

LAW OFFICE OF
Suzanne Lee Elliott
1300 HOGE BUILDING
705 SECOND AVENUE
SEATTLE, WASHINGTON 98104

TELEPHONE:
(206) 623-0291

E-MAIL: SUZANNE@SUZANNEELLIOTTLAW.COM
WEBSITE: WWW.SUZANNEELLIOTTLAW.COM

FAX:
(206) 623-2186

February 4, 2014

Clerk of the Court
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504

Re: WACDL's Proposed Alternative Amended RAP 16.7

Dear Clerk:

On February 4, 2014, the Christian Science Monitor reported that last year exonerations in the US reached the highest number in 25 years. Eighty-seven people were exonerated. The criminal justice system can no longer pretend that innocent people are not convicted or that all flawed convictions are identified and corrected on direct appeal.

And it is not just other States that get it wrong. The Seattle Times reports that on December 23, 2013, Brandon Olebar was exonerated and released. Seattle Times, *Wrongfully Convicted Man Released After 10 Years In Prison, 12/23/13*. In 2005, Mr. Olebar was convicted of robbery in the first degree and burglary in the first degree. His convictions were confirmed on direct appeal. *State v. Olebar*, 126 Wash. App. 1017 (2005). But he continued to file documents in the trial court seeking to have his conviction re-examined. Attached is a "statement of misidentity" filed on his behalf in the trial court in 2006.

But Washington's Personal Restraint Petition procedures generally prevent even the initial consideration of Petitioners' claims. The vast majority of petitions are filed by indigent, pro se prisoners - because counsel is not appointed until after consideration of the Petition. Rule 16.7 as interpreted by this Court in *In Re Rice*, 118 Wash. 2d 876, 885, 828 P. 2d 1086 (1992), requires Petitioner support his or her Petition with evidence that would be admissible under the Rules of Evidence. Even a fairly well educated, literate prisoner would have significant difficulty meeting this unreasonably high bar to seeking justice in a case that has obvious merit.

Clearly, Olebar's "statement of misidentity" did not meet the unreasonably high *Rice* standard. And, so it is not surprising that it was unavailing. Olebar was exonerated only because two law students, working for the Innocence Project Northwest, "developed a body of evidence" - from the street. They were able to track down the necessary witnesses and get the declarations necessary to persuade

RECEIVED
STATE OF WASHINGTON
SUPREME COURT
2014 FEB -7 A 9:31
BY MAIL
CLERK

the State that Olebar had, in fact, been misidentified as the perpetrator of the crime. Mr. Olebar was one of the lucky few.

The modest change in WACDL's proposed amended rule, will give this Court (and the Courts of Appeals) better opportunity to deal with all Petitions in a fair and just manner. It will allow pro se petitioners, unschooled in the minutia of the evidence rules, to submit materials that are reliable if even they are not declarations or certified copies.

I urge this court to crack the gates open just a little and permit meritorious petitioners access to a meaningful post-conviction procedure.

Sincerely,

A handwritten signature in black ink that reads "Suzanne Lee Elliott". The signature is written in a cursive, flowing style with a prominent initial 'S'.

Suzanne Lee Elliott
Attorney at Law

FILED

06 MAR -1 PM 3:30

KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON.
IN AND FOR THE COUNTY OF KING

vs. Plaintiff/Petitioner,

Brandon Red Tail Hawk Okebar

Defendant/Respondent.

NO. FF03-1-00610-2 SEA
 KNT

Statement of Misidentity, _____ is attached.

St. Davids March, 1st 06.
#03-1-00610-2

STATEMENT: (Continued)

For Brandon Red Tail Hawk Olebar:
Identity in the case is of 2 "two"
different people, with very similar identity
I, Ms Olebar, heard the true person that
committed the actual crime Sheldon E. Hylward,
whom verbally confessed to me of what he
did to the victim of Brian Vogelbacher,
as well as other people heard at the same
time, William Chicote, Eddie Edward ~~Law~~ Loney.
Brandon Red Tail Hawk was at Tana Dowers
residence visiting, with the permission
of his Uncle Clifford A. Commodore, that his
PO at the time was aware of him residing
there.

Please help us or support our direction
we would appreciate,

Please Thank You
Ms Olebar, Family

7350 33rd Ave So
Seattle Wa 98118
206-330-3874

(Continue on separate page if necessary)

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

DATED March, 1st 06 at Keat Washington.

Ms. Aina S. Olebar
Signature of Petitioner