

No. 20-6064

IN THE
SUPREME COURT OF THE UNITED STATES

Alan Smith — PETITIONER
(Your Name)

vs.

Seth A. Fine, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Court of Appeals of the State of Washington
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
{ Petition for Rehearing of Order Denying }
PETITION FOR WRIT OF CERTIORARI }

Alan Smith #381201
(Your Name)

IB 19, PO Box 769
(Address)

Connell, WA 99326-0769
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the application of civil rules of evidence to admit at my criminal trial an alleged confession obtained by methods that shock the conscience - the extended incommunicado detention of my natural children for over four months, attendant threats and promises, and further conduct of State officials prejudicial to a fair trial
- works a deprivation of my liberty without due process of law
Amend 14, 5
2. Whether the State court's proceedings divesting me of custody of my natural children without a hearing to determine parental fitness, for an extended period and ongoing, ~~such that the deprivation~~ under conditions that shock the conscience
- works a deprivation of my fundamental liberty interest in the companionship, care, custody, and management of my natural children without due process of law
Amend 14, 5

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	8
CONCLUSION.....	13
<i>Attachment: Motion to Modify Commissioner's Ruling Denying Review (Excerpted from Appendix K)</i>	

INDEX TO APPENDICES

(Filed with Petition for a Writ of Certiorari)

APPENDIX A	<i>Decision Dismissing PRP in the WA Court of Appeals and Related Orders</i>
APPENDIX B	<i>Decision on Direct Appeal</i>
APPENDIX C	<i>Judgment of the Trial Court</i>
APPENDIX D	<i>Findings and Conclusions</i>
APPENDIX E	<i>Relevant Clerk's Papers Assoc with Dependencies and Guardianships</i>
APPENDIX F	<i>Order of Permanent Guardianship (not Available)</i>
APPENDIX G	<i>Order of Supreme Court of Washington Denying Review</i>
APPENDIX H	<i>Order on Rehearing / Motion to Modify</i>
APPENDIX I	<i>Constitutional Provisions / Treaties / Statutes</i>
APPENDIX J	<i>Recitation of Undisputed Facts</i>
APPENDIX K	<i>Other Materials</i>

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Supreme Court of Washington court appears at Appendix G to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 04/03/2020.
A copy of that decision appears at Appendix G.

☒ A timely petition for rehearing was thereafter denied on the following date: July 8, 2020, and a copy of the order denying rehearing appears at Appendix H.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In the Constitution of the United States,

Amendment 4 Unreasonable searches and seizures

Amendment 5 (Due process clause)

Amendment 6 Rights of the accused (right to speedy trial, confrontation clause, and Assistance of Counsel)

Amendment 14

Sec. 1. (Due Process Clause)

Sec. 5. (Power of Congress to enforce)

Treaties,

Convention on the Civil Aspects of International Child

Abduction, Done at the Hague, October ²⁵~~19~~, 1980

(aka. Hague Child Abduction Convention)

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (a.k.a. 1996 Hague Convention), Done at the Hague 19 October 1996

Federal Statutes

18 USC §242 Deprivation of rights under color of law

18 USC §3142(f)(1)(A) crime of violence

18 USC §3143(b) Release or detention pending appeal by the defendant

18 USC §3145(c) Appeal from a release or detention order (exceptional reasons provision)

Federal Statutes (continued)

22 USC, Chapter 97, International Child Abduction Remedies

§ 9001. Findings and declarations

§ 9002. Definitions

§ 9009. Office of Children's Issues

22 USC, Chapter 98. International Child Abduction Prevention and Return

§ 9101. Definitions

§ 9121. Response to international child abductions

§ 9122. Actions by the Secretary of State in response to patterns of noncompliance in cases of international child abductions

R. Fed. Civil 65 Injunctions and Restraining Orders

Statutes of the State of Washington

RCW Ch. 7.36 Habeas Corpus • RCW 4.84.185
• RCW 26.19.080

RCW Ch. 26.27 Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

RCW Ch. 4.100 Wrongly Convicted Persons

RCW 49.60.180 Unfair Practices of employers

State Court Procedures

CR 8 General Rules of Pleading

CR 15 Amended and Supplemental Pleadings

CR 65 Injunctions

CrR 3.3 Time for Trial

CrR 8.3 Dismissal

RAP 8.3 Appellate Court Orders Needed for Effective Review

RAP 10.10 Statement of Additional Grounds for Review

RAP 12.4 Motions for Reconsideration of Decision Terminating Review

RAP 13.15 A Motions for Discretionary Review

RAP 13.7 Proceedings After Acceptance of Review

RAP Chapter 16

RAP 17.1, 17.4, 17.3 Motions

RAP 17.7 Motion to Modify

RAP 13.4 Discretionary Review of Decision Terminating Review

RAP 18.8 (b) "gross miscarriage of justice" provision

Rules of Professional Conduct

RPC 3.6 Trial Publicity

RPC 3.8 Special Responsibilities of a prosecutor

STATEMENT OF THE CASE

State officials seized my natural custodial children on 12 February 2013 at the instance of the Bothell police department, because I was a person of interest in a criminal investigation. Detective Chissus, after an interrogation at a secured room where I was employed with Boeing, urged "Help us clear your name. Don't you care about your kids?" After four and 1/2 months of the secret, incommunicado detention of my children, police obtained a statement upon which evidence I was arrested. The statement was admitted at trial under civil rules of evidence, and after a lengthy trial I was convicted. The recitation of undisputed facts is at Appendix J of my petition for writ of Certiorari.

I appealed, where I moved for substitution of counsel on the grounds that I had a valid claim that evidence was objectively insufficient as a matter of law to uphold my conviction under the Fourteenth Amendment's Due Process Clause, and that counsel, who failed to bring forth that claim, was prejudicially ineffective.

On June 8, 2016 I filed the instance habeas petition in the Supreme Court of Washington. I requested stay of the proceeding ~~to making guardianship of~~ for permanency of the guardianship of my children, and stay of my criminal appeal, noting that my uncontested substitution motion was disregarded by the Court of Appeals.

The Supreme Court of Washington recharacterized my habeas petition as a personal restraint petition, ~~leaving~~ without comment, and leaving no possibility to obtain the urgent relief I had requested. The personal restraint petition (prp) was stayed pending outcome of my direct appeal. After my conviction was affirmed on appeal in an unpublished decision, I amended my prp as of right and I filed motions to add respondents and to provide provisional relief. The Court of Appeals disregarded the motions, but accepted the timely amendments. Although state rules and controlling precedent require responsive pleadings to every ^{substantive} claim in an amended prp, the Court of Appeals did not call for such pleadings. By those rules, the State conceded all of my particularized claims of misconduct prejudicial to my right to a fair trial, except for my Confrontation Clause claim - and the state court did not reach the merits of any of my claims. See attachment - Motion to Modify Commissioner's Ruling Denying Review (complete list of substantial federal claims elevated at pp 8-10).

I filed a motion for discretionary review and an amended motion for discretionary review. The Prosecutors' Office answered the first motion with a one-page letter, stating that the State relies on the reasoning of the Court of Appeals and would not file an answer to my allegations. I filed a motion for order directing State Respondents to Admit or Deny Substantive Allegations with Motion for Leave to File and Serve. The County Prosecutor urged the application of strict res judicata without contesting

my claim that conviction of the wrong defendant worked a gross miscarriage of justice in this case. The Supreme Court ~~denied~~ of Washington denied the motion to file and serve, and denied an evidentiary hearing - declining to apply stare decisis because the substantive relief due would disturb the unpublished judgments at trial and on appeal (thus deciding in favor of the state's res judicata argument).

I filed an ex parte petition for speedy relief pursuant to RAP 16.15(b) and the Uniform Child Custody Jurisdiction and Enforcement Act (RCW Ch 26.27).

On July 8, 2020, the panel of judges denied my motion to modify and the petition for speedy relief in an unreasoned decision. RAP 12.4(a) bars a motion for reconsideration of the decision to deny a motion to modify. So I fully exhausted my underlying claims with a full round of collateral proceedings in the State Court of last resort. At no time did a court plainly apply procedural default to those claims which I elevated in the ~~attachment~~ attached motion to modify. In that motion, I made further claims for relief based on the allegations that, in refusing the substantive relief due, the state court transgressed the Due Process Clause of the Fourteenth Amendment. Motion at 7, 12-13.

My petition for writ of certiorari was denied on 7 December 2020.

REASONS FOR GRANTING THE PETITION

1. The state court's rule for admitting an alleged confession in a criminal trial and procedures to enforce that rule as it elects "cannot foreclose inquiry as to whether, in a given case, the application of that rule works a deprivation of [my]... liberty without due process of law." Lisenbena v. California, 314 US 219, 236, 86 LEd 166 (1941).

Application by the court of the State of Washington of civil rules of evidence to admit at my criminal trial for murder, an inculpatory statement by methods that shock the conscience, as conceded by the State, denied me "that fundamental fairness essential to the very concept of justice. ... [T]he acts complained of [are] of such quality as necessarily prevent a fair trial. Such unfairness exists [here, where] a coerced confession [was] used as a means of obtaining a verdict of guilt." Id., 314 US, at 236. See Chavez v. Martinez, 538 US 760, 774, 155 LEd 2d 984, 123 S Ct 1994 (2003) ("Convictions based on evidence obtained by methods that... 'shock the conscience' violate the Due Process Clause.")

Because my "statement has been procured by such means [the Court is] bound to make an independent examination of the record to determine the validity of the claim. The performance of this duty cannot be foreclosed by the finding of any court...." Lisenbena v. California, *supra*, at 237; Ashcraft v. Tennessee, 322 US 143, 147-148, 88 LEd 1192 (1944).

The Constitution of the United States stands as a bar against the conviction of any individual in an American court by means of a coerced confession. There have been, and are now, certain... governments dedicated to an opposite policy: governments which convict individuals with testimony obtained by police organizations possessed of an unrestrained power to seize persons [on suspicion] of crimes against the state, hold them in secret custody, and wring... confessions by physical or mental torture. So long as the Constitution remains the basic law of our Republic, America will not have that kind of government, Id.

I properly exhausted relevant underlying federal claims that particular conduct of officials of the State of Washington, including the methods to procure the alleged confession, prejudiced my right to a fair trial. I elevated these claims through one complete cycle of collateral review, to the final procedure available in the state court of last resort, which was my motion to modify ~~the~~ Commissioner's ruling denying review, 3 May 2020 (attached - excerpted from Appendix K of my petition for writ of certiorari) (underlying federal claims are at pp. 8-10). In the motion to modify, I raised an additional federal claim asserting that, in refusing relief, the Supreme Court of the State of Washington transgressed the Due Process Clause of the Fourteenth Amendment. This Court thus has jurisdiction to review. Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 US 673, 678, 74 L ed 1107, 50 S Ct 451 (1930). (procedural claim is at ~~pp~~, pp 7, 12-13 of motion to modify).

Conclusion: Therefore, the Court should answer the relevant underlying federal questions/claims "by reviewing the circumstances ... as shown by the undisputed facts of the case." Lyra v. Denno, 347 US 556, 558, 98 L Ed 998, 74 S Ct 716 (1954). (recitation of undisputed facts is at Appendix J of my petition for writ of certiorari)

Because I am likely to prevail in the coercion claim, the appropriate remedy is likely reversal. Id., 347 US, at 562; Ashcraft v. Tennessee, supra, 322 US, at 156; Rochin v California, 342 US 165, 174, 96 L Ed 183, 72 S Ct 205, 25 ALR2d 1396 (1952). ~~recitation of undisputed~~

Because the state court further transgressed the Due Process Clause by refusing relief from violation of my right to a speedy trial, among other particular violations of the right to a fair trial - which are not subject to this Court's review - an instruction to dismiss with prejudice is appropriate. Barker v. Wingo, 407 US 514, 522, 536, 92 S Ct 2182, 33 L Ed 2d 101 (1972); WA CrR 8.3(b), WA Const. Art 1, §22; Amends 6, 14 (texts of these provisions were provided with the appendix to my petition for writ of certiorari).

Because the state court further transgressed the Due Process Clause by refusing relief from the conviction secured by objectively insufficient evidence as a matter of law, an instruction to dismiss with prejudice or to enter a judgment of acquittal is appropriate. Hudson v. Louisiana, 450 US 40, 43, 67 L Ed 2d 30, 101 S Ct 970 (1981); Burks v United States, 437 US 1, 2, 18, 57 L Ed 2d 1, 98 S Ct 2141 (1978).

Because "this is a case in which there is no dispute about the substantive law," a summary reversal citing Rochin v. California; Hudson v. Louisiana; Burks v United States, may be appropriate. Bell Atlantic Corp v Twombly, 550 US 441, 571, 167 L Ed 2d 929, 127 S Ct 1955 (2007) (Justice Stevens, with whom Justice Ginsberg joins, dissenting).

2. Where the Washington court refused relief from proceedings that divested me of the custody of my natural children without a hearing to determine parental fitness; I was denied due process of law. Stanley v. Illinois, 405 US 645, 649, 92 SCt 1208, 31 LEd 2d 551 (1972).

The State has no legitimate interest "in separating children from fathers without a hearing designed to determine whether the father is unfit in a particular disputed case." Id., 405 US, at 652-655, 658; Palmore v. Sidoti, 466 US 429, 432-434, 80 LEd 2d 421, ~~104 LEd 2d~~ 104 SCt 1879 (1984).

Where I ~~also~~ have the underlying claim that the separation shocks the conscience; this is one of the "rare instances...in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue." Elk Grove United School Dist. v. Newdow, 542 US 1, 13, 124 SCt 2301, 159 LEd 2d 98 (2004) (referencing Palmore v. Sidoti, *supra*).

I properly exhausted the relevant underlying federal claim and the claim that, in refusing relief, the Supreme Court of Washington transgressed the Due Process Clause of the Fourteenth Amendment - as in Item 1 above.

Conclusion: Therefore, the Court should review for likely reversal as in Palmore v. Sidoti, 466 US, at 434; Stanley v. Illinois, 405 US, at 659.

Because I have a fundamental liberty interest in the "custody, care, and nurture of my children, ... [t]he integrity of the family unit ~~is~~ has found protection in the Due Process Clause of the Fourteenth Amendment." Stanley v Illinois, 405 US, at 651 (internal citations omitted). Thus the Court is not foreclosed from considering whether, considering the totality of the circumstances, the State ~~and~~ officials' conscience-shocking conduct works a deprivation of that fundamental liberty interest. Lisabena v California, 314 US, at 236. Where the State concedes that, in light of clear and convincing evidence, I was the wrong defendant in the criminal investigation; and where I was divested of custody solely on the ground that I was a suspect in the criminal charge at bar — instruction for dismissal with prejudice ^{of the subject dependency and guardianships} is appropriate.

As there is no dispute about the substantive law, a summary ~~dis~~ reversal citing Lisabena v California, *supra* and Palmore v. Sidoti may be appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 4 January 2021

I declare that on 3 May 2020 I deposited the enclosed
Motion to Modify Commissioner's Ruling Denying Review

In the institutional mail at Coyote Ridge Corrections Center
and made arrangements for first-class postage, to the
following addressees.

{ Supreme Court of Washington
{ Temple of Justice
{ PO Box 40929
Olympia, WA 98504-0929

{ Mary Kathleen Webber
{ Snohomish County Prosecutor's Office
{ MSC 504
{ 3000 Rockefeller Avenue
Everett, WA 98201-4061

{ Paul D. Weisser
{ P.O. Box 40116
{ State Attorney General's Office
Olympia, WA 98504-0116

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

DATED 03 May 2020 at Connell,
Washington



Alan Justin Smith #381201

Supreme Court
State of Washington

In the Personal Restraint of:

Alan Justin Smith

Noelani Hannah Smith

Felix Leon Alexander Smith,
Petitioners

No. 97692-9

Motion to Modify

Commissioner's Ruling

Denying Review

Alan Justin Smith #381201, IB10

Coyote Ridge Corrections Center

PO Box 769

Connell, WA 99326-0769

Table of Contents

A. Identity of Petitioner	1
B. Relief Requested: Modify Ruling Denying Review . .	1
Ruling	1-6
Ruling avoided claim of substantive due process coercion, shocks-the-conscience	1
Ruling avoided inquiry into (other) violations of fair trial	2
Ruling applied a harmless-error presumption disallowed under Fourteenth Amendment substantive due process analysis	4
Ruling did not admit the truth of exculpatory forensic evidence in finding evidence sufficient to convict	5
Ruling found violation of custodial rights arguable, but not a personal restraint	6
This court should	
Determine purs. RCW 7.36.140, whether a constitutional right was violated	7
Allow filing and service of proper motions for immediate or 'speedier' relief, purs 7.36.020, .220	7
C. Facts Relevant to Motion	8-11
D. Grounds for Relief	12-13
Attachments - Appendix F	

A. Identity of Petitioners COMES NOW Alan Justin Smith, petitioner prose and parent of additional petitioners: Noelani Hannah Smith and Felix Leon Alexander Smith, to respectfully request the relief in part B

B. Relief Requested I request modification of the RULING DENYING REVIEW filed on 3 April 2020, of the motion for discretionary review of my personal restraint petition.

The ruling avoided my claim, under the shocks-the-conscience standard, of substantive due process coercion,¹ Amend 14; where my children were detained incommunicado² for ~~five~~^{four} months, from February 12, 2013 until Bothell police obtained a putative confession on June 25, 2013. Appendix F at 1-11. Chi Chao Yuan v. Rivera, 48 F.Supp.2d 335, 344, 347 (SDNY 1999) ("substantive due process claims derive from... the right of the family to live together without the coercive interference of the awesome power of the State"; separation of approx 3 months "constitutes significant infringement upon their right to live together"); see also Brotaw v Mercer County, 235 F.3d 1000, 1019 (7th Cir 2000) ("substantive due process provides the appropriate vehicle for evaluating the constitutionality of the

¹ The ruling refers to my substantive due process coercion claim under two alternate grounds: "his statements to Mr. Morris were inadmissible," and "whether the removal of his children violated his due process rights." Id, at 5.

² incommunicado detention - relevant facts in Appendix F at 3, 5; CP 10/06/2015 at 2

four-month government-forced separation of C.A. from his parents"); Kovacic v Cuyahoga County Dept. of Children and Family Servs., 809 F. Supp. 2d 754, 775 (SD Ohio 2011) (seizure and detention upon the State's bare claim of "no parent" had "no application in the context of removal of children from their parent[.]"), aff'd 724 F.3d 687 (6th Cir. 2013) (holding that social workers were acting in a police capacity, rather than as legal advocates). CP 02/13/2013 at 3 (Dependency ~~claimed~~ Petition claimed "no parent" and the Bothell Police Department removed my children from their schools into protective custody). The trial court did not inquire whether the putative confession was voluntary within the meaning of the Fourteenth Amendment. Appendix F at 15(b). Rather, the testimony from Mr. Morris was admitted under the civil rule governing priest-penitent privilege. Ruling at 3-4.

The commissioner adopts the ruling of the Acting Chief Judge of the Court of Appeals, finding, "Smith cites various instances of governmental misconduct that he contends entitle him to dismissal under CrR 8.3(b). But as Smith acknowledges, he did not at [trial] request dismissal on these grounds. Nor, despite what Mr. Smith suggests, does this court have the ability to dismiss criminal charges pursuant to CrR 8.3(b)." ORDER OF DISMISSAL^y at 19. The ruling thereby avoided
08/20/2019

"[t]he issue in a personal restraint petition, which]

is whether the petitioner's right to a fair trial was actually and substantially prejudiced by constitutional error.... Those types of constitutional errors which can never be considered harmless on direct appeal will also be presumed prejudicial for purposes of personal restraint petitions. See State v Kitchen, 110 Wn.2d 403, 756 P.2d 105 (1988) (citing In re Boone, 103 Wn.2d 224, 233, 691 P.2d 964 (1984)). [And this is because,] It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process." Caperton v Massey Coal Co., 568 U.S. 868, 876, 129 S.Ct. 2252, 173 L Ed 2d 1208 (2009) (citing In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L Ed 942 (1955)). [Thus, an appellate court] must consider the general purpose behind CrR 8.3(b), which is to ensure that defendants are treated fairly. State v Rohrich, 110 Wn. App. 832, 840, 845 P.2d 1017 (1993). WA. Const. art. 1, §22; Amends 6, 14.

See also State v Rife, 2016 Wash. App. LEXIS 1273, n7 (the appellate court has discretion even if the allegations were not raised below).

The commissioner overruled the law of the case to find that evidence was sufficient to convict without the coerced confession; thereby applying an alternate standard similar to the harmless-error analysis of Fifth Amendment/procedural due process claims. Ruling at 7. Cf.

Chavez v. Martinez, 538 US 760, 733, 155 L Ed 2d 984, 123 S.Ct.

1994 (2003) ("Our views on the proper scope of the Fifth Amendment's Self-Incrimination Clause do not mean that police torture or other abuse that ~~leads~~ results in a confession is constitutionally permissible so long as the statements are not used at trial; it simply means that the Fourteenth Amendment's Due Process Clause ... would govern the inquiry in those cases and provide relief in appropriate circumstances.")

(emphasis added); Id., 538 US at 781-782 ("The Court's dicta often 'uses 'Fourteenth Amendment rights' as a stand-in for that aspect of the Fourteenth Amendment which consists of the doctrine of substantive due process. (Justice Thomas uses similar shorthand in the concluding sentence of his analysis: ... 'the Fourteenth Amendment's Due Process Clause ... would govern the inquiry in these cases.' ...)") (Justice Scalia, concurring in part in the judgment)

The ruling adopted the trial court's alternate standard for sufficiency-of-evidence, which did not admit the truth of the State's evidence and all inferences that reasonably can be ~~be~~ drawn therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068, 1074 (1992). Amend 14. The charging period matched an unrelated sighting of an unidentified bicyclist near Susann's (victim's) home in the early morning of 11 February 2013. Appendix F at 11, citing Information 07/19/2013 at 1 ("committed... on or about the 10th day of February, 2013, through the 11th day of February, 2013") (also Exhibit 7 of State's Response to PRP 12/27/2018). However, the time of death was around 24 hours later (around 4:30am on 12 February). Appendix F at 2. The skin contact sample from Susann yielded trace male DNA, which excluded myself. Appendix F at 4-5. Semen was also found, although no DNA could be extracted. Appendix F at 4. By the rules of pleading, the state conceded that I was not involved in the crime and that evidence was insufficient to convict under the Fourteenth Amendment. Ruling at 2 n.1; REPLY to County Prosecutor's Answer to Motion for Leave to File and Serve: Motion for Order Directing State Respondents to Admit or Deny Substantive Allegations, 01/14/2020 at 4.

"while

The ruling adopted the finding below that: ^{it} it may be argued that Smith's "freedom" is limited by the restriction of his parenting rights, the limitation does not rise to the level of restraint within the meaning of the rules governing personal restraint petitions, " ~~and~~ ORDER OF DISMISSAL at 18; Commissioner's Ruling at 5. The ruling thus applied alternative standards to avoid my substantive due process claim under In re Dependency of J.M.R., 160 Wn. App. 929, 939, 940, 942 (2010) (where a stipulated guardianship was not voluntarily made, the appellate court has jurisdiction and dismissal is mandatory to correct the manifest injustice); Brokaw, ^{Yuan v. Rivera, supra.} supra; [^] In pursuing the dependencies and guardianships, the State brought no claims of parental unfitness, CP (Appendix E) 10/06/2015 at 1, 02/13/2013 at 2.

The ruling also adopts the finding below, stating, "For the same reason, this court does not consider Smith's Motion for Provisional Remedies... and Motion to Add Respondents, both of which were filed February 5, 2019." ORDER OF DISMISSAL at 18 n8. The commissioner's ruling further notes on page 2 n1, "His motion to order the State to admit or deny allegations is denied because the record is sufficient to establish whether review is warranted under RAP 13.4(b)." ~~The ruling thereby~~

This court should, pursuant to In re Pers. Restraint of Gronquist, 192 Wn.2d 309, 319-320, 429 P.3d 804 (2018) (where the petitioner presents an arguable basis to support a claim of unlawful restraint, and the chief judge below erroneously dismisses pursuant to RAP 16.11(b) as frivolous, review corrects the error); In re Welfare of A.B., 168 Wn.2d 908, 232 P.3d 1104 (2010) (supreme court reviewed where deprivation of father's custodial rights was absent finding of parental unfitness); Amends 6, 14, RCW 7.36.140 - determine in the opinion of the Justices "whether or not the petitioner[s] ha[ve] been denied a right guaranteed by the Constitution of the United States;" and pursuant to CR15; RCW 7.36.020, .220; allow filing and service of proper motions pursuant to RAP 16.15(b) and RCW 26.27.071 for immediate or 'speedier' relief. Amends 6, 14, WA Const. art 1, §§3 & 22; Hague Convention on the Civil Aspects of International Child Abduction, done at the Hague on October 25, 1980 (Hague Child Abduction Convention); Hague Convention on ~~the~~ Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, October 19, 1996 (1996 Hague Convention); Schreifels v Schreifels, 47 Wn.2d 409, 414-415, 287 P.2d 1001 (1955); Tackson v Virginia, 443 U.S. 307, 99 S Ct 2781, 61 L Ed 2d 560 (1979).

C. Facts Relevant to Motion

The ~~five~~^{four} issues presented in my amended motion for discretionary review were timely presented in my pleadings to the Court of Appeals in my personal restraint petition, including timely amendments accepted by the Court of Appeals.³ However, the court did not direct the state to respond to the amendments. The issues timely briefed and raised for discretionary review are:

1. Whether the government's coercive forced incommunicado detention of my children without just cause, for over five months of criminal investigation prior to charge ~~and~~ or arraignment and ongoing, constitutes a substantive due process violation under the shocks-the-conscience standard?

Amend 14; CrR 8.3(b); WA Const. Art 1, §3

2. Whether the Washington Court, having jurisdiction under RCW 26.27.211 in custody determination of my children should proceed by proper motion with adjudication of custody and return of my children from guardianship in Germany? Amend 14; Schreifels, supra; RCW 26.27.071

• where my children were wrongfully removed to Germany by the State and are now wrongfully retained, under the Hague Child Abduction Convention; and where State and federal law define the State and its legal entities as an abducting 'person.'

³ summary of facts presented in Motion for Order Directing State Respondents to Admit or Deny Substantive Allegations RAP 16.9(b), 12/08/2019

3. Whether cumulative government misconduct or arbitrary conduct prejudiced my right to a fair trial? CrR 8.3(b); WA. Const. Art. 1, §§ 3 & 22; Amend 6; where

3.1 In light of all the circumstances, viewed objectively, the 'primary purpose' of the conversations initiated by Mr. Morris with myself (defendant/declarant) and subsequently with law enforcement were "to create an out-of-court substitute for testimony"? Ohio v Clark, 192 LEd 2d 306, 314 (2015) (Confrontation Clause Violation⁴, analysis in Appendix G of motion for discretionary review) (also) State v Rice, 120 Wn.2d 549, 844 P.2d 416 (1993).

3.2 To the extent that prosecution shifted the burden of proof to myself, misconduct was "flagrant and ill intentioned," so that my claim overcomes the lack of contemporaneous objections to the "opinions on ultimate issues" presented in direct questioning of state's witness Morris. In re Personal Restraint of Glasman, 175 Wn.2d 696, 704, 286 P.3d 673 (2012)

3.3 The state failed to act with due diligence by not disclosing timely the exculpatory genetics report, and by introducing State's exhibit 1 shortly before the continuance hearing, thereby prejudicing my right to a fair trial by compelling me to choose between the right to a speedy trial and the right to be represented by adequately prepared counsel. State v. Price, 94 Wn.2d 810, 620 P.2d 994 (1990); State v. Woods, 143 Wn.2d 561, 814, 23 P.3d 1046 (2000).

⁴ Out of the 10 particular violations here presented, the Confrontation Clause violation is the only one contested

3.4 ~~Counsel~~ Appointed public defenders' remark, "You'll never see your kids again!" when I asked them to investigate a possible coercion claim, was ~~in~~ incompatible with "assistance of counsel required by the Constitution," such that I was constructively denied counsel. Frazier v United States, 18 F.3d 778, 781-785 (9th Cir. 1994)

3.5 Circumstances of the case at the May 2014 continuance hearing, when in due course I asserted my right to a speedy trial, evince implementation of "demand-waiver doctrine," such that the conviction was unconstitutional. Barker v. Wingo, 407 US 514, 529-530, 92 S.Ct 2182, 33 L Ed 2d 101 (1972); Doggett v. United States, 505 US 647, 655-57, 112 S.Ct 2686, 120 L Ed 2d 520 (1992).

3.6 In causing my loss of employment by releasing prejudicial information in connection with a contested criminal allegation, the government committed a stigma-plus due process violation that resulted in denial of counsel of choice. Amend 14; Kaley v. United States, 188 L Ed 2d 46, 66-67 (2014); United States v Gonzalez-Lopez, 548 US 140, 147-148, 126 S.Ct. 2257, 165 L Ed 2d 409 (2006); RCW 49.60.180; Luis v. United States, 194 L Ed 2d 256, 269 (2015); RPC 3.6(a), 3.8(f)

4. Evidence was insufficient to convict under the Fourteenth Amendment, where ~~material~~ reasonable inferences from exculpatory DNA evidence, and other forensic evidence, preclude a reasonable juror from finding guilt beyond a reasonable doubt, there being no substantial nexus connecting me with the crime charged. State v. Cardenas-Flores, 189 Wn.2d 243, 401 P.3d 19 (2017); 10 State v Clinkenbeard, 130 Wn. App. 552, 568-571, 123 P.3d 872 (2005).

The facts of the case are primarily set forth in Appendix F, Recitation of Undisputed Facts, which was attached to my personal restraint petition and was included in my motion for discretionary review. Find here attached with edits for format (references to "petitioner" and related have been changed to first-person declarations, as is customary in legal pleadings)

~~Other relevant facts (as to claims), were included in my amended motion for discretionary review. See attached list of appendices.~~

D. Grounds for Relief and Argument

I have presented prima facie showing of federal claims prejudicial to my right to a fair trial, including substantive due process coercion and insufficiency of evidence. "A state defendant should have the opportunity to have all issues which may be determinative of his guilt tried by a state judge... under appropriate state procedures which conform to the requirements of the Fourteenth Amendment." Rogers v. Richmond, 365 US 534, 547-548, 5 L Ed 2d 760, 81 S Ct 735 (1961). "A defendant has the right to be tried according to the substantive and procedural due process requirements of the Fourteenth Amendment." Id., 365 US at 544-545.

My substantive due process coercion claim implicates our right to familial relations and its totality of circumstances standard encompasses the wrongful removal and retention within the meaning of the Hague Child Abduction Convention.

State utilization of habeas to test the legal custody of a child is part of the fabric of its reserved jurisdiction over child custody matters. If a habeas remedy were not provided, some other procedure would be needed to effectuate the state's substantive interest in these relationships. It is purely a matter of procedural detail whether the matter is called 'habeas' or something else. Lehman v. Lycoming County Children's Services, 458 US 507, 515, 73 L Ed 2d 928, 102 S Ct 3231 (1982); Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Ch. 26.27 RCW

"The State's response must answer the allegations and identify all material disputed questions of fact," In re Personal Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 882 (1992). Amend 14.

I declare under penalty of perjury under the laws of the State of Washington that all of the foregoing averments, factual and legal, are true and correct.

Respectfully Submitted,

DATED: 03 May 2020 at
Connell, WASHINGTON



Alan Justin Smith #381201
Petitioner pro se

(Attachments)