in the possession of others, he may not simply state what he thinks those others would say, but must present their affidavits or other corroborative evidence to be entitled to a reference hearing and affidavits in turn must contain matters to which affiants may competently testify. *Id.*

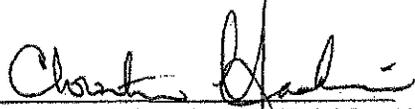
During the pendency of this petition, Mr. Sandoval's legal counsel made efforts to obtain appellate counsel's complete file. Before submitting the personal restraint petition on April 17, 2015, Mr. Sandoval's counsel received Mr. Nielsen's file but it did not contain any correspondence with Mr. Sandoval. Declaration of Kate Tylee ("Tylee Decl."), ¶ 3. Mr. Sandoval's counsel did not receive copies of the correspondence until September 15, 2016 when Mr. Sandoval mailed his copies of Mr. Nielsen's correspondence to his counsel. *Id.* at ¶ 4.

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. Pursuant to *In Re Rice*, Mr. Sandoval submits this evidence for this Court's consideration. Tylee Decl., Ex. A.

In addition, pursuant to RAP 16.7(a)(3), Mr. Sandoval identifies 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, as supporting his claim of appellate ineffective assistance of counsel. Tylee Decl., Ex. B.

DATED this 11<sup>th</sup> day of October, 2016.

Respectfully submitted by:

By 

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**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

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**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,

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