

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ALLEN EUGENE GREGORY,

Appellant.

NO. 88086-7

THIRD STATEMENT OF ADDITIONAL
AUTHORITIES

Pursuant to RAP 10.8, appellant Allen Gregory submits the following statement of additional authorities:

1. In support of Mr. Gregory's argument that the trial court's refusal to allow him to submit evidence in rebuttal to the State's argument he was among the "worst of the worst" violated his Fourteenth Amendment due process rights and Eighth Amendment rights (*see* AOB at 51-54; ARB 27-32), Mr. Gregory cites:

The Court correctly concludes that the exclusion of the proffered testimony violated due process. *Ante*, at 5, n. 1. In *Gardner v. Florida*, [430 U.S. 349, 97 S. Ct. 1197, 51 L. Ed. 2d 393 (1977)], we vacated a death sentence on the ground that the sentencing judge had considered a confidential presentence



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1 report without permitting the defendant to see the report. The
2 plurality concluded that the defendant was denied due process
3 because "the death sentence was imposed, at least in part, on the
4 basis of information which he had no opportunity to deny or
5 explain." *Id.*, at 362 (opinion of STEVENS, J.). *See also id.*, at
6 364 (WHITE, J., concurring in judgment) (applying the same
7 analysis under the Eighth Amendment). As in *Gardner*,
petitioner in this case was not permitted to "deny or explain"
evidence on which his death sentence may, in part, have rested.
This error was aggravated by the prosecutor's closing argument,
which emphasized and exaggerated petitioner's misconduct in
prison after his arrest. Therefore, petitioner's death sentence
violates the rule in *Gardner*.

8 *Skipper v. South Carolina*, 476 U.S. 1, 10-11, 106 S. Ct. 1669, 90 L. Ed. 2d 1
9 (1986) (Powell, J., concurring). *See also State v. Davis*, 175 Wn.2d 287, 320,
10 290 P.3d 43 (2012) (citing *Skipper v. South Carolina*, 476 U.S. at 5 n.1).

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13 2. In support of Mr. Gregory's arguments related to the failure of
14 the State to rebut the findings of the Beckett Report (*see* ARB at 48), Mr.

15 Gregory cites:

16 Had there been evidence obtainable to contradict and disprove
17 the testimony offered by petitioner, it cannot be assumed that
the State would have refrained from introducing it.

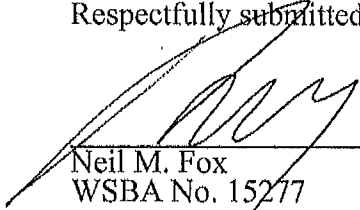
18 *Miller-El v. Cockrell*, 537 U.S. 322, 345 123 S. Ct. 1029, 154 L. Ed. 2d 931
19 (2003) (quoting *Pierre v. Louisiana*, 306 U.S. 354, 361-362, 59 S. Ct. 536, 83
20 L. Ed. 757 (1939)).

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23 3. In support of Mr. Gregory's argument that his death sentence
24 fails proportionality review (*see* AOB at 59-104; ARB at 34-53), Mr. Gregory
25 cites TR 346 (Christopher Monfort) (life sentence for defendant for one count
26 of aggravated murder (with other convictions for first degree arson and two
27 counts of attempted first degree murder); report includes "racism" as mitigating
28

1 circumstance for black defendant, and lists "age" as mitigating circumstance
2 for a defendant who was 41 years old when he committed the crimes).

3 DATED this 8th day of October 2015.

4 Respectfully submitted,

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6 _____
7 Neil M. Fox
8 WSBA No. 15277

9 /s/ Lila J. Silverstein
10 Lila J. Silverstein
11 WSBA No. 38394

12 Attorneys for Appellant
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8 IN THE SUPREME COURT FOR THE STATE OF WASHINGTON
9

10 STATE OF WASHINGTON,

11 Respondent,

12 v.

13 ALLEN EUGENE GREGORY,

14 Appellant.
15
16

NO. 88086-7

CERTIFICATE OF SERVICE

17 I, Alex Fast, certify and declare that on the 8th day of October 2015, I served a copy of
18 the attached THIRD STATEMENT OF ADDITIONAL AUTHORITIES by depositing a copy
19 into the United States Mail with proper first class postage affixed in an envelope addressed to:
20

21 Mark Lindquist
22 Pierce County Prosecuting Attorney
23 John Neeb & Kathleen Proctor, Deputies
24 930 Tacoma Ave. S. Room 946
25 Tacoma, WA, 98402-2102

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

28 10.8.2015. SEATTLE, WA
DATE AND PLACE

ALEX FAST

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To: Alexandra Fast; Lila Silverstein; pcpatcecf@co.pierce.wa.us; jneeb@co.pierce.wa.us; kprocto@co.pierce.wa.us; Neil Fox
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Please accept for filing the attachments in file regarding State v. Gregory, No. 88086-7 "Third Statement of Additional Authorities" and Certificate of Service.

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