FILED
SUPREME COURT
STATE OF WASHINGTON
7/13/2021
BY ERIN L. LENNON
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOJO DEOGRACIAS EJONGA v. MICHAEL OBENLAND, et al.

Supreme Court No. 99685-7

Court of Appeals No. 80709-9-I

PETITION FOR REVIEW

JOJO DEOGRACIAS EJONGA

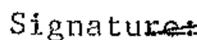
DOC #366372-C-107L

MONROE CORRECTIONAL COMPLEX(WSRU)

P.O.BOX 777

Monroe, WA 98272

Date: JULY/08/2021 : 20:30pm

Signature: 

A. Assignment of Error

1). RCW.10.73.090 is unconstitutional, where it abridges on the right to petition,and abridges petitioner's Privileges.

2). The Habeas Court erred when it ruled that Mr. Ejonga was notified of his right to Consulate under the Treaty --although the state evidence was insufficient to establish that a notice was given.

Issues Pertaining to Assignment of Error

1). Whether the time bar limitation under RCW. 10.73.090 abridges on the Privilege of the Writ of Habeas Corpus through the Petition Clause of Article 1 Section 4 of Washington State Constitution, the First Amendment to the U.S. Contitution, and the Privilege Clause of the 14th Amendment to the U.S. Constitution?

2). Whether the State met its burden required under Article 36 of the Vienna Convention on Consular Relation, which reqires the host state to notify a foreign national of his right to consulate comminication, and whether such notification or the

State notification complies with state law and court rules?

B.

Statement of the Case.

Mr. Ejonga first filed his Habeas petitions to Snohomish County Superior Court Claiming that he was not notified of his right under the vienna convention on consular relation. In the state supplemental response, the respondent submitted What appears to be a notice, but the notice show that the petitioner did not sign the document, and all that court be seen in the document is an hand written note that says " Refuse to Sign" by the defendant signature space. The respondent relied on this document to claim that they comply with their obligations. When this document was presented it did appear at the time to be a notice which led the appellant to at veryleast agree with the state, but the appellant still maintained that he never waived his right to consular notification, even though he had zero memory of such notice been presented to him at any point. The lack of clarity pushed the petitioner to examined the state document further-- upon further examination of the document, it became clear that the document presented by the respondent was defective even if it was real. The petitoner also found that the

document did not have a certificate of service/proof of service, and it lacks basic necessary detail point to validate the said document even if the state did notified me. Further more, the state also failed to identify where, how and when was the notice given to me or the notice was made. The petitioner also challenge the state statute RCW.10.73.090, but the lower court failed to address the issues.The Court of Appeals issued its decision Affirming on January 25, 2021(Exhibit 1) The respondent did file a response to the appellant opening brief in the court below on, 7/27/20(Exhibit #2). Mr. Ejonga Now comes before this honorable court to seek review of the lower court, and to test the constitutionality of the State Time Bar RCW.10.73.090.

C.

ARGUMENT.

> Whether the time bar limitation under RCW.10.73.090 abridges on the Privilege of the Writ of Habeas Corpus through the Petition Clause of Article 1 section 4 of Washington State Constitution,the First Amendment to the U.S. Const and the Privilege Clause of the 14th Amendment to the U.S. Constitution.

Article 1 section 13 of the State constitution and Article 1 section 9 of the U.S. constitution contains identical prohibitive language against suspension of the writ of habeas corpus, but the suspension question is not been argued here to this honorable court. There is no dispute that the right to petition the court is protected under the first amendment. see United Mine Workers v. Illinois State Bar Ass'n, 3899 U.S. 217, (1964), and this court made it clear in Richmond v. Thompson, 130 Wn.2d 368(1996). The right to petition comes with it wit the right to petition the court, and meaningful access to the court. The right to access to court, which includes the right to petition, is the most important right, since it theoretically protects all other rights. Yick Wo v. Hopkins, 118 U.S.

358(1886) alsoo see McCarthy v. Madigan, 503 U.S. 140(1991). This right must be meaningful, adequate, effective, and adequate. see Bond v. Smith, 430 U.S. 817(1977) and thus extends to all categories of prisoners/persons. see King v. Atiyeh, 814 F.2d 565, 568(9th Cir. 1987). Under both the federal and the state constitution, there is only one constitutionally recognized form of petition or mechanism mentioned in the constitution that a person may use to seek relief to the judiciary breach for violation of his constitutional rights. The mechanism is the writ of habeas corpus, which is a petition.

Because the writ is a constitutionally protected privilege its find it also find its protection under the Privilege and the Immunity clause of the 14th amendment, which Bars the Abridgment of such priviledges. To answer this questions, we first need to know whether the state has the power to abridge on the right to patition. This issues was addressed in 1940, 1943, and 1973 by the U.S. Supreme Court. In 1940, the U.S. Supreme Court made it clear that "The 14th amendment renders legislatures of states as incompetent as congress to enact laws contrary to the first amendment".see Cantwell v. Connecticut, 310 U.S. 296(1940); Murdock v. Pennsylvania, 319 U.S. 105(1943), also see Cruz v. Beto. 405 U.S. 319(1972). However our state law RCW.10.73.090

has rendered the right to petition the court inadequate, and not meaningful--by disproportionately affect the marginalized poor and uneducated people. This law has created what is called a per se suspect class. As argued in the court below, this law has made it close to impossible for an uneducated person to petition the court for relief beyond one year, it makes it impossible if you are poor, uneducated, disabled and a minority too, you definitely got nothing coming--good luck to you constitutional rights. RCW. 10.73.090 must be scrutinized strictly because it has created an environment where the amount of money you have and the social economical class that you are in, determines the access and the right you get to court. The U.S. Supreme court has made it clear that when a law or rule thus set such a standard, it is "IMPERMISSIBLE". see Tate v. Short, 401 U.S. 395(1971) also see Bearden v. Geargia, 461 U.S. 660(1983). RCW.10.73.090 affects the minority community the most, especially people of color, where no matter how persuasive your argument is, or how much merit it has, What you never want to hear, but has become more theme: "YOU ARE TIME BARRED". This law has created a road block, thus abridging on peoples right to petition, interfering with the ability of person to get relief from the court when his or her rights/ constitutional rights are violated.. The Supreme court in 1969 reasoned that" There is no

higher duty than to maintain the writ of habeas corpus unimpaired". see Johnson v. Avery, 393 U.S.483(1969). Rcw. 10.73.090 has actually done the opposite of what the U.S. Supreme Court Cautioned not to do.

Because the writ is also a privilege the 14th Amendment prohibition on the state from making or passing any law which shall abridge the privilege or immunities, also bars the state from abridging the privilege to file the writ of habeas corpus, and be offered meaningful access to the court and to be heard.

Abridgment means: To reduce or to Lessen in duration. That is exactly what RCW.10.73.090 has done--it has lessen in duration the amount of time a person has to file a collateral relief or an Habeas Petition, outside the 6 narrow, non meaningless,inadequate, ineffective exceptions.

No matter how it is looked at,either through the petition clause,through the privilege and immunity clause or through both-- There should never be a time frame in which a Washingtonian must use the privilege of the writ, so no matter how we slice it, RCW.10.73.090 is Unconstitutional under the petition and the privilege clause.

B. Whether the state has met its burden under Article 36 of the vienna convention on consular relation, which requires the host state to notify a foreign national of his right to consulate communication, and whether such notification or the state notification complies with state law and court rules?

The respondent has relied heavily on a piece of document they allege proves that they Notified the petitioner of his right to consulate(Exhibit #3), and yes during one of the filings the petitioner stated based on the document presented by the respondent--that it appears that he was Notified of his right to consulate. But upon further review of the record, and closer review of the presented document, many question came up, and upon further research of relevant state laws and court rules, it became very clear that the state failed to comply with CR.5, CR.11, and CrR. 8.4. The court below overlooked an important fact--which is: The respondent/state failed to provide any proof that they complied with the procedural rules of service, which is very critical to establish that the petitioner was served the notice. The Notice itself contains numerous fundamental defects, such as; its lack the name of the prosecutor who gave the notice, was it done in a open court? was the defendant counsel

available?. The petitioner here was represented by counsel, and such notice should have been given to counsel or in front of counsel, in an open court, and the Notice should have been with a proof of service. Thus this document Doesn't establish that a notice was given, it is rather "NULL AND VOID" because it is silence as to the manner of its service. see FairFieif v. Binnian, 13 Wash, 1, 42 P. 632(1895). The Document failed to identify basic information, such as where, the notice was given, how the notice was given, who the notice was given to, and who did the notification. Furthermore the document failed to identify, who was present during the service of the notification, basic informations are necessary to satisfy a fair notice to an individual, and to comply to the fundamental principle of due process. The simple fact that there is no evidence on the record other that this insufficient defective document to support the state claim that the petitioner was notified of his right to consular, and the fact that the respondent did not produce any evidence to show a proof of service, showing that petitioner's counsel was serve with the notice as in accordance with CR.5, the respondent has failed to prove compliance with with treaty, due to the insufficiency of the service process under CR.5. and the state fail under Leen v. Demopolis, 62 Wn.App.473, 815 P.2d 269(1991)review denied 118

Wn.2d 1022 827 P.2d 1393(1992)

Upon further review of the record, the lack of further evidence and record of in the docket, made the appellant to confiddently say that he was not Notified of his rights, because the evidence presented by the Respondents here is insufficient to establish that a Notice was given & the treaty was complied with.

The three judges panel relied on Sanchez-Llamas v. Oregon(2006),548 U.S. 331 338-39, 126 S.Ct.2669, 165 L.Ed.2d 557. The panel omitted Chief Justice Robert's Opinion in Sancheez-Llamas, by only relying on one part of the Supreme Court Interpretation of the Treaty."The plain language of the treaty requires the state to notify the consulate only if the detainee so request". But the Court left out the key part of the treaty,and the Supreme court interpretation of the treaty by Chief Justice Roberts, that states: " Article. 36(1)(b) Further states that the said authority shall inform the person concerned [i,e., the detainee] without delay of his right under sub-paragraph".-Sanchez-Llamas v. Oregon,548 U.S. 331, 338, 126 S.Ct. 2669, 165 L.Ed.2d 557(2006).

The state has to first meet its resposibility of notifying Mr.

Ejonga, and such a notice has to meet all constitutional requirements, by being valid, sufficiently in compliance with the court rule. The respondent here has failed to meet, or show the court that the notice was valid, and the records shows no evidence of a valid certificate of service of the said NOTICE.

The Three Judges Panel failed to address the question regarding the Constitutionality of RCW.!10.73.090 because the court believe the Treaty issue lacked merit. The Appellant respectfully disagree. Yes the issues presented by Mr. Ejonga has some complex facts, but it is far from lacking merit. The petition raised serious questions of law and fact that required de novo review of this court. Ejonga raised serious questions under Internatinal law, which is very significant to many immigrant/incarcerated immigrant community, those were not frivolous issues, nor did they lack merit, they are factual disputes that this honorable court need to address for the interest of justice. A petition is not frivolous, unless if its fails to present an arguable basis for colleteral relief either in law or in fact. In re Pers Restraint of Khan, 184 Wn.2d 679, 363 P.3d 577(2015) also see. Neitzke v. Williams, 490 U.S. 319

325, 109 S.Ct. 1827, 104 L. Ed.2d 338(1989). Appellant argument wasn't frivolous, because he presented an arguable claim for relief, satisfying the requirement under KHAN.

D.

CONCLUSION.

Appellant respectfully ask this court to accept review, and answer the two significant questions of public interest which requires a de novo review by this court.

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

Respectfully Submitted by: JOJO DEOGRACIAS EJONGA(Pro Se)
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Monroe, WA 98272

Dated: JULY/08/2021 08:30pm

EXHIBIT # 1

COA DECISION

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle

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January 25, 2021

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CASE #: 80709-9-I
Jojo Deogracia Ejonga, Appellant v. Michael Obenland, Respondent

Snohomish County, Cause No. 19-2-07117-4

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We affirm."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of $200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

jh

Enclosure
c: The Honorable Linda Krese

FILED
1/25/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOJO DEOGRACIAS EJONGA, Appellant, v. MICHAEL OBENLAND, superintendent of Monroe Correctional Complex; JAY INSLEE, governor of the state of Washington; BOB FERGUSON, attorney general of the state of Washington, Respondent.	No. 80709-9-I DIVISION ONE UNPUBLISHED OPINION

APPELWICK, J. — Ejonga appeals the trial court's denial of his petition for a writ of habeas corpus. He argues his petition should be granted because the State violated the Vienna Convention by failing to notify the Congolese consulate of his arrest and detention. We affirm.

FACTS

JoJo Ejonga is a citizen of the Democratic Republic of the Congo. On May 11, 2011, the State of Washington charged him with three counts of assault in the first degree, all of which occurred in King County. The State later amended the information to add three counts of attempted murder in the first degree, also occurring in King County.

On May 23, 2011, the State presented Ejonga with a notice of his right under the Vienna Convention[1] to have his consulate notified of his arrest and detention. The notice provided two places for signature. The first, entitled "Defendant's Acknowledgment and Waiver of Immediate Consular Notification," stated that the defendant acknowledged his right to have his consulate notified, but waived the right. The second, entitled, "Defendant's Acknowledgement and Request for Immediate Consular Notification," stated that defendant acknowledged his right to have his consulate notified and requested the State notify the appropriate consulate. Ejonga did not sign either section. Rather, somebody wrote "refused to sign" in the signature block in the "waiver" section. Ejonga does not claim to have ever asked the State to notify the Congolese consulate of his arrest and detention.

A jury found Ejonga guilty of three counts of attempted murder in the first degree while armed with a deadly weapon for all three counts. The court sentenced him to 792 months of confinement. The judgment and sentence was filed on April 19, 2013. This court affirmed the conviction on May 26, 2015. State v. Ejonga, No. 70069-3-I, slip op. at 14 (Wash. Ct. App. May 26, 2015) (unpublished), http://www.courts.wa.gov/opinions/pdf/700693.pdf. Our Supreme Court denied his petition for review. This court's mandate issued on February 5, 2016.

[1] Vienna Convention on Consular Relations, Apr. 24, 1963, art. 36(1)(b), 21 U.S.T. 77 (entered into force for the United States Dec. 24, 1969).

On August 8, 2019, Ejonga filed a petition for writ of habeas corpus in Snohomish County Superior Court. He alleged that the State failed to inform him of his right under the Vienna Convention to have the consulate of his home county notified of his arrest and detention. The State countered that he had been notified of his rights on May 23, 2011. Ejonga then argued that, because he had not waived his rights under the convention, the State was obliged to notify his consulate and failed to do so. The court denied his petition.

Ejonga appeals.

DISCUSSION

Ejonga argues that his conviction is invalid because the State was required under Article 36 of the Vienna Convention to notify his consulate of his arrest and detention and failed to do so. The State argues that his petition is time-barred under RCW 7.36.130 and RCW 10.73.090.[2] Ejonga argues that applying this time-bar to his petition violates the petition clause of the First Amendment and the privileges and immunities, and equal protection clauses of the Fourteenth Amendment.

---

[2] Ejonga's petition for a writ of habeas corpus is governed by chapter 7.36 RCW. RCW 7.36.010. RCW 7.36.130 and RCW 10.73.090 mandate that such petitions be filed within one year from the date the appellate court issues its mandate disposing of a timely direct appeal of the conviction. RCW 10.73.100 outlines several exceptions to this requirement.

The mandate in this case issued on February 5, 2016. Ejonga was therefore required to submit his petition for a writ of habeas corpus by February 5, 2017. Ejonga does not argue that any of the exceptions in RCW 10.73.100 apply to his petition. He filed the petition at issue on August 8, 2019. His petition is therefore untimely. Ejonga does not dispute this timeline.

However, we need not reach the time-bar issue and constitutional counter-arguments, because the record is clear that his underlying claim for relief is without merit.

Ejonga seeks a writ of habeas corpus on the ground that the State violated his rights under the Vienna Convention by failing to notify the Congolese consulate of his arrest and detention. Article 36(1)(b) of the Vienna Convention provides, "If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State" if a national of the sending state is arrested or detained. It further provides that "[t]he said authorities shall inform the person concerned without delay of his rights." Id.

Ejonga originally claimed below that he was not informed of his right to consular notification. After the State produced proof that he had, in fact, been notified, he modified his argument to claim that because he had not waived his right to notification, the State was obliged to notify the Congolese consulate. He brings that same argument on appeal.[3]

[3] Ejonga initially conceded that the State had served his counsel with the notification of his Vienna Convention rights on May 23, 2011. In his reply brief, Ejonga indicated that he "never conceded" that the document was a notification of his rights. Ejonga instead says that he only ever admitted that the "so called document . . . appear[s] to be a notice," and that he is "reluctant to give credit to the document in question." Importantly, Ejonga does not dispute that he was presented with the document on May 23, 2011. The document is entitled "Vienna Convention and Bilateral Treaty Notification, Acknowledgment, and Waiver or Request." It specifically informs of the right to consular notification and allows the detainee to request such notification. Ejonga's refusal to concede does not change the fact that the document clearly advised him of his rights under the Vienna Convention.

The plain language of the treaty requires the State to notify the consulate only if the detainee so requests. Id. The Supreme Court has interpreted the language to require a request from the detainee. Sanchez-Llamas v. Oregon, 548 U.S. 331, 338-39, 126 S. Ct. 2669, 165 L. Ed. 2d 557 (2006) ("In other words, when a national of one country is detained by authorities in another, the authorities must notify the consular officers of the detainee's home country, if the detainee so requests."). Ejonga cites no case law to contradict the plain requirements of the treaty. He also does not claim that that he ever requested consular notification. The State was therefore under no obligation to inform the Congolese consulate of his arrest, and no violation of the Vienna Convention has occurred.

We affirm.

Appelwick, J.

WE CONCUR:

[signature], J.

Andrus, A.C.J.

EXHIBIT #2

STATE: RESPONSE IN COA.

FILED
Court of Appeals
Division I
State of Washington
7/27/2020 9:11 AM

NO. 80709-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JOJO DEOGRACIAS EJONGA,

Appellant,

v.

MICHAEL OBENLAND,

Respondent.

RESPONSE TO APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Appellant Ejonga is currently serving three consecutive terms of total confinement for three counts of attempted murder in the first degree. Since he is a Congolese national, the King County Prosecutor's Office well before the beginning of his trial informed him of his right to contact a consular official of his home state under the Vienna Convention on Consular Relations (Convention). Ejonga declined to exercise this right. In April 2013, he was sentenced. His appeal affirming his conviction and sentence became final in early 2016.

Over three years later, Ejonga filed a habeas corpus petition in the Snohomish County Superior Court, arguing that he was entitled to relief because he had never been notified of his rights under the Convention and applicable statutes of limitation either did not apply to his petition or were unconstitutional. The superior court denied his petition. This Court should affirm the superior court because his petition is time-barred.

II. STATEMENT OF THE ISSUES

1. Whether, under RCW 7.36.130, Ejonga's habeas corpus petition is time-barred by RCW 10.73.090?

2. Whether the time bar in RCW 7.36.130 and RCW 10.73.090 is constitutional?

3. Whether the State had notified Ejonga of his rights under the Convention but Ejonga failed to exercise those rights?

III. STATEMENT OF THE CASE

A jury convicted Ejonga of three counts of attempted murder in the first degree in January 2013. Clerk's Papers (CP) 72. Almost two years prior to his conviction, the King County Prosecutor's Office advised Congolese national Ejonga in May 2011 of his right to request notification of his home country's consular officials under the *Vienna Convention on Consular Relations & Optional Protocol on Disputes*, T.I.A.S. No. 6820, 21 U.S.T. 77, 1969 WL 97928 (Dec. 14, 1969). CP 37. The notification advised Ejonga of his right "to have [his] country's consular representatives here in the United States notified of [his] situation." CP 57. The notification also advised him that he could "request this notification now, or at any time in the future." CP 57. Ejonga refused to sign the document. CP 58. Ejonga also did not exercise his right of consular notification under the Convention prior to sentencing or while his appeal was pending.

Ejonga was sentenced on April 19, 2013. CP 72. This Court affirmed his conviction and sentence. CP 168. The Supreme Court denied his petition for review, and this Court's mandate issued on February 5, 2016. CP 183, 185. Ejonga did not file a petition for a writ of certiorari in the U.S. Supreme Court.

Ejonga filed his state habeas petition pursuant to chapter 7.36 RCW in Snohomish Superior Court on August 8, 2019. CP 198. He claimed he

was entitled to relief because he had not been advised of his rights under the Convention. CP 203, 206. He also claimed that the time bar in RCW 10.73.090 applicable to habeas corpus petitions under RCW 7.36.130 did not apply to his petition because he only "recently" became aware of his right under the Convention. CP 213. He also argued that the time bar is unconstitutional. CP 213 Respondent demonstrated that, under RCW 7.36.130, Ejonga's petition was untimely due to the constitutional time bar in RCW 10.73.090. CP 61. After Respondent discovered that Ejonga had in fact been advised of his rights under the Convention in 2011, well before his 2013 trial, Respondent advised the superior court of this fact and submitted the notification as supplemental evidence. CP 32. In reply, Ejonga argued that he was still entitled to relief because the State had failed to notify the Congolese consulate even though, or because, Ejonga had not waived his right to notify the consulate. CP 3-5.

After considering the briefs submitted by the parties and holding a hearing, the superior court denied Ejonga's petition on November 1, 2019. CP 1. Ejonga then filed this appeal.

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IV. ARGUMENT

A. Under RCW 7.36.130, Ejonga's Habeas Corpus Petition Is Time-Barred by RCW 10.73.090

Ejonga's petition is untimely because over three years elapsed between the date this Court issued its mandate in Ejonga's direct appeal and the date Ejonga filed his petition for habeas corpus in the Snohomish County Superior Court. The mandate was issued on February 5, 2016. CP 185. The petition was filed on August 8, 2019. CP 198. Because more than one year elapsed between the two dates, Ejonga's petition must be dismissed as time barred under RCW 7.36.130.

RCW 7.36.130 provides in relevant part:

> No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge the party when the term of commitment has not expired, in either of the cases following:
>
> (1) Upon any process issued on any final judgment of a court of competent jurisdiction except where it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the state of Washington or of the United States have been violated and the petition is filed within the time allowed by RCW 10.73.090 and 10.73.100.

RCW 7.36.130(1). As relevant here, RCW 10.73.090 provides that the one-year period of limitation begins to run at "[t]he date that an appellate court issues its mandate disposing of timely direct appeal from the

conviction." RCW 10.73.090(3)(b). RCW 10.73.100 enumerates certain exceptions to the one-year period of limitation.

Here, this Court issued its mandate on February 5, 2016. CP 185. The one year period of limitation expired in February 2017, more than two years before Ejonga filed his habeas petition in Snohomish County Superior Court on August 8, 2019. On appeal, Ejonga does not argue that any of the exceptions in RCW 10.73.100 apply. *See* Opening Brief at 2-4. His petition is, therefore, untimely and must be dismissed.

B. The Time Bar in RCW 7.36.130 and 10.73.090 Is Constitutional

Ejonga does not challenge the fact that his petition is time-barred under RCW 7.36.130 and 10.73.090. He also does not argue that any of the exceptions in RCW 10.73.100 apply to his petition. Rather, without citing to any case law, Ejonga claims that this time bar is unconstitutional under the First and Fourteenth Amendments and the corresponding provisions of the Washington Constitution. Opening Brief at 21, 26. This argument is without merit.

The Washington Supreme Court has held that the statute of limitations governing habeas corpus and all other types of collateral relief—RCW 10.73.090—is a reasonable limitation that violates neither the State Constitution's Suspension Clause (Const. art. I, § 13) nor the Due-Process Clause's reasonability requirement:

> In streamlining the postconviction collateral review process, RCW 10.73.090 *et seq.* have *preserved unlimited access* to review in cases where there truly exists a question as to the validity of the prisoner's continuing detention. However, as this court warned almost 20 years ago, postconviction collateral review was never intended to be a "superconstitutional procedure enabling [the petitioner] to institute appeal upon appeal and review upon review in forum after forum ad infinitum." *Holt v. Morris*, 84 Wn.2d 841, 852, 529 P.2d 1081 (1974) (Hale, C.J., concurring). This general 1–year time limit is *a reasonable and constitutional method* for ensuring that collateral review does not degenerate into such a procedural merry-go-round.

Petition of Runyan, 121 Wn.2d 432, 453-54, 853 P.2d 424 (1993) (emphases added); *accord State v. Robinson*, 104 Wn. App. 657, 670, 17 P.3d 653 (2001).

Ejonga does not engage *Runyan* but claims unpersuasively that such a time-bar violates the First Amendment's Petition Clause. The First Amendment provides in relevant part that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for redress of grievances." U.S. Const. amend I. The right to access the courts "for redress of wrongs is an aspect of the First Amendment right to petition the government." *Bill Johnson's Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731, 741, 103 S. Ct. 2161, 76 L. Ed. 2d 277 (1983). It is incorporated against the states through the Fourteenth Amendment of the

United States Constitution. *Edwards v. South Carolina*, 372 U.S. 229, 235, 83 S. Ct. 680, 9 L. Ed. 2d 697 (1963); *De Jonge v. Oregon*, 299 U.S. 353, 364, 57 S. Ct. 255, 81 L. Ed. 278 (1937).

This right of access to the courts, however, is not unlimited. Specifically, it does not include the right to file baseless litigation. *Bill Johnson's*, 461 U.S. at 743. It does not include the right to effective access. *Lewis v. Casey*, 518 U.S. 343, 354, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996). And it also does not include the right to present stale claims. *United States v. Kubrick*, 444 U.S. 111, 117, 100 S. Ct. 352, 62 L. Ed. 2d 259 (1979) (noting that "the right to be free from stale claims in time comes to prevail over the right to prosecute them").

Limitations of the right to access the courts are subject to the Due-Process Clause. The Due-Process Clause requires that "a State must afford to all individuals a meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971). But imposing "reasonable time limitations" does not violate the Due-Process Clause. *Michel v. Louisiana*, 350 U.S. 91, 97, 76 S. Ct. 158, 100 L. Ed. 83 (1955), *accord Kubrick*, 444 U.S. at 117 (noting that statutes of limitation as "statutes of repose" properly afford plaintiffs "what the legislature deems a reasonable time to present their claims").

Runyan held that the time bar in RCW 10.73.090 that also governs habeas corpus petitions under RCW 7.36.130 is a reasonable method "for ensuring that collateral review does not degenerate into . . . a procedural merry-go-round." *Runyan*, 121 Wn.2d at 454. Because this limitation is reasonable, it is also constitutional under the First Amendment.

Ejonga presents no persuasive argument that the applicable time bar unreasonably abridges his rights under the First Amendment. And resorting to the corresponding provision in the Washington Constitution—Const. art I, § 4—is also of no avail to Ejonga, as he has not shown that it provides broader, or different, protections than the First Amendment on this point. *See Richmond v. Thompson*, 130 Wn.2d 368, 383, 922 P.2d 1343 (1996) (reading Const. art. I, § 4, "consistent with the First Amendment").

Moreover, Ejonga presents no persuasive argument that his rights under the Fourteenth Amendment—either the Equal Protection Clause or the Privileges or Immunities Clause—are unconstitutionally abridged by the applicable time bar. The Fourteenth Amendment provides in relevant part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1; *see* Const. art. I, § 12.

"The Privileges or Immunities Clause protects only those rights 'which owe their existence to the Federal government, its National character, its Constitution, or its laws.' " *McDonald v. City of Chicago*, 561 U.S. 742, 754, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (quoting *Slaughter-House Cases*, 83 U.S. 36, 79, 21 L. Ed. 394 (1872)). These rights include "the privilege of the writ of *habeas corpus*" and the right to "petition for redress of grievances . . . guaranteed by the Federal Constitution." *Slaughter-House Cases*, 83 U.S. 36, 79, 21 L. Ed. 394 (1872). But this Clause does not protect Ejonga's right to petition for a writ of habeas corpus guaranteed by Washington law. Put differently, since Ejonga here petitions for a writ of habeas corpus under state law, not federal law, the Clause is not applicable to his petition.

Moreover, the "right to petition for redress of grievances" is subject to reasonable time limitations applicable to the First Amendment's Petition Clause because the Privileges or Immunities Clause is not a source of additional privileges or immunities but only protects privileges or immunities guaranteed elsewhere in the U.S. Constitution—here, the First Amendment—from encroachment by state law. *See McDonald*, 561 U.S. at 754. RCW 10.73.090's time bar incorporated in RCW 7.36.130 is such a reasonable time limitation under *Runyan*.

Ejonga has presented no argument that securing this First Amendment right via the Fourteenth Amendment's Privileges or Immunities Clause—instead of incorporating it against the states via the Fourteenth Amendment's Due-Process Clause—would make any substantive difference. *See McDonald*, 561 U.S. at 758-66 (outlining the post-*Slaughter-House Cases* developments leading to the incorporation of almost all provisions of the Bill of Rights under the Due-Process Clause instead of producing a similarly expansive jurisprudence under the Privileges or Immunities Clause). Thus, even to the extent the Privileges or Immunities Clause applies to his state habeas petition, it does not entitle Ejonga to a determination of his petition on the merits.

The Equal Protection Clause in both federal and state constitutions requires that "persons similarly situated with respect to the legitimate purpose of the law receive like treatment." *Runyan*, 121 Wn.2d at 448. The *Runyan* court expressly addressed an equal-protection challenge to RCW 10.73.090 under the rational-basis test because the statute at issue makes no distinctions based on (semi-)suspect classes, including poverty. *Id.* The court rejected the challenge because the statute meets the applicable test: "[T]he statute is a reasonable means for controlling the flow of postconviction collateral relief petitions and does not violate the equal protection clause of either the state or federal constitution." *Id.* at 448-49.

Ejonga offers no persuasive argument to the contrary. Instead of engaging the relevant precedent, he engages in free-wheeling constitutional speculation. *See* Opening Brief at 26-29. As a result, he is not entitled to have his petition reviewed on the merits.

C. Even if Ejonga's Petition Were Timely, He Would Not Be Entitled to Relief on the Merits Because the State Notified Him of his Rights under the Convention but He Failed to Exercise those Rights

If the Court found Ejonga's petition to be timely, it should deny it on the merits because the State notified Ejonga of his rights under the Vienna Convention and Ejonga never exercised those rights by actually requesting that the State notify the Congolese consulate. Ejonga claims that he is entitled to habeas relief because he did not waive his right under the Vienna Convention to have the Congolese consulate notified of the criminal charges against him and the State did not notify the Congolese consulate. Opening Brief at 2. This claim does not entitle him to relief because, under the Convention, the State was only required to notify Ejonga of his right to have the consulate notified and to notify the consulate if Ejonga requested the State to do so. The State notified him of this right well before trial, but Ejonga never exercised this right by requesting that the State notify the consulate. As a result, his petition also fails on the merits.

Article 36 of the Vienna Convention provides in relevant part:

> [*I*]*f he so requests*, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph.

Convention, art. 36(1)(b) (emphasis added). The U.S. Supreme Court has summarized the gist of this paragraph as follows: "[W]hen a national of one country is detained by authorities in another, the authorities must notify the consular officers of the detainee's home country *if the detainee so requests*." *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 338-39, 126 S. Ct. 2669, 165 L. Ed. 2d 557 (2006) (emphasis added).

Here, Ejonga concedes that he was notified of his rights under the Convention in May 2011, stating that "the document [was] presented to Mr. Ejonga on his arraignment day[,] 'VIENNA CONVENTION AND BILATERAL TREATY NOTIFICATION, ACKNOWLEDGEMENT AND WAIVER OR REQUEST.' " Opening Brief at 16. This statement demonstrates that the State notified Ejonga of his rights under the Vienna Convention, as set forth in the form referenced here by Ejonga. *See* CP 37, 57-58.

Elsewhere in the brief, Ejonga concedes that "[o]n May-23-2011, [t]he State served Mr. EJONGA'S Counsel with a (VIENNA CONVENTION AND BILATERAL TREATY NOTIFICATION, ACKNOWLEDGEMENT AND WAIVER OR REQUEST) . . . . Mr. Ejonga Refused to sign the document . . . ." Opening Brief at 6; *see* CP 37. "The attorney's knowledge is deemed to be the client's knowledge, when the attorney acts on his behalf." *Haller v. Wallis*, 89 Wn.2d 539, 547, 573 P.2d 1302 (1978). Absent a showing that the attorney-client relationship was destroyed due to the attorney's mental illness or other disability, this service and the resulting notice should be attributed to Ejonga. *See Barr v. MacGugan*, 119 Wn. App. 43, 47, 78 P.3d 660 (2003). Ejonga has not made such a showing but only states that he requested a new attorney in September 2011. Opening Brief at 6. Admitted service on defense counsel resulted therefore in service on Ejonga, absolving the State of any additional notification requirements.

Ejonga's reliance on the fact that he refused to sign the waiver portion of the form presented to him in May 2011 is futile. Under Article 36 of the Convention, the defendant must affirmatively request notification of his or her consulate. Only this request triggers the State's duty to notify the consulate. Simply refusing to sign a waiver of this right does not trigger the State's duty, as the term "waiver" or "waive" does not appear in the

relevant portion of Article 36. Accordingly, Ejonga's refusal to waive his rights under the Convention means just that—he refused to waive his notification rights under the Convention. *See* CP 58 ("I do not wish to provide citizenship information and I waive any right to consular notification at this time."). It does not mean that he exercised those rights by affirmatively requesting that the State notify the Congolese consulate because Ejonga also did not sign the request portion of that form. *See* CP 58 ("I choose not to waive my right to notification and I ask that you notify my county, _______, of my arrest or detention."). He never requested such notification at any time before or during his trial, although the notification form expressly advised him of this possibility. CP 58.

Ejonga concedes that he had notice of his right to request consular notification in May 2011. He refused to waive his right at the time. But more importantly, he failed to exercise this right by affirmatively requesting that the State notify the Congolese consulate in May 2011 or at any time before or during his trial. His claim that he is entitled to relief because the State failed to notify the Congolese consulate is without merit because Ejonga failed to request such notification after the State notified him of this right to do so almost two years before his trial.

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V. CONCLUSION

For the reasons set forth above, Respondent requests that the Court affirm the superior court's order denying Ejonga's petition for habeas corpus.

RESPECTFULLY SUBMITTED this 27th day of July 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I caused the RESPONSE TO APPELLANT'S OPENING BRIEF document to be electronically filed with the Clerk of the Court, and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participant:

JoJo Deogracia Enjonga, DOC #366372
Monroe Correctional Complex
PO Box 777
Monroe, WA 98272

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

EXECUTED this 27th day of July 2020, at Olympia, WA.

s/ Beverly Cox
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EXHIBIT #3

STATE EXHIBIT IN

HABEAS COURT: NOTICE

EXHIBIT #3

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KING COUNTY, WASHINTON
MAY 23 2011
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. JOJO D. EJONGA, Defendant.	No. 11-1-05704-2 KNT VIENNA CONVENTION AND BILATERAL TREATY NOTIFICATION, ACKNOWLEDGEMENT AND WAIVER OR REQUEST

Pursuant to Article 36(1)(b) of the Vienna Convention on Consular Relations, if you are a non-U.S. citizen who is being arrested or detained, you are entitled to have your country's consular representatives here in the United States notified of your situation. A consular official from your country may be able to help you to obtain legal counsel, and may contact your family and visit you in detention, among other things. If you want your country's consular officials notified, you may request this notification now, or at any time in the future.

In addition, the United States has entered into treaties that <u>require</u> notification to a consular representative of a treaty country if one of their citizens has been arrested or detained. If you are a foreign national of any of the following countries, the King County Prosecuting Attorney's Office is prepared to notify your country's consular officials as soon as possible. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel, and may contact your family and visit you in detention, among other things.

Algeria	Antigua and Barbuda	Armenia
Azerbaijan	Bahamas, The	Barbados
Belarus	Belize	Brunei
Bulgaria	China (not R.O.C.)	Costa Rica
Cyprus	Czech Republic	Dominica
Fiji	Gambia, The	Georgia
Ghana	Granada	Guyana

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(206) 296-9000, FAX (206) 296-0955

5423611

Hong Kong	Hungary	Jamaica
Kazakhstan	Kiribati	Kuwait
Kyrgyzstan	Malaysia	Malta
Mauritius	Moldova	Mongolia
Nigeria	Philippines	Poland
Romania	Russia	Saint Kitts and Nevis
Saint Lucia	Saint Vincent/Grenadines	Seychelles
Sierra Leone	Singapore	Slovakia
Tajikistan	Tanzania	Tonga
Trinidad and Tobago	Tunisia	Turkmenistan
Tuvalu	Ukraine	United Kingdom
U.S.S.R.	Uzbekistan	Zambia
Zimbabwe		

Defendant's Acknowledgement and
Waiver of Immediate Consular Notification

I acknowledge the above notification and understand it. I do not wish to provide citizenship information and I waive any right to consular notification at this time. I understand that my refusal to provide information will release United States authorities from their notification obligations under the Vienna Convention or bilateral treaties. If I change my mind and wish to have a consulate representative notified, I will request my defense attorney to notify the King County Prosecuting Attorney's Office or, if I am pro se, I will ask the Court to notify the King County Prosecuting Attorney's Office.

refused to sign

Date: ______________ ______________________
DEFENDANT

Defendant's Acknowledgement and
Request for Immediate Consular Notification

I acknowledge the above notification and understand it. I choose not to waive my right to notification and I ask that you notify my country, ______________________, of my arrest or detention.

Date: ______________ ______________________
DEFENDANT

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CERTIFICATE OF SERVICE

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

Submitted by: JOJO DEOGRACIAS EJONGA
DOC # 366372-C-107L
MONROE CORRECTIONAL COMPOMPLEX(WSRU)
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Date:JULY/08/2021.

INMATE

July 13, 2021 - 4:49 PM

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Appellate Court Case Number:	Case Initiation

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