

No. 94582-9

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT
PETITION OF:

GARY MEREDITH,

Petitioner.

NO. 46671-6-II

STATE'S SECOND SUPPLEMENTAL
RESPONSE TO PERSONAL
RESTRAINT PETITION

The petitioner has filed three briefs to support his PRP, including one submitted by counsel. The brief by counsel, although better organized and more articulate than those filed by the petitioner, does not raise any new legal issues.

The State has filed two responses, which address the issues raised by the petitioner. In its previous briefs, the State discusses many of the cases cited in the petitioner's briefs.

In a collateral attack, this PRP, the petitioner has the burden to show actual and substantial prejudice from constitutional error. *See In re Personal Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

The petitioner and counsel raise several issues regarding trial rulings which, if raised on appeal, would be reviewed for abuse of discretion. But, this is not an appeal. The burden of persuasion shifts to the petitioner and the standard of review is higher.

1 Perhaps the most troubling issue in this case is the matter of the number of
2 peremptory juror challenges. But, as pointed out in the State's previous responses in this
3 case, unless the issue involves discriminatory intent by the State, peremptory juror
4 challenges do not involve a constitutional right. See *State v. Meredith*, 178 Wn.2d 180,
5 306 P.3d 942 (2013); *State v. Saintcalle*, 178 Wn.2d 34, 309 P.3d 326 (2013); see also
6 *State v. Briggs*, 55 Wn. App. 44, 51, 776 P.2d 1347 (1989); *State v. Kender*, 21 Wn. App.
7 622, 626, 587 P.2d 551 (1978).

8 Failure of trial defense counsel to keep accurate track of the peremptory challenges
9 or to object to the court's calculation could be deficient performance under *Strickland* and
10 *McFarland*. However, the petitioner must also show prejudice. *Id.* He has not done so.

11 The petitioner fails to meet his burden in this PRP. The State again respectfully
12 requests that the petition be denied.

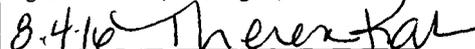
13 DATED: August 4, 2016.

14 MARK LINDQUIST
15 Pierce County
16 Prosecuting Attorney

17 
18 Thomas C. Roberts
19 Deputy Prosecuting Attorney
20 WSB #17442

19 Certificate of Service:

20 The undersigned certifies that on this day she delivered by U.S. mail
21 to petitioner true and correct copies of the document to which this certificate
22 is attached. This statement is certified to be true and correct under
23 penalty of perjury of the laws of the State of Washington.
24 Signed at Tacoma, Washington, on the date below.

25 8.4.16 
Date Signature

PIERCE COUNTY PROSECUTOR

August 04, 2016 - 4:01 PM

Transmittal Letter

Document Uploaded: 2-prp2-466716-Response~2.pdf

Case Name: In Re: The PRP of Meredith

Court of Appeals Case Number: 46671-6

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

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