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IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR CLARK COUNTY

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
DINO J. CONSTANCE,  
  
Defendant.

CAUSE NO. 07-1-00843-8  
  
REPLY TO STATE'S RESPONSE TO  
DEFENDANT'S CrR 7.8 MOTION

**1. Introduction**

A week after its brief was due, the State has filed a tardy response to Mr. Constance's motion for relief under CrR 7.8. This response is completely inadequate and does not, in any significant way, answer the Court's previous order for the State to show cause why relief should not be granted. The response is void of any substantive information, and, other than stating in a conclusory manner that it "does not agree" with the claim that it withheld exculpatory evidence, the State fails to give even a hint as to whether it admits or denies it failed to disclose evidence of deals it made with key witnesses in exchange for their testimony against Mr. Constance or whether it admits or denies withholding powerful evidence of bias of other witnesses (such as Keitt Spry's threatening e-mails).

1 The State seeks to sweep all of these issues under the rug and delay the case even  
2 more, by seeking, without citation to any authority, to transfer the case to the Court of  
3 Appeals, simply arguing that “[g]enerally the motions the defendant makes should be brought  
4 at [sic] a personal restraint petition in the court of appeals . . . . The defendant in this motion  
5 raises issues that are not [a] proper basis for [a] CrR 7.8 motion.” State’s Response at 3.

6 This Court previously set a hearing for the State to come forward and show cause why  
7 Mr. Constance’s motion should not be granted. In the press, when the pending motion was  
8 raised as an issue in Mr. Golik’s election campaign, Mr. Golik’s position was that “[w]hen  
9 there’s a hearing on the matter, Golik’s prepared to show documentation and call prosecutor’s  
10 office support staff members to testify, disproving all the allegations.” “Blogger Pushing  
11 Appeal of 2008 Trial as Campaign Issue,” *The Columbian*, October 26, 2010 (App. A). In its  
12 pleadings in the Court of Appeals in response to Mr. Constance’s motion to remand the appeal  
13 in COA No. 40504-1-II back to this Court, the State has argued:

14 As that order [Judge Lewis’ order of 9/30/10) indicates the Superior  
15 Court has scheduled a show cause hearing for October 29, 2010. It’s believed  
16 that the Judge wishes to get a handle on what is currently happening with this  
particular case. This attempt to clarify some of these issues would also be of  
great benefit to the State . . .

17 The State submits that it would make sense to allow the show cause  
18 hearing to proceed, the court to prepare whatever orders are necessary, and at  
19 that point determine what is required. It continues to be the State’s position  
20 that the defendant is attempting to use the Personal Restraint Petition  
mechanism in an inappropriate manner. However, as previously indicated, the  
State suggests that this matter be postponed until at least after the show cause  
hearing.

21 *State’s Supplemental Response to the Defendant’s Motion to Remand*, at 1-2 (App. B).

22 Rather than seeking clarity, however, the State’s response to Mr. Constance’s motion in this  
23 Court seeks simply to avoid having to admit that Mr. Constance’s convictions are tainted.

24 There is no procedural impediment to the Court reviewing all the matters now before  
25 it. The State has not shown cause at all. The Court should vacate the convictions.

1           **2.     Procedurally This Court Has the Power to Rule on the Pending**  
2           **Motions**

3           As to all of the matters currently raised by Mr. Constance in the CrR 7.8 motion,  
4           except for the State’s failure to disclose exculpatory evidence, the State argues, without any  
5           authority, that the matters should be transferred to the Court of Appeals. The State’s lack of  
6           citation to authority is telling – its position is not supported by any authority.

7           “A motion in the trial court under CrR 7.8(b) is the functional equivalent of a personal  
8           restraint petition in the Court of Appeals.” *State v. Madsen*, 153 Wn. App. 471, 475, 228 P.3d  
9           24 (2009), *rev. denied* 168 Wn.2d 1064 (2010). There is no preference in this State for the  
10          lengthy Personal Restraint Petition process as a means of post-conviction relief. Over twenty  
11          years ago, the Washington Supreme Court rejected an attempt by the Court of Appeals to  
12          channel all post-conviction remedies into the PRP process, holding that the Supreme Court,  
13          the Court of Appeals and the superior court have concurrent original jurisdiction for  
14          determining post-conviction petitions. *Toliver v. Olsen*, 109 Wn.2d 607, 746 P.2d 809  
15          (1987). *See also Madsen, supra* (rejecting argument that a trial court does not have authority  
16          under CrR 7.8 to grant post-conviction relief – “The Department's interpretation of the rule is  
17          contradicted by authority.”).

18          CrR 7.8(c)(2) does allow for transfer to the Court of Appeals in a sub-set of cases –  
19          cases that are time-barred by RCW 10.73.090 and cases either where the defendant has not  
20          made a substantial showing he or she is entitled to relief or cases where resolution would not  
21          require a factual hearing. Otherwise, there is no authority to transfer a CrR 7.8 motion to the  
22          Court of Appeals, and if the trial court does not transfer the matter, then it must set a “show  
23          cause” hearing under CrR 7.8(c)(3). As the Court of Appeals ruled the last time this Court  
24          attempted to transfer the matter to the Court of Appeals, COA No. 39878-8-II (filed with the  
25          CrR 7.8 motion as Exhibit 12), transfer is not permitted after the trial court holds a hearing.

26          The State makes no argument that this matter is time-barred. Importantly, *it makes no*  
27          *argument that Mr. Constance has not made a substantial showing that he is entitled to relief.*  
28          Indeed, the State does not deny – even in a conclusory manner – that Mr. Constance’s trial

1 counsel failed to investigate the backgrounds of the four main witnesses at trial. The State  
2 does not even claim lack of prejudice by this ineffectiveness.<sup>1</sup> The State also does not dispute  
3 that Mr. Constance's trial lawyer failed to litigate the appropriate motions, *inter alia*, a motion  
4 to dismiss based upon the eavesdropping on and recording of Mr. Constance's private  
5 conversations with his attorney, a motion to suppress based upon *Franks v. Delaware*, 438  
6 U.S. 154 (1978), a motion to dismiss Count 1 or 2 based upon double jeopardy, and the failure  
7 to except to jury instructions that lacked an essential element of the charges.

8 By failing to deny Mr. Constance's claims, the State has essentially conceded error.  
9 The only objection the State apparently has to granting relief is the argument that the case  
10 should be transferred to the Court of Appeal, an argument that, as noted above, is not  
11 supported by authority, and, in fact, is contradicted by authority.

12 This Court set a hearing for the State to show cause why relief should not be granted.  
13 The State has not provided any such cause. The Court should grant relief.

14 **3. The State Does Not Explain Why an Evidentiary Hearing is**  
15 **Required Regarding the Issue of its Withholding of Exculpatory**  
16 **Evidence**

17 As to Mr. Constance's claim that the State violated its obligations under *Brady v.*  
18 *Maryland*, 373 U.S. 83 (1963), it makes simply the following argument:

19 The State does not agree with the defendant's claim. . . . The State agrees an  
20 evidentiary hearing is required by the trial court to make a determination as to  
21 whether discoverable exculpatory evidence was not provided in this matter.

22 *State's Response* at 3.

---

23 <sup>1</sup> The State suggests that the evidence that trial counsel failed to discover and introduce was "clearly  
24 collateral." *State's Response* at 3. Yet, among other things, trial counsel failed to discover and introduce much of  
25 the very same evidence that the State has withheld -- evidence of deals made with its witnesses in exchange for their  
26 testimony, evidence related to the witnesses' criminal histories including unfiled criminal charges and outstanding  
27 arrest warrants, evidence of bias (i.e. Keitt Spry's threatening e-mails to Mr. Constance). This information was easy  
28 to obtain through records searches and Public Records Act requests (although the State should have disclosed on its  
own). As for other evidence involving the various witnesses' deceptiveness during interviews (i.e., Zach Brown  
stating during the defense interview held shortly before his testimony, "I don't steal, I don't rob . . . I don't do  
drugs," Ex. 58; Keitt Spry claiming he was no longer a pastor because of his divorce and that he did not like  
profanity, Ex. 49, 50), such evidence could clearly be brought up under the Confrontation Clauses of U.S. Const.  
amend. 6 and Wash. Const. art. 1, sec. 22 and ER 608(b). See *State v. Gregory*, 158 Wn.2d 759, 798-799, 147 P.3d  
1201 (2006); *State v. McDaniel*, 83 Wn. App. 179, 186-87, 920 P.2d 1218 (1996).

1 Does this statement “show cause . . . as to why the relief asked for should not be  
2 granted”? *Order to Show Cause on Motion to Vacate Under CrR 7.8 and for Discovery* at 1.  
3 Has the State, in any way, denied the core allegations – that it, among other things, withheld  
4 evidence of deals given to its witnesses (including pushing through the dropping of Zach  
5 Brown’s NCO and Det. O’Mara’s promises to Ricci Castellanos’ attorneys (the same  
6 attorneys as were representing Mr. Constance), that the State withheld criminal history of its  
7 witnesses (pending drug charges, outstanding arrest warrants), that it withheld evidence of  
8 bias (i.e. Keitt Spry’s abusive e-mails to Mr. Constance), that it withheld evidence of a police  
9 interview with a favorable witness (Fabian Rosales Gomez), or that it withheld evidence of  
10 Det. O’Mara’s troubled history as a police officer, or withheld evidence of Ricci Castellanos’  
11 mental instability?

12 CrR 8.2 states that CR 7(b) governs motions in criminal cases. CR 7(b) requires all  
13 motions to be signed in accordance with CR 11. CR 11 provides that an attorney’s signature  
14 on a pleading “constitutes a certificate by the . . . attorney” that he or she has read the pleading  
15 and that:

16 to the best of the . . . attorney’s knowledge, information and belief, formed  
17 after an inquiry reasonable under the circumstances: (1) it is well grounded in  
18 fact; . . . (3) it is not interposed for any improper purpose, such as to harass or  
19 to cause unnecessary delay or needless increase in the cost of litigation; and (4)  
20 *the denials of factual contentions are warranted on the evidence or, if*  
21 *specifically so identified, are reasonably based on a lack of information or*  
22 *belief.*

23 CR 11(a) (emphasis added).

24 Has the State made reasonable inquiry and determined that there is evidence that it  
25 actually told the defense prior to trial that his office assisted Mr. Brown in getting his NCO  
26 dropped so that he could testify against Mr. Constance? Or is the State denying the  
27 authenticity of the documentary evidence from the Department of Corrections: “I was  
28 informed by the DV Unit that this was being pushed through as P is a witness to a major crime  
and he is asking for no-contact to get dropped in order to testify.” Ex. 61. Is the State denying  
that in August 2007, Stephanie Earl, a legal assistant in the Clark County Prosecutor’s Office,  
Major Crimes’ Unit, corresponded by e-mail with Peggy Watson, the legal assistant in the

1 Domestic Violence Prosecution Center, asking about how Mr. Brown could get the no contact  
2 order dropped, noting that “he’s a witness in our murder for hire case,” Ex. 62 (PRA page no.  
3 1402), and that they “would appreciate our assistance in working with him to get the NCO’s  
4 dropped.” Ex. 62 (PRA page no. 1439). Are we to have an evidentiary hearing on the  
5 authenticity of these documents provided to Mr. Constance, years after the fact, through the  
6 Public Records Act?

7 Has the State made reasonable inquiry of Det. O’Mara and determined that when Mr.  
8 Castellanos’ attorney (whose firm also represented Mr. Constance for four months) showed  
9 Judge Schreiber an e-mail in court on November 15, 2007, apparently detailing Mr.  
10 Castellanos’ assistance in the *Constance* case in an effort to avoid having to serve out his  
11 sentence, that this attorney was mistaken and that there was never any agreement to assist Mr.  
12 Castellanos? Is the State asserting that the prosecutor’s office revealed to the defense the  
13 unfiled felony drug charges hanging over Mr. Brown’s head, or is the State saying that the  
14 exoneration file materials in Exhibit 65 are inaccurate? Does the State deny that Keitt Spry  
15 was the subject of a witness intimidation investigation in Clark County (Ex. 56)? Does the  
16 State deny that Det. O’Mara had possession of e-mails from Mr. Spry which showed his  
17 extreme bias toward Mr. Constance (Ex. 31), or is it claiming it revealed this evidence to the  
18 defense?

19 The State has these answers in its control. It does no good to set an evidentiary  
20 hearing on the blanket issue of *Brady* violations where the State can easily just tell the Court  
21 now what evidence it withheld (and what evidence it continues to withhold). The State has  
22 had months to admit or deny evidence that it has control over. If the goal of this hearing is to  
23 clarify the issues, the State has completely failed in that task.

24 The State’s blanket denial causes complications. For instance, after the State gave Mr.  
25 Brown preferential treatment in exchange for his testimony, he went on to kidnap and rape  
26 someone in Portland and is currently believed to be in prison in Oregon. His attorney has  
27 informed the undersigned counsel that Mr. Brown refuses to discuss the deal he received.  
28 Thus, the Court will have to enter orders to take Mr. Brown’s deposition under various out-of-

1 state witness statutes, and then will have to enter a series of orders, in two states, to bring Mr.  
2 Brown from Oregon to Washington to testify at the hearing. All of this could be avoided if  
3 the State admits what the evidence clearly shows – that it cut a deal with Mr. Brown, gave him  
4 preferential treatment in exchange for his testimony and then failed to disclose this deal to the  
5 defense.

6 Similarly, while wanting an evidentiary hearing to address facts within its own control,  
7 the State now takes the position that the discovery rules and CrR 4.7 are not applicable and  
8 that it has no obligation to provide discovery at this juncture. Thus, under the State’s theory,  
9 there should be an evidentiary hearing – with witnesses from the prosecutor’s office and law  
10 enforcement – but the defense would have no right to conduct pre-hearing interviews or obtain  
11 additional documentary evidence. This is absurd.

12 Because the State has within its control the very evidence it seeks to have an  
13 evidentiary hearing about, the Court should simply order the State to respond and admit or  
14 deny the specifics of Mr. Constance’s claims. Alternatively, the Court should order Mr.  
15 Golik’s deposition (at State expense).

16 **4. The Court Has the Power to Order Discovery**

17 The State claims that the defense has not provided any authority by which this Court  
18 can order discovery in this case. The State ignores the authority and argument set out at pages  
19 83-84 of the 7.8 motion. Clearly, if the State has an obligation to disclose exculpatory  
20 evidence after a trial, *see* authorities listed at page 84 of the CrR 7.8 motion, there must be  
21 some mechanism to enforce this obligation. Nothing about CrR 4.7 or the Due Process  
22 Clauses of U.S. Const. amend. 14 and Wash. Const. art. 1, § 3, limit the State’s discovery  
23 obligations to the pre-trial contexts, and, in fact, CrR 4.7(h)(2) imposes a continuing duty to  
24 disclose.

25 RCW 2.28.150 provides:

26 When jurisdiction is, by the Constitution of this state, or by statute,  
27 conferred on a court or judicial officer all the means to carry it into effect are  
28 also given; and in the exercise of the jurisdiction, if the course of proceeding is  
not specifically pointed out by statute, any suitable process or mode of

1 proceeding may be adopted which may appear most conformable to the spirit  
2 of the laws.

3 Under this statute, this Court has the power to force the State to comply with its constitutional  
4 obligations to disclose exculpatory evidence. Otherwise, the State could get away with  
5 violating its *Brady* obligations simply by withholding evidence until after a trial is complete.  
6 Innocent people unfairly sentenced to years in prison could never have access to justice  
7 because there would be no mechanism to compel the State to turn over the very evidence it  
8 should have disclosed prior to trial.

9 While Mr. Constance's case is on appeal, this Court has authority under RAP 7.2(e) to  
10 hear "postjudgment motions authorized by the . . . criminal rules." A motion under CrR 7.8  
11 is such a motion, and the Court necessarily must have the power to order the State to turn over  
12 exculpatory evidence.

### 13 **5. Shackling at the Motion Hearing**

14 It has become common in many courtrooms throughout the United States to keep  
15 defendants in shackles and other restraints during non-jury hearings. Such practices violate  
16 due process of law, are abhorrent to the dignity of the court and interfere with the right to  
17 counsel, all of which are protected by U.S. Const. amends. 6 & 14 and Wash. Const. art. 1, §§  
18 3 & 22.

19 In *Illinois v. Allen*, 397 U.S. 337 (1970), the Supreme Court noted:

20 Not only is it possible that the sight of shackles and gags might have a  
21 significant effect on the jury's feelings about the defendant, *but the use of this  
22 technique is itself something of an affront to the very dignity and decorum of  
23 judicial proceedings that the judge is seeking to uphold.*

24 397 U.S. at 344 (emphasis added).

25 Physical restraints also "may confuse and embarrass the defendant, thereby impairing  
26 his mental faculties; and they may cause him pain." *Spain v. Rushen*, 883 F.2d 712, 720-21  
27 (9th Cir. 1989). This fact has long been recognized at common law:

28 Bracton saith . . . if felons come in judgment to answer they shall be out  
of irons, and all manner of bonds, so that their pain shall not take away any  
manner of reason. . . . And in another place he saith . . . It is an abuse that  
prisoners be charged with irons, or put to any pain before they be attained.

1 3 Coke Inst. 34 (1797) *quoted in Spain v. Rushen*, 883 F.2d at 723.

2 Shackling can interfere with the ability to communicate with one's lawyer during, or  
3 before, a hearing:

4 Moreover, one of the defendant's primary advantages of being present at trial,  
5 his ability to communicate with his counsel, is greatly reduced when the  
6 defendant is in a condition of total physical restraint.

6 397 U.S. at 344.

7 Since the beginnings of statehood, Washington courts have strongly condemned the  
8 practice of shackling prisoners in courtrooms, even during non-jury proceedings. In *State v.*  
9 *Williams*, 18 Wash. 47, 50 P. 580 (1897), the Court relied on a line of English common law  
10 cases back to the 17th century which condemned this barbaric practice:

11 It was the ancient rule at common law that a prisoner brought into the presence  
12 of the court for trial upon a plea of not guilty to an indictment was entitled to  
13 appear free of all manner of shackles or bonds; and, prior to 1722, when a  
14 prisoner was arraigned or appeared at the bar of the court to plead, he was  
15 presented without manacles or bonds, unless there was evident danger of  
16 escape. 2 Hale, P.C. 219; 4 Bl. Comm. 322; Layer's Case, 6 State Trials (4th  
17 Ed., by Hargrave) 230, 231, 244, 245; Waite's Case, 1 Leach, 36. In J.  
18 Kelyng's Reports (please of the crown adjudged in the reign of Charles II.), "it  
19 was resolved that, when prisoners come to the bar to be tried, their irons ought  
20 to be taken off, in that they be not in any torture while they make their defense,  
21 be their crime never so great. And accordingly, upon the arraignment and trial  
22 of Hewler and others, who were brought in irons, the court commanded their  
23 irons to be taken off."

18 *State v. Williams*, 18 Wash. at 51 (emphasis added).

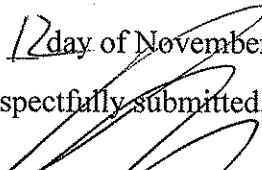
19 Mr. Constance was not shackled at trial. There is no reason to humiliate him with  
20 shackles during the hearing on the motion under CrR 7.8.

1           **6.     Conclusion**

2           The State does not deny most of Mr. Constance's claims, and offers only a blanket  
3 denial that it withheld exculpatory evidence, without any specifics. The State fails to give any  
4 authority for its argument that this Court does not have the power to grant relief under CrR  
5 7.8. In light of the complete lack of any substantive response, and the lack of any procedural  
6 barriers to relief, the State has not shown cause why relief should not be granted. This Court  
7 should vacate Mr. Constance's convictions and dismiss the case under CrR 7.8, CrR 8.3, U.S.  
8 Const. amends. 1, 5, 6 & 14 and Wash. Const. art. 1, §§ 3, 5, 9 & 22.

9           Dated this 12 day of November 2010.

10           Respectfully submitted,

11             
12           \_\_\_\_\_  
13           NEIL M. FOX  
14           WSBA NO. 15277  
15           Attorney for Defendant

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IN THE SUPERIOR COURT OF WASHINGTON  
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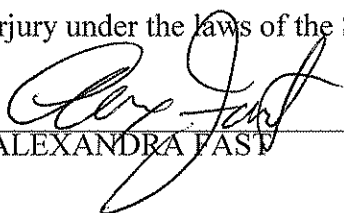
CAUSE NO. 07-1-00843-8  
CERTIFICATE OF SERVICE

I certify that on November 12, 2010, I served a copy of the "REPLY TO STATE'S RESPONSE TO DEFENDANT'S CrR 7.8 MOTION" by sending a copy to counsel for Plaintiff by depositing a copy in the United States Mail, with proper postage attached, in an envelope addressed to:

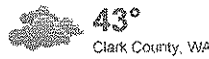
Anthony Golik  
Deputy Prosecuting Attorney  
Clark County Prosecutors  
P.O. Box 5000  
Vancouver WA 98666-5000

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

11-12-2010, SEATTLE, WA  
DATE AND PLACE

  
ALEXANDRA EAST

APPENDIX A



### Boger pushing appeal of 2008 trial as campaign issue

Blog: Political Beat

By Columbian Politics (COLUMBIAN STAFF)

October 26, 2010

In the final days before the election, prosecuting attorney candidate Brent Boger has campaigned extensively on one topic: murder-for-hire convict Dino Constance's allegations of prosecutorial misconduct against Tony Golik.

The Republican party has sent several e-mails to The Columbian, pressing the newspaper to report on the pending appeal. Boger has issued a press release, asking opponent Golik to respond.

The appeal alleges Golik did not disclose criminal histories of four witnesses and didn't disclose preferential treatment of another witness in exchange for testimony during the 2008 trial. The case has not even been heard by a judge yet.

"Votes are being cast and the close of voting is a week away and Mr. Golik still has not responded to the specific allegations of misconduct against him despite having multiple opportunities," Boger said in the press release.

Well, here's what Golik says:

--Constance has already unsuccessfully appealed his case twice before and never brought these things up before. He's now hired his fifth lawyer for his latest attempt.

--The 15-year veteran deputy prosecutor has never had a criminal case overturned on appeal, though all the defendants in cases he's taken to trial have sought appeal.

--When there's a hearing on the matter, Golik's prepared to show documentation and call prosecutor's office's support staff members to testify, disproving all the allegations.

At trial, jurors heard that Constance was caught on tape soliciting several men to kill or seriously injure his wife.

"This is a case where we actually prevented someone from getting killed," Golik said. "I see my opponent in engaging in very desperate, negative campaign tactics on a very important case."

Boger said he thinks it's irrelevant that Golik has never lost a case on appeal.

"After thinking about it some, I think Tony's talking about never being reversed on appeal is a distraction of the issues in the specific Constance case," Boger said in an e-mail.

Boger, a Vancouver senior assistant city attorney who handles land-use issues, and Golik, a major crimes deputy prosecutor, are in a heated battle to be the next prosecuting attorney.

And if Boger wants to talk record, Golik said, voters can be reminded that Boger has never taken a case to trial in Washington and has virtually no criminal law experience, besides filling in on misdemeanor arraignments for a few months once.

A judge will schedule a hearing on the Constance matter at the Nov. 17 criminal docket.

--Laura McVicker

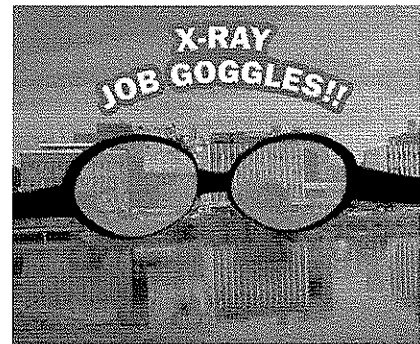
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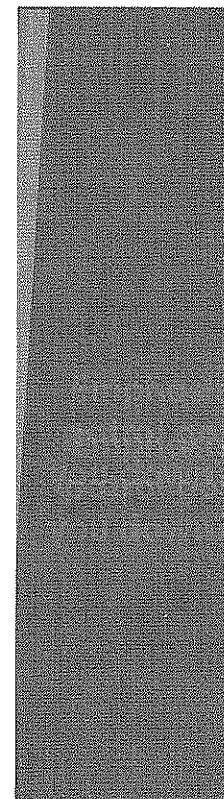
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APPENDIX B

NO. 40504-1-II

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

---

STATE OF WASHINGTON, Respondent

v.

DINO J CONSTANCE, Appellant

---

FROM THE SUPERIOR COURT FOR CLARK COUNTY  
THE HONORABLE ROBERT LEWIS  
CLARK COUNTY SUPERIOR COURT CAUSE NO.07-1-00843-8

---

STATE'S SUPPLEMENTAL RESPONSE TO THE DEFENDANT'S  
MOTION TO REMAND

---

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Clark County, Washington

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I. RESPONSE .....1

## I. RESPONSE

The State has previously filed its response indicating that there is no current matter in the Superior Court and thus there's no reason to stay any proceedings or to send it back to the Superior Court.

However, on September 30, 2010, Judge Robert Lewis of the Clark County Superior Court signed an Order to Show Cause on Motion to Vacate under Criminal Rule 7.8 and for Discovery. A copy of that order is attached hereto and by this reference incorporated herein.

As that order indicates the Superior Court has scheduled a show cause hearing for October 29, 2010. It's believed that the Judge wishes to get a handle on what is currently happening with this particular case. This attempt to clarify some of these issues would also be of great benefit to the State. Currently the State is responding to a direct appeal in the Supreme Court and various matters that are, or have been, in and out of the Divisions I and II of the Appellate system.

The State submits that it would make sense to allow the show cause hearing to proceed, the court to prepare whatever orders are necessary, and at that point determine what is required. It continues to be the State's position that the defendant is attempting to use the Personal Restraint Petition mechanism in an inappropriate manner. However, as

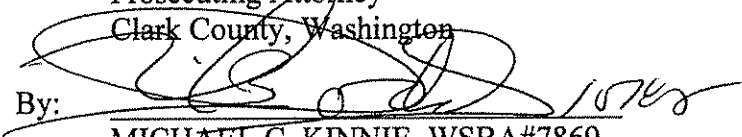
previously indicated, the State suggests that this matter be postponed until at least after the show cause hearing.

DATED this 7<sup>th</sup> day of Oct, 2010.

Respectfully submitted:

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