

FILED
OCT 24 2016
WASHINGTON STATE
SUPREME COURT

Court of Appeal Cause No.
338312

93746.0

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

FILED

OCT 19 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

State of Washington

v.

Melissa Kerns

PETITION FOR REVIEW

Melissa Lynne Kerns DOC#873629
Washington Corrections Center for Women
9601 Bujacich Rd NW, MSC-J-A
Gig Harbor, Washington 98332

PRO SE

IDENTITY OF PETITIONER

I Melissa Lynne Kerns appellant, residing at Washing Correction Center for Woman, 9601 Bujacich Rd. N.W., Gig Harbor, Washington 98332. Asks this court to accept review of the Court of Appeals decision denying Ms. Kerns Motion for Reconsideration.

Ms. Kerns is asking the court to consider this Petition for Review.

COURT OF APPEALS DECISION

Court of Appeals affirmed Court of Appeals 33831-2 on August 9th, 2016. The court determined that Ms. Kerns did not establish ineffective assistance of counsel and deficient performance of prejudice because the court felt the claims were based outside the record.

ISSUES PRESENTED FOR REVIEW

Ms. Kerns is asking the Supreme Court to review the issues raised on Duress and Battered Woman Syndrome? Ms. Kerns counsel denied investigation of duress and refused to present witnesses in forum on Ms. Kerns behalf. Furthermore Ms. Kerns 1st, 5th, 6th, 14th, amendments were violated, Therefor under Strickland counsel fell well beneath the standard.

STATEMENT OF THE CASE

In the record it clearly states the facts of the passenger being (the now deceased) Lucas James Nelson. Also in the record it clearly states that the Spokane County Police did in fact find Mr. Nelsons gun in the vehicle which he fled from and was never apprehended on. The trial courts also stated that they knew Ms. Kerns was under “duress” by abuse at the hands of her husband yet the courts refused to use this on Ms. Kerns behalf. Also the courts refused to give Ms. Kerns any mental health evaluation which was requested long before trial.

ARGUMENT

Ms. Kerns did not chose with full knowledge to participate in an illegal scheme such as Attempt to Elude and Hit and Run. Ms. Kerns was under duress at gun point. Ms. Kerns just wanted Lucas Nelson not to shoot her nor did Ms. Kerns want to be shot by police. Ms. Kerns was in no circumstance to compromise with her abuser.

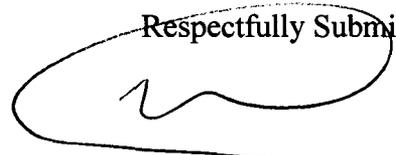
CONCLUSION

Ms. Kerns is asking for the mercies of the courts to consider that trial courts eroded and one that “infects the entire trial process and necessarily renders it fundamentally unfair” which requires automatic reversal.

Trial court violated the National Constitutions Due Process and Assistance of counsel clauses.

October 14, 2016

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Melissa', enclosed within a large, hand-drawn oval.

Melissa Lynne Kerns

TABLE OF AUTHORITIES

FILED

OCT 19 2016

Washington Appellate Court No. 338312

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS OF THE STATE OF WASHINGTON
Division III

State of Washington

v.

Melissa Kerns

MOTION FOR RECONSIDERATION

Spokane County Superior Court Cause No. 15-1-02469-9
Washington State Court of Appeals Cause No. 338312

Melissa Kerns DOC# 873629
Washington Corrections Center for Women
9601 Bujacich Road NW, MSC-K-A
Gig Harbor, WA 98332

PRO SE

TABLE OF CONTENTS

I. IDENTITY OF PETITIONER.....

II. DECISION

III. STATEMENT OF RELIEF SOUGHT

IV. GROUNDS

V. FACTS.....

 A. Deficient Performance

 B. Resulting Prejudice

VI. ARGUMENT.....

IV. CONCLUSION.....

WITNESSES IN FORUM AT TRIAL

1. Stephanie Lynne Kerns
(509-329-8972)
7026 N. Colton # D104
Spokane, WA 99208

2. Linda Joice Rupp
(509-487-1469)
43 E. Weile # 148
Spokane, WA 99208

OTHER WITNESSES

1. Tina Marie Kerns
2. Larry Richard Kerns Jr.
3. Larry Richard Kerns III
4. Timothy Jacob Kerns
5. Pacific Towing of Spokane Wa
6. Richard Johnson

IN CUSTODY WITNESS

1. Lucas James Nelson

IDENTITY OF PETITIONER

I Melissa Lynne Kerns appellant, residing at Washington Correction Center for Woman, 9601 Bujacich Rd. N.W., Gig Harbor, Washington 98332. Asks for Motion for Reconsideration, Court of Appeals Division III cause number 33831-2 which was Amended on August 9th, 2016.

Ms. Kerns is asking the court to reconsider their decision and to prevail on a claim of ineffective assistance of counsel. Ms. Kerns will establish both deficient performance and prejudice. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. McFarland, 127 Wn.2d 322, 899 P.2d 1251 (1995).

DECISION

The court affirmed Court Of Appeals 33831-2 on August 9th, 2016. The court determined that Ms. Kerns did not establish ineffective assistance of counsel and deficient performance of prejudice because the court felt the claims were based outside the record.

STATEMENT OF RELIEF SOUGHT

Ms. Kerns petitions this court to reconsider her claim for ineffective assistance of counsel and deficient performance of prejudice and reverse her conviction and/or remand for a new trial.

GROUND

Ms. Kerns' counsel denied investigation of duress and refused to present witnesses in forum on Ms. Kerns behalf. Furthermore Ms. Kerns 1st, 5th, 6th, and 14th Amendments were violated, therefore under Strickland counsel fell well beneath the standard. Ineffective assistance of counsel. Lord v. Wood 184 F.3d P 1083.

Gonzaga Law Reviews

34 Gonz. L. Rev. 329 (1998/1999)

Providing equal justice for the domestic violence victim, Due Process and the victims right to counsel.

Because of Ms. Kerns' marital "Duress" Ms. Kerns counsel had an even "Greater" obligation to investigate and analyze available mitigation evidence. (73 Wn. 2d 635) (440 P.2d 168) It is a terrible thing to aim a deadly weapon and demand. State v. Kerns, P. 114, Ln. 6-10 Sept. 9, 2015.

RCW 26.50.010 Finding—1991 c301:

While incidents of domestic violence and are not caused by perpetrators use of alcohol and illegal substances, substances abuse may be contributing factor to domestic violence and the injuries and deaths that result from it. Also there is a need to consistent training of professionals who deal with domestic violence or are in a position to identify domestic violence and provide support and information. State v. Kerns, P. 260 Ln. 17, 18 (Sept 9th 2015). This would include yet not be limited to the courts, and counsels and any professionals in a position to help our community whom seek their help. State v. Melissa Kerns, Letter to Courts P. 4.

USCS Constitution Amendments 5th, and 14th

U.S. L. Ed Digest, Const. Law § 840.5 Eved. § 685; Witnesses§ 94.5

In re Jones (1996) 13 Cal. App.3d 1537, 1542-1543, 242 Cal. Rptr. 624:

14th Amendment-Due Process

It is well stated that under the Sixth Amendment an accused has the right to present witnesses to testimony and other evidence in his defense. Wash v. Texas, 388 U.S. 14, 19, 87 S. St. 1920, 18 L. Ed. 2d.

1019 (1967). The court, Prosecutor, and Ms. Kerns counsel seen with their own eyes the presence of Ms. Kerns witnesses in forum. Ms. Kerns counsel even spoke to two of the witnesses in person who were present in forum. Each time Ms. Kerns asked her counsel to announce their presence to the courts Ms. Kerns counsel kept (Shhhhn-her). Ms. Kerns counsel knew full well the intent of their presence in forum "To Testify" counsel refused to notify the courts verbally of their presence. US v. Sanchez-Lima, 161 F. 3d 545 (9th Cir. 1998) US v. Golding, 168 F. 3d 700 (4th Cir. 1999) US v. Hubbell, 167 F. 3d 552 (D.C. Cir. 1999)

14th Amendment

Ms. Kerns mental health condition had precluded her ability to make valid waive of her Miranda rights (702 P. 2d 722)

Validity or Admissibility, under Federal Constitution, of accused pretrial confession as affected by accused mental illness due to duress *(confession to police in Ms. Kerns case) 21 Am. Jur. 2d, Criminal Law §§ 710, 797; 29 Am. Jur. 2d, Evidence § 555.

(1) Duress

1. William R. Anson/Principles of the Law of Conduct 261-62 (Arthur L. Corbin ed., 3d Am. ed. 1919). Today the general rule is that any wrongful act or threat which over comes the free will of a Party constitutes duress. John D. Calamari and Joseph M. Perillo, The Law of Contracts § 9-2, at 337 (3d ed., 1987). Ms. Kerns duress of imprisonment, leading to Ms. Kerns duress of her person, Concluding to Ms. Kerns duress per minas.

1. William Blackstone/commentaries on the Laws of England 127 (1765) Ohio Rev. Code §§ 2929.03-2929.04 (B) (1975) applied the **8th and 14th Amendment**. State v. Bayless, 48 Ohio St. 2d 73, 86-87, 357 N.E. 2d 1038, 1045-1046 (1976)

State v. Bell, supra, at 281, 358 N.E. 2d at 564 38 Ohio St. 2d, at 281-282, 358 N.E. 2d, at 546-565; State v. Bayless, supra, at 87 n. 2, 357 N.E. 2d, at 104 n. 2.

US v. JOHNSON, US v. LaFLEUR, US v. RIFFE, US v. MORENO, US v. ARTHURS

Ineffective Assistance of Counsel

Errors regarding witnesses

Ineffective

Chapter 7:18

Failure to call or impeach a witness may be grounds for ineffective assistance. With respect to the decision whether or not to use the defendant's testimony or witness for defendant. In a 2004 decision the Supreme Court reiterated the "certain decisions" regarding the exercise or waiver of basic trial rights are of such moment that they cannot be made to the defendant by a surrogate.

Courts have concluded that counsels failure to inform defendant that he has right at trial is constitutionally deficient performance and may be prejudicial. Freeman v. Leapley, 519 N.W. 2d 615,618 Arner v. State, 872 P.2d 100 (Wyo. 1994)

Chapter 7:19

Regarding witness failure to cross examine witnesses Chambers v. Armontrout, 907 F.2d 825 (8th Cir. 1990) Haris v. Reed, 894 F. 2d 871 (7th Cir. 1990) Higgins v. Renco, 470 F. 3d 624, 2006 FED App. 0428 P (6th Cir.)

Counsel's failure to cross-examine the prosecutor's key witness was constitutionally deficient

performance and prejudiced Ms. Kerns; the witness was an eye witness, and failure to cross-examine a witness allowed the State's case to go untested and made the outcome of the trial unreliable. Stewart v. Wolfenbarger, 468 F. 3d 338, 2006 FED App. 0417P (6th Cir. 2006)

This failure allowed questionable testimony to go unchallenged: Goodman v. Bertrand, 467, F. 3d 1099 (9th Cir. 2006)

Counsel rendered ineffective counsel by doing nothing to present potential witnesses; counsel "appears" to have actively barred his client, Ms. Kerns from introducing this witness defense, despite the urgings of the trial court. Luma v. Cambra, 306 F. 3d 954, 59 Fed. R. Evid Serv. 1408 (9th Cir. 2002)

6th Amendment

Under Hearsay and Confrontation Clause

Chapter 11:18

Crawford: Admissibility of Statements in cases involving domestic Violence Giles v. California, 128 S. Ct. 2678, 2683-2684, 171 L. Ed. 2d 488 (2008).

6th Amendment

Ineffective Assistance of Counsel

The Performance Prong:

Failure to file witness notice or investigate potential witnesses.

Michigan Court of Appeals Unreasonably Applied Strickland "Avery v. Prelesnik, 548 F. 3d 434, 437-438 (6th Cir. 2008). Cert. 130 S. Ct. 80, 175 L. Ed. 2d 234 (2009)

6th Amendment

Failure to Investigate Potential witnesses

We note at the outset that a number of courts have found ineffective assistance of counsel in violation of the 6th Amendment where, as in the case, a defendant's trial counsel, fails to file a timely notice and/or fails adequately to investigate potential witnesses. Clinkscale v. Carter, 375 F. 3d 430, 2004 FED. App. 0213P (6th Cir. 2004)

When defense counsel undertakes to establish a witness, but does not present available evidence or offer a strategic reason for failing to do so, his actions are unreasonable, Alcala v. Woodford, 3340F. 3d. 862 (9th Cir. 2003). Ms. Kerns counsel prejudiced Ms. Kerns when he refused to call witnesses in forum which we previously discussed would testify on Ms. Kerns behalf before trial.

1st Amendment

TITLE 42 THE PUBLIC HEALTH AND WELFARE

CHAPTER 21 CIVIL RIGHTS

GENERALLY

Letter to Courts, Ms. Kerns counsel, prosecutor, and courts knew full well the purpose of Ms. Kerns letter to the courts, for the purpose of "duress" and a "mental health evaluation" on Battered Womens Syndrome, which was denied by Ms. Kerns counsel and the courts. Letter to Court P. 4 state in letter which was used at trial State vs. Melissa Kerns Sept. 9, 2015 P. 184, Ln.3, P12 Defendant's Letter To Courts 206. While the entirety of this letter involving Ms. Kerns "Freedom Of Speech" asking for help from Ms. Kerns superiors concerning her welfare and her sincerity of "Good Faith" should have been taken into consideration by the trial courts and Ms. Kerns' counsel. Counsel, the courts, and prosecutor

allowed this letter to be used against her, when in fact Ms. Kerns' "Welfare" should have been taken seriously and into consideration. Expressing concern of Ms. Kerns "Welfare" and her "Freedom of Speech" to her the courts and Ms. Kerns' superiors, asking for help. Instead refusing Ms. Kerns her right to speak up for help. Therefor refusing to formally address the issue of her request for mental health professionals.

Blacks Law 9th Addition, West "Good Faith" = "Fiduciary"

§1983. Civil action for deprivation of rights (R.S. §1979; Dec. 29, 1979, P.L. 96-170, § 1, 96 Stat. 1284; Oct. 19, 1996 P.L. 104-317 Title III, §309 (c), 110 Stat. 3853) 1985 §Conspiracy to interfere with civil rights (3) (R.S. § 1980)

Resulting in deficient performance Strickland v. Washington, Abridging Ms. Kerns' "Freedom of Speech" State v. Melissa Kerns Sept. 9, 2015. Melissa Pierce/Direct by Mr. Zeller P. 205 Ln. 5, ref. Letter to Courts P. 206 Ln. 5-16.

5th Amendment

Violated

The 5th Amendment does not protect against hard choices, it protects against coercion, "duress", that deprives defendant of opportunity to make such free choices for himself. This determination depends on an assessment of the totality of the circumstances. U.S. v. Roberts (2011, Cal. 2 NY), State v. Bower 73 Wn. 2d. 634 440 P.2d 167, (Wash 1968)

WEST 8:4

This establishes both serious attorney error and prejudice failure to investigate or call Ms. Kerns witnesses or announce their presence in forum on her behalf if ineffective assistance of counsel. Ms.

Kerns counsel failures prejudiced her. Had Ms. Kerns received competent defense, a reasonable probability exists that the jury would have returned and not guilty verdict. Ms. Kerns counsels failure to investigate her "Duress" including seeking mental health professional concerning Battered Woman Syndrome and what those witnesses might have contributed on her behalf. Because of Ms. Kerns marital duress and the time of the said criminal act Ms. Kerns counsel had and even "GREATER" obligation to investigate and analyze available mitigating evidence. State v. Pascal, 108 Wn. 2d 125, 736 P. 2d 1065,987 Wash. LEXIS 1062 (Wash. 1987)

US v. RODRIGUEZ-DE JESUS, 201 F. 3d, 482 (1st Cir. 2000) It is highly improper for the prosecutor to call a defendant a liar.

RCW 5.60.060

Ms. Kerns was also prejudiced by her counsel by deficient conduct, the facts exist that a great deal of mitigating Circumstances/evidence existed, including duress and physical abuse is severe prejudice. This would conclude her rights by the 6th Amendment. Strickland v. Washington, (1984) 466 U.S. 668, 691, 104 S. Ct. 2052, 80 L. Ed. 2d 674. Assistance rendered was Constitutionally deficient Ms. Kerns counsel errors were so serious that he was not functioning as counsel guaranteed her by the 6th Amendment

WEST 3:16

6th Amendment

Leading to the Prejudice Prong

TIME SPENT

Clearly there is enough evidence of prejudice considering no investigation was done on Ms. Kerns behalf concurring that the application of "Strickland" was objectively unreasonable, alleging this that including not allowing Ms. Kerns witnesses be known to the courts. State v. Melissa Kerns, P. 191 Ln. 1.

Rule 403

Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time. Seattle Univ. Law Review 27 Seattle U.L. Rev. 453 (2003).

ALR

Admissibility of expert testimony concerning domestic violence syndromes and duress to assist jury in evaluating victims testimony or behavior.

57ALR 5th 315

26.50.010 Definitions

(1) Courts

(3) Domestic Violence Means-----RCW 9A.46.110

(6) Family or household members

State v. Sweat, 180 Wn. 2d 156, 322 P. 3d 1213, 2014 Wash. LEXIS 245 (Wash. 2014)

(1) DURESS

(A) Fourteenth Amendment

- (i) A confession of a criminal defendant is admissible against him only if under "ALL" the circumstances it affirmatively appears to have been done voluntarily made without (duress) (fear) or (compulsion).
- (ii) (73 Wn. 2d 635) (440 P. 2nd 168)
It is a terrible thing to aim a deadly weapon and demand.

(1) Violations

(A) Sixth Amendment

- (i) In criminal prosecution the accused shall have the right to have compulsory process to compel the attendance of witnesses in his own behalf.
- (ii) Amendment 10,1921 P. 79 § 1. Approved November, 1922. Original text

-ART. 1 § 22 RIGHTS OF ACCUSED PERSON-

(B) Prejudicial

(i) Damage or detriment to ones' own legal rights or claims

Ms. Kerns letter to courts clearly states her need for help P. 4, in return by counsel/courts she gets denied by the only people able to help her.

RCW 9.94A.589

May be appealed by the offender as set forth in **RCW9.94A.585(2)**

(1)(c) The defendant committed the crime under (duress), coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct as expressed in,

(g) **RCW 9.94A.010**

(j) As defined in **RCW 10.99.020** Domestic

(2) **RCW 9.94A.537**

(h) **RCW 10.99.020** as defined in **RCW 9A.46.110** State v. Blakely.

Prejudice where judgment was involved with the courts and jury because no such investigation was done involving duress what so ever as stated by Mr. Zeller to the courts he didn't even know the entirety of the meaning of "duress" when it came to the **WPICs** as Ms. Kerns' counsel states to the courts "There's a section in there that is missing" State v. Melissa Kerns, P. 186 Ln. 23-24, P. 187 Ln. 2-3, Sept 9, 2015. Marital status discrimination included situations where the identity and conduct of my spouse were involved in my conviction and where I did not perform wrongful acts on my own personal will on the record State v. Melissa Kerns, P. 114 Ln. 1-12, Sept 8, 2015.

State v. Riker, battered woman' under duress; 19 Seattle U.L. Rev. 385 (1996) State v. Huff, 119 Wn.

App. 367, 80 P. 3d 432 2003 Wash LEXIS 816 Wash 2003.

Prosecuting domestic violence crimes:

Effectively using Rule 404 (b) to hold batterers accountable for repeated abuse. 34 Gonz. L. Rev. 361

(1998-1999)

Ms. Kerns counsel refused to take the time to investigate any of her case history; Spokane County Police Department had apprehended her husband Lucas James Nelson, whom was identified as the passenger in the vehicle on July 1, 2015, during Ms. Kerns' incarceration before trial. While Ms. Kerns' counsel knew Mr. Nelsons whereabouts before and during her trial. Also her counsel and the courts refused to bring (the now deceased), Mr. Nelson to justice. While Mr. Nelson was in custody he wrote and in-house letter to his wife Ms. Kerns, which she shared with her counsel Mr. Zeller expressing his apologizes and his part in the crime furthermore if there was anything he could do to inform the courts in his part he would. Yet Ms. Kerns counsel read the letter and just disregarded it as if it was simply too much work for him and not worth his time to investigate all the evidence. Clearly proving prejudice.

UNITED STATES DISTRICT COURT OF THE 9TH CIRCUIT

2016

U.S. Dist. LEXIS 17771: : Mix v. King, February 12, 2016

Opinion

III. LEGAL STANTARD

The court has discretion to grant motion for the attendance of incarcerated witnesses if the moving party has shown the witnesses have relevant information and the court determines the witnesses presence will substantially further the resolution of the case. Wiggins v. County of Alameda.

717 F. 2d 466, n. 1 (9th Cir. 1983) 649 F. Supp. 2d 1182: Mazzeo v. Gibbons, June 29, 2009.

Conclusion;

Motion to Dismiss: Granted

ANNOTATED REVISED CODE OF WASHINGTON

Title 9 Crimes and Punishment

Chapter 9.94A Sentencing Reform Act of 1981

Sentencing

9.94A.535 Departures from guidelines

Annotations

Conclusion

Ms. Kerns has established both deficient performance and was prejudice. Ms. Kerns also shows that it is in court record and not outside the record and therefor the original decision should be reversed and remanded back.

Respectfully submitted this _____ day of August, 2016

Melissa Kerns – Pro Se
873629 K-Unit
Washington Corrections Center for Women
9601 Bujacich Road NW
Gig Harbor, WA 98332

STATE OF WASHINGTON)
COUNTY OF PIERCE) SS.

AFFIDAVIT OF :
MELISSA LYNNE KERNS

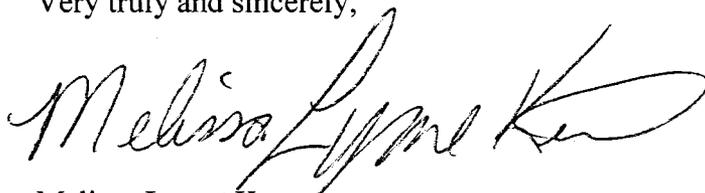
September 19, 2016

I Melissa Lynne Kerns is motioning the courts for sentence reduction. My grounds are as followed, today I have clearer direction in safeguard against unwise relationships. I know that my choice to be with a man who was addicted to drugs and alcohol and violence led me here. I take full responsibility of my actions and choices in being left vulnerable and open to an abusive relationship with my abuser, my now deceased husband. I realize that to avoid problematic places and relationships I need to give an account to which people I spend my time with . By ignoring wise boundaries of personal freedom I fell into traps far too often. Today I aim higher in my choices to enjoy privileges without abusing it. In some situations I realize things that seem good can turn into bondage. Today I have clearer direction and my honesty about faults and failures has opened me to receive right counsel and encouragement. This process has increased my potential greatly not just mentally and emotionally yet spiritually also. Today I have increased integrity and I know I can live more transparently making myself accountable to be careful not to waste available resources. I have managed to become more balanced and refrained from taking liberties these past fifteen months. Finally in closing I would like to say that my future goals are to advocate for domestic violence victims and to help those in our communities see clear their choice before it becomes unreasonable that life is so much more than co-dependency and addiction. Yes we all need love yet we don't need someone else to validate us as people or depend on to live a healthy productive and spiritual life. I survived many, many physically violent days and nights by the hands of my abuser and should be dead. Yet by the

grace of God I am not. Truly as I am sitting here today I will also be safe upon my release from my abuser, to make clearer and more productive choices without the fear of his hands.

Knowing mentally and emotionally that I am not the broken woman who accepted abuse as a way of life fifteen months ago, today I know where I am going and who I am. Will this court please grant me with the mercies of modifying the remainder of my sentence.

Very truly and sincerely,

A handwritten signature in cursive script that reads "Melissa Lynne Kerns". The signature is fluid and somewhat stylized, with a large loop at the end of the last name.

Melissa Lynne Kerns



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

STATE OF WASHINGTON,)	
)	No. 33831-2-III
Respondent,)	
)	ORDER DENYING
v.)	MOTION FOR RECONSIDERATION
)	
MELISSA LYNN KERNS,)	
)	
Appellant.)	

THE COURT has considered appellant Melissa Lynn Kerns' motion for reconsideration of our August 9, 2016, opinion and the record and file herein;

IT IS ORDERED that the appellant's motion for reconsideration is denied.

PANEL: Judges Lawrence-Berrey, Korsmo and Pennell

FOR THE COURT:

GEORGE FEARING
Chief Judge

FILED
Aug. 9, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III



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

STATE OF WASHINGTON,)	
)	No. 33831-2-III
Respondent,)	
)	
v.)	
)	UNPUBLISHED OPINION
MELISSA LYNN KERNS,)	
)	
Appellant.)	
)	

Pennell, J. — Following Melissa Kerns’s convictions for attempting to elude a police vehicle and hit and run (injury accident), the sentencing court imposed legal financial obligations (LFOs) that included a mandatory \$100 deoxyribonucleic acid (DNA) collection fee under RCW 43.43.7541. We affirm.

FACTS

A jury found Ms. Kerns guilty as charged of attempting to elude a police vehicle and hit and run (injury accident). Her criminal history included 10 prior felony convictions. The court rejected her request for a prison-based Drug Offender Sentencing

No. 33831-2-III
State v. Kerns

Alternative (DOSA) sentence upon determining she was not a suitable candidate. The court imposed concurrent sentences of 29 and 60 months respectively for the crimes. The court also imposed only mandatory LFOs, including a \$500 victim assessment, a \$200 criminal filing fee, and a \$100 DNA collection fee. Ms. Kerns did not object to imposition of any of the LFOs and did not raise any constitutional claims regarding the DNA collection fee.

ANALYSIS

Ms. Kerns contends the \$100 DNA collection fee mandated by RCW 43.43.7541 violates substantive due process and equal protection. Identical arguments have been rejected by this court previously. *State v. Lewis*, No. 72637-4-I, 2016 WL 3570550 (Wash. Ct. App. June 27, 2016); *State v. Johnson*, No. 32834-1-III, 2016 WL 3124893 (Wash. Ct. App. June 2, 2016); *State v. Mathers*, 193 Wn. App. 913, ___ P.3d ___ (2016). We reject them here as well.

STATEMENT OF ADDITIONAL GROUNDS

In her statement of additional grounds for review, Ms. Kerns makes two claims that she was denied ineffective assistance of counsel: (1) counsel refused to call witnesses and failed to present 911 records, hospital records or possible photos of recent abuse/death threats—all of which she contends would have corroborated her duress defense, and (2) counsel failed to use any past drug evaluations or request a new drug/mental health evaluation to support her request for a DOSA sentence.

No. 33831-2-III
State v. Kerns

To prevail on a claim of ineffective assistance of counsel, Ms. Kerns must establish both deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687–88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 334–35, 899 P.2d 1251 (1995). But her complaints relate to materials outside the trial court record. Ms. Kerns’s avenue for bringing claims based on evidence outside the record is through a personal restraint petition, not an appeal. *McFarland*, 127 Wn.2d at 335.

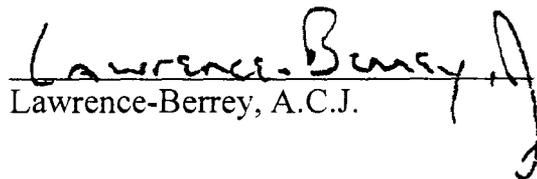
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Pennell, J.

WE CONCUR:



Lawrence-Berrey, A.C.J.



Korsmo, J.

IN THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF Spokane

338312

THE STATE OF WASHINGTON)
COUNTY OF PIERCE) ss. DECLARATION OF MAILING

I, Nelissa Kerns, state that on this 14th day of October,
2016, I deposited in the mail of the United States of America a properly stamped
envelope containing a copy of the following described documents:

- Petition for Review
- Motion for Reconsideration
- Affidavit of : Melissa Lyme Kerns

I further state that I sent these copies to the following addresses:

The Court of Appeals of the State of Washington
Division III 500 N. Cedar St Spokane WA 99201-1905
Spokane Co Pros Atty 1100 W. Mallon Ave
Spokane Wa 99260-2043

Dated: 10-14-16

MELISSA LYME KERNS 813629
Signature
Print Name & DOC

Washington Correction Center for Women
9601 Bujacich Rd. N.W.
Gig Harbor, Washington 98332-8300