

(sent via email May 20, 2014)

Dear Ms. Vaughn:

Marc Silverman recommended that I contact you and provided me with your address. I am an attorney with The Defender Association and am one of the attorneys representing Joseph McEnroe in a pending King County capital homicide case. As you may know, this case, together with the companion case of State v. Michele Anderson, is currently pending discretionary review in the Washington State Supreme Court (hereafter, "WSSC"). Oral argument is set for June 26.

The primary issue pending before the Supreme Court is whether a June 2013 U.S. Supreme Court case, *Alleyne v. United States*, ___U.S.____, 113 S.Ct. 2151 (2013), affects the application of (and possibly the validity of) Washington's death penalty statute, RCW 10.95. In January 2014, Superior Court Judge Jeffrey Ramsdell ruled that *Alleyne* did affect our statute. Although it is complicated to explain succinctly, suffice it to say that the State disagreed with Judge Ramsdell's ruling and filed a motion for discretionary review with the WSSC. Discretionary review was granted. The State filed their opening brief in April; we filed our responsive brief yesterday (May 19). Oral argument is set for June 26. (Marc indicated that he had forwarded to you some material I previously sent him, so in the interest of brevity I will not explain the *Alleyne* issue any further at this point.)

The issue that we believe WSBA may be interested in arose because in its opening brief filed in April, the State requested that the WSSC reverse the trial court's ruling and remand the case with orders that it be reassigned to a new trial judge. (In early 2013, Judge Ramsdell ruled against the State on a different motion and dismissed the State's Notice of Intent to seek the death penalty; that ruling was unanimously reversed by the WSSC last fall.) We believe that the State's request for reassignment is essentially an attempt by the State to bully trial judges into agreeing with the State, and if granted is likely to make trial judges reluctant to enter rulings that might be politically unpopular. This State's request also looks eerily similar to a situation that occurred in Oklahoma in April, where five justice of their supreme court stayed an execution. The governor of the state announced that she would not honor the stay, and a state legislator then introduced a resolution to impeach the five justices. In response, all five of the justices reversed their own ruling. The state then attempted to go forward with the execution. (The Oklahoma situation was in the news because the execution attempt was botched, although the condemned man later died of a heart attack.)

We believe that judicial independence is at stake in the State's request for reassignment, and we believe that the State's request that Judge Ramsdell be removed is inappropriate and threatens to chill the discretion trial judges must have to enter any ruling the law requires, even in cases where that ruling might be politically unpopular or adverse to the requests that the State is making.

Because of this we wanted to approach WSBA to see whether it might be interested in seeking to be heard as Amicus Curiae regarding the reassignment request. Time is short since the Court has us on a "rocket docket." But we would be happy to discuss this matter with you at your convenience. For your reference, I am attaching the Motion to Strike the State's reassignment request, which we filed yesterday. I am also attaching an op-ed piece from the Washington Post regarding the Oklahoma situation, written by two former state supreme court justices.

I look forward to hearing from you regarding this matter. Thank you for attention.

--

William Prestia
Staff Attorney
The Defender Association Division
King County Department of Public Defense