

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT)
OF:) No. 92816-9
)
)
) STATEMENT OF ADDITIONAL
) AUTHORITIES
SIONE P LUI,)
)
Petitioner.)
_____)

Pursuant to RAP 10.8, the State of Washington respectfully cites additional authority on the following issues:

1) On the standard for finding ineffective assistance of counsel:

Richter v. Hickman, 578 F.3d 944, 969 (9th Cir. 2009) (dissenting opinion), rev'd and remanded sub nom. Harrington v. Richter, 562 U.S. 86, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011)

("Years of consuming forensic science television shows have gone to our heads. We know the plot by heart: the hapless State has charged the wrong guy and our scientists-turned-sleuths will come up with the trial-changing evidence at the last minute. But State v. Richter isn't the pilot for *CSI: Sacramento*. Real trials are rarely as gratifyingly formulaic as those seen on TV, and real defense attorneys can seldom boast the Holmesian intuition imputed to them by savvy scriptwriters. In the real world, defense attorneys must often contend with an unsympathetic bench, financial and temporal pressures, and unexpected evidentiary developments. They must also sometimes decide between various unappealing defense strategies. When we ignore these gritty realities and do not adequately analyze the specific circumstances surrounding an attorney's performance, we inevitably fail to heed the Supreme Court's admonition about second-guessing trial counsel. See Strickland v. Washington, 466 U.S. 668, 689 (1984)). ... The majority opinion is a model of the intrusive post-trial inquiry into attorney performance long rejected by the Court."

“In sum, the majority holds today that defense counsel was required to adopt a different trial strategy-the majority's scorched-earth investigative strategy-and assume new burdens that this new strategy creates. Both counsel's original strategy and the majority's new tactics have some merit, and neither can solve all Richter's problems. But the only reason the majority's strategy prevails over counsel's is that it gets to go last, and counsel's strategy, having proven unsuccessful, can be second-guessed.” Richter v. Hickman, 578 F.3d at 970.

2) On the standards for admitting other suspect evidence:

State v. Giles, ___ Wn. App. ___, 385 P.3d 204 (Nov. 28, 2016) (“While the evidence tied Colacurcio to Berry, it did not tie him to her killing. Thus, the trial court properly ruled that the proposed testimony seeking to identify Colacurcio as the true killer was not of a type that would cause to exist a reasonable doubt as to Giles' guilt.”).

3) On the standards for evaluating the showing that must be made in a personal restraint petition to merit a reference hearing:

In re Pers. Restraint of Moncada, 2017 WL 227861, Div. 3 (1/19/17) (A petitioner may not obtain a reference hearing by relying on inadmissible hearsay, conjecture, or speculation. Rather, the petitioner must produce admissible evidence establishing the facts that entitle him to relief.)

Dated this 31st day of January, 2017.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
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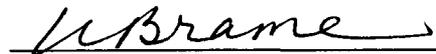
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to David Zuckerman, the attorney for the petitioner, at David@DavidZuckermanLaw.com, containing a copy of the Statement of Additional Authorities, in Re Personal Restraint of Sione P Lui, Cause No. 92816-9, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 31st day of January, 2017.



Name:

Done in Seattle, Washington

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

January 31, 2017 - 9:27 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 92816-9
Appellate Court Case Title: Personal Restraint Petition of Sione P. Lui

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