AO 241

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District: Eastern
Name (under which you were convicted): James Benedict Stockhold **CV-10-240-RMP**	Docket or Case No.: 08-1-01181-1
Place of Confinement: Airway Heights Correction Center PO Box 2049 LB 42 Airway Heights, Wa. 99001-2049	Prisoner No.: 808329
Petitioner (include the name under which you were convicted) James Benedict Stockhold	Respondent (authorized person having custody of petitioner) v. Maggie Miller-Stout (Superintendant) Airway Heights Correction Center PO Box 1899 11919 W. Sprague Airway Heights, Wa. 99001-1899
The Attorney General of the State of Washington	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Pierce County Superior Court, 930 Tacoma Ave. S., Tacoma, Wa. 98402

(b) Criminal docket or case number (if you know): 08-1-01181-1

2. (a) Date of the judgment of conviction (if you know): July 10th, 2008

(b) Date of sentencing: August 15th, 2008

3. Length of sentence: 36 Months with 9-18 months of supervision

4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case: Intimidating a Witness, Felony Violation of a Protection Order, Domestic Violence Assault 4°.

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)

☐ (2) Guilty ☐ (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

RECEIVED
JUL 30 2010
CLERK, US DISTRICT COURT
SPOKANE, WASHINGTON

AO 241

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Court of Appeals Division II

(b) Docket or case number (if you know): 38207-5-11

(c) Result: The Appeals Court Affirmed my convictions.

(d) Date of result (if you know): October 6th, 2009

(e) Citation to the case (if you know): unpublished ruling

(f) Grounds raised: Due to limited space, please refer to pages 2.1& 2.2 for GROUNDS RAISED, which you will find to be the following page in this petition.

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Washington State Supreme Court.

(2) Docket or case number (if you know): State of Washington, v. James B. Stockhold 83933-6

(3) Result: Petition for Discretionary Review denied.

(4) Date of result (if you know): April 27th, 2010

(5) Citation to the case (if you know): unpublished ruling.

(6) Grounds raised: Please see pages 2.3 &2.4 which are the next pages.

GROUND 9(f) expanded

* Defense counsel's brief raised the sole ground that the trial court abused its discretion in admitting the statements made to the detective by the complaining witness. This was a state law ground involving the excited utterance exception to the hearsay rule, ER 803(a)(2).

* The Court of Appeals' UNPUBLISHED OPINION, hereafter **ORDER**, at pp 6-8 **mischaracterized** the **"SAG ISSUES"** (Statement of Additional Grounds) as:

  A. Prosecutor Disclosure

  B. Ineffective Assistance of Counsel

  C. Motion for Mistrial

* Petitioner's pro se Motion for Reconsideration, hereafter **RECON MOTION**, presented the following ISSUES, not all of which are grounds for overturning the sentence:

  V.1 "THE OPINION failed to consider several issues raised in the SAG, and because of the insufficient argument therein should have ordered additional briefing from counsel." This is argued in **MEMORANDUM** ISSUE#4 to be the basis for cause and prejudice.

  V.1.a "Ineffective Assistance of Counsel (IAC) combined with Prosecutorial Misconduct (PM) in regards to forcing a "yes or no" answer and counsel not objecting." This is the basis for **GROUND FIVE** of this petition, based upon the 6th and 14th Amendments.

  V.1.c "Expansion of prior IAC claim of inadequate investigation to include additional instances of IAC as well as the synergistic combination with various instances of PM. Based on 6th and 14th Amendments." "Prior" refers to the **SAG**. See **MEMORANDUM** ISSUE#3 where Petitioner abandons, for purposes of this habeas petition, the instance of **IAC** presented in the SAG, because the **ORDER** stated "We do not review these issues". In other words, Petitioner is attempting to have the expanded presentation of various instances of IAC and PM in **V.1.c** analyzed under the pre-AEDPA standard of review; see **MEMORANDUM** ISSUE#1. **V.1.c** is the basis for **GROUND SIX** of this petition.

  V.2 "Establishes that manifest constitutional errors may be raised in a motion for reconsideration in the Court of Appeals. Based on 14th Am." See **MEMORANDUM** ISSUE#2 arguing that State v. Kitchen establishes that there is not a "firmly established and regularly followed state practice" preventing the raising of manifest constitutional errors as late as a motion for reconsideration. The State Supreme Court in Kitchen granted him relief based upon a unanimity issue first raised in his motion for reconsideration in the Court of Appeals. On this basis, Petitioner suggests that his **GROUNDS ONE, TWO, THREE, FOUR** and **EIGHT** should be treated as exhausted.

  V.3 "Raises a new issue that the cumulative effect of all constitutional errors should be considered. Based upon 6th and 14th Am." This is the basis for **GROUND EIGHT** of this petition.

V.4 "Raises a new issue that counsel committed IAC by adding the second defense of self-defense with no intention of lettting defendant testify. Based on 6th and 14th Am." This is the basis for **GROUND FOUR.**

V.5 "Raises a new issue of a double jeopardy violation in finding defendant guilty of both Count I and Count III where Count III does not require any element not found in Count I. Based on 5th Am." This is the basis for **GROUND TWO** of this petition.

V.6 "Raises a new issue of a due process violation for not rearraigning defendant on the amended Count 2 and for not filing the amendment until after trial. Based upon 14th Am." This is the basis for **GROUND THREE.**

V.7 "Raises the new issue that jury instr 13 misstated the law to the level of a due process violation, particularly since confusion as to the definition of acting knowingly could have affected the jury's interpretation in instr 14 on self-defense. Am. 14." This is the basis for **GROUND ONE.**

* Petitioner's pro se Motion to Modify Clerk's Ruling raised a 14th Am. due process issue as to allowing the State to amend their cost bill, where RAP Rule 14.4(a) only allows for supplementation.

Ground 9(g)(6) expanded

* Petitioner's pro se PETITION FOR REVIEW, for which the State Supreme Court denied discretionary review, presented the following issues:

ISSUE C1 "Should the pending matters as to pro se status and potential motion to modify clerk's ruling(s) as to cost bill(s) be transferred from Div. 2 and consolidated with the petition for review? Alternatively, should this Court specify that Appellant should be allowed to brief supplemental issues arising from Div. 2 rulings which occur too late to be included in this petition for review?"

ISSUE C2 "Div. 2 has erred in denying Appellant the right to become pro se and drop appointed counsel. This is a 14th Am. due process violation."

ISSUE C3 "The Court of Appeals hypothetically will err in denying the argument that there is no procedure allowed for amending a cost bill, only for supplementation." The supporting argument ends with the statement: "This arguably is a **14th Am.** due process violation".

NOTE: Petitioner is unclear whether the cost bill 14th Am. issue can be raised in his federal habeas petition. If it is not a proper ground, then its inclusion would not produce a "mixed" petition. Instead of kicking out the entire petition, **GROUND NINE** should instead simply be ignored if it is inappropriate in this forum.

ISSUE C4 The Court of Appeals hypothetically will err in denying the argument that the amended cost bill does not relate back to the filing date of the original cost bill." The supporting argument ends with the statement: "The hypothetical failure of the Court of Appeals to act in accordance with these procedural rules arguably amounts to a **14th Am.** due process violation affecting substantive rights."

ISSUE C5 "The Div. 2 Clerk lacked authority to rule on the pro se status issue already put before the Judges by the MOTION TO MODIFY CLERK'S RULING at pp A46 - A48 infra, and hypothetically prejudiced Appellant's rights by failing to file and consider COST MEMO#1." The supporting argument ends with citation to the **14th Am.**

ISSUE C6 "The OPINION at internal pp 7 - 8 found as pp A8 - A9 infra erred in its analysis of whether a mistrial should have been declared upon a trial irregularity, or at least provided a curative instruction." The supporting argument ends with citation to the **14th Am.** This forms part of the basis for **GROUND SEVEN** of this petition. RAP Rule 13.4(b) allows that a petition for review may challenge a Court of Appeals decision which is in conflict with one of its decision or raises a significant question of law under the State or federal Constitutions. Not only did ISSUE C6 raise the 14th Am., it also raised two State Supreme Court decisions, State v Johnson and State v Gilcrest. ISSUE C6 further cites extensively to the SAG, in which this issue was presented.

ISSUE C7 "The OPINION at internal pg 7 found as pg A8 erred in refusing to review the issue of ineffective assistance of counsel (IAC)." This is relevant to **MEMORANDUM** ISSUE#4, which suggests this is a basis for cause and prejudice. The supporting argument states both the **6th** and **14th** Amendments.

ISSUE C8 "Div.2 abused its discretion by not ordering additional brief (sic, should be briefing) of potentially meritorious issues presented in the SAG." This also is relevant to **MEMORANDUM** ISSUE#4, which suggests that this is a basis for cause and prejudice. The supporting argument cites due process under the **14th Am.**

ISSUE C9 "Manifest constitutional errors are allowed to be added in a motion for reconsideration in the Court of Appeals, based upon due process; **14th Am.**" This forms part of the basis for **MEMORANDUM** ISSUE#2, and expands significantly beyond the State v. Kitchen argument presented to the Court of Appeals as **V.2.**

ISSUE C10 "Div.2 erred in denying the constitutional errors raised in RECON MOTION, both individually and as to their cumulative effect. Furthermore, the failure of Div.2 to provide its reasoning arguably is a **14th Am.** due process violation, which prejudices Appellant because it prevents him from finetuning his arguments before the Washington State Supreme Court." Subissues presented in support are:

C10.a This presents issue **V.1.a** without any additional argument or citation to authority. This is the basis for **GROUND FIVE.**

C10.b This presents issue **V.1.c**, with correction of a mistake as to the "clear and convincing" standard of proof. The correction is minor. This is the basis for **GROUND SIX** of the petition.

C10.c This presents issue **V.3**, without any additional argument or citation to authority. This is the basis for **GROUND EIGHT.**

C10.d This presents issue **V.4**, without any additional argument or citation to authority. This is the basis for **GROUND FOUR.**

C10.e This presents issue **V.5**, without any additional argument or citation to authority. This is the basis for **GROUND TWO.**

C10.f This presents issue **V.6**, with added argument as to a court's ruling not being final until reduced to a written order. It further adds argument and citation to authority as to a "substantial amendment" having occurred which "required that the defendant be rearraigned." This is the basis for **GROUND THREE.**

C10.g This presents issue **V.7**, without any additional argument or citation to authority. This is the basis for **GROUND ONE.**

AO 241

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Pierce County Superior Court.

(2) Docket or case number (if you know): 08-1-01181-1

(3) Date of filing (if you know): 2/19/2009

(4) Nature of the proceeding: Motion for new Trial

(5) Grounds raised: Lack of representation of my Public Defender, The court erred in its decision, New evidence has arisen since my court.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No , I made a Motion to Strike on 7/7/2009. It's not clear if it was ever heard.

(7) Result: I never heard anything from the court and am not relying on this.

(8) Date of result (if you know):

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

AO 241

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☒ No, because I withdrew my Motion in the Superior Court

(2) Second petition: ☐ Yes ☐ No

AO 241

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Raises the issue that Jury Instruction 13 misstated the law to a level of a due process violation, particularly since confusion as to the definition of knowingly could have affected the jury's interpretation in instruction 14 on self defense. Based upon 14th Amendment.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
That Jury Instr. No.13 is misleading and/or incorrectly states applicable law is shown by a direct comparison on the court approved instruction in App.#3 with the correct instruction in App.#5, as attached to RECON MOTION. Because this is a self-defense instruction, it is subject to heightened scrutiny; see RECON MOTION pg 25 which argues this is a 14th Am. due process issue because self-defense "becomes another element of the offense". App. #4, #6, #7 provide related jury instructions.

(b) If you did not exhaust your state remedies on Ground One, explain why: **EXHAUSTED IN:**

RM - ISSUE V.7 @ Pages 2 & 25, 28-33 APPENDICES #3 - #7

PFR - ISSUE C10.g @ Pages 19, A12, A35, A38-A43 APPENDICES #3 - #7

NOTE: Expansion of argument in **PFR** Pg. 25

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

AO 241

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO: Raises the issue of a Double Jeopardy Violation in finding defendant guilty of both Count I and Count III where Count III does not require any element not found in Count I. Based upon 5th Amendment.

(a) Supporting facts (Do not argue or cite law. Just state specific facts that support your claim.):

RECON MOTION App.#7 provides jury instr. no.12, the elements Assault IV which was Count III. Element (1) is the same as element (4(a) of the correct jury instruction since 2000 for Count I; see RECON MOTION App.#2 for history that it covers all violations of domestic violence protection and no-contact orders. Count III does not contain any elements not found in Count I, and thus fails the Blockburger test.

(b) If you did not exhaust your state remedies on Ground Two, explain why: **EXHAUSTED IN:**

RM - ISSUE V.5 @ Pages 1, 24-25, 27 APPENDIX #2

PFR - ISSUE C10.e @ Pages 17, A11, A34-A35, A37 APPENDIX #2

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

AO 241

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two

GROUND THREE: Raises the issue of a due process violation for not rearraigning defendant on the amended Count II and for not filing the amendment until after trial. Based upon 14th Amendment.

(a) Supporting facts (Do not argue or cite law. just state specific facts that support your claim.):

The most serious charge that defendant faced, Intimidating a Witness, was verbally amended on the first day of trial over counsels objection. Moreover, it was not reduced to a written order until after trial and defendant was never rearraigned.

(b) If you did not exhaust your state remedies on Ground Three, explain why: **EXHAUSTED IN:**

RM - ISSUE V.6 @ Pages 1, 24-25

PFR - ISSUE C10.f @ Pages 17-19, A11, A34-A35

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

AO 241

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR: Raises IAC by adding a second defense of self-defense with no intention of letting defendant testify . This also incorporates Judicial Error because the same standard should have applied to the judge, and this defense not allowed. Based upon 6th & 14th Amendments.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defense counsel did not allow defendant to testify, and in fact rested without presenting any witnesses at all. RECON MOTION App.#1 establishes the longstanding rule that self-defense must be assessed from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees. To establish the defense, defendant had to provide testimony. The judge erred to allow the defense.

(b) If you did not exhaust your state remedies on Ground Four, explain why: **EXHAUSTED IN:**

RM - ISSUE V.4 @ Pages 1, 8-9, 12, 23-25, 26 APPENDIX #1

PFR - ISSUE C10.d @ Pages 17, A11, A18-A19, A22, A33-A35, A36 APPENDIX #1

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

PLEASE NOTE THAT THIS PAGE IS CONTINUED ON PAGE 22

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

No, all remedies exhausted.

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

GROUND 5: Raises **IAC**, combined with **PM** in regards to forcing a "Yes or No" answer from the complaining witness and counsel not objecting.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The primary complaining witness was confused and uncertain under direct examination; instead of the prosecution accepting the witnesses uncertainty, the prosecutor forced "Yes or No" answers from the witness and counsel failed to object. The combination of **IAC** combined with **PM** was damaging and prejudicial.

(b) If you did not exhaust your state remedies on Ground , explain why: **EXHAUSTED IN:**

RM - **ISSUE** V.1.a @ Pages 1, 3, 6-8

PFR - **ISSUE** C10.a @ Pages 16, A11, A13, A16-A18

(c) **Direct Appeal of Ground**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground

GROUND 6: Raises Cronic Error, as well as numerous instances of **IAC** including Failure to Investigate based upon Strickland in synergistic combination with multiple instances of **PM. NOTE** that **RM** page 6 incorporated V.1.a which is GROUND 5 of this Habeas Petition, supra. This begins the cumulative approach of GROUND 8. Based upon 6th & 14th Amendments.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

RECON MOTION Issue V.1.c at pp 3-22 begins with failure to investigate, and then adds other instances of IAC too numerous to describe here. The failure to investigate was argued to rise to the level of a Chronic error, because counsel failed to subject the prosecutor's case to "meaningful adversarial testing". Inadequate investigation is demonstrated on the record at RECON MOTION pp 5-6, by testimony of the complaining witness that she had been interviewed in the hallway by defense counsel just prior to the opening of trial.

(b) If you did not exhaust your state remedies on Ground , explain why: **EXHAUSTED IN:**

RM - ISSUE V.1.c @ Pages 1-22, 36-43 APPENDICES #1 - #7

PFR - ISSUE C10.b @ Pages 16-17, A11-A32, 36-43 APPENDICES #! - #7

NOTE: Strickland cited @ Pages 4-5 in the **RM** & Pages A14-A15 in the **PFR**
Cronic cited @ Pages 5, 7, 9 in the **RM** & Pages A15, A17, A19 in the **PFR**

(c) **Direct Appeal of Ground**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground

GROUND 7: Raises two issues of Judicial Error for limiting cross-examination, and for failing to sua sponte offer curative instruction regarding a Trial Irregularity. Based upon 6th & 14th Amendments.

NOTE: These issues were never raised under their own headings but appeared embedded within other grounds.

NOTE#2: It is important to note that the Appellate Court did not address these issues in its OPINION Dated: 090CT-6

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

After the primary witness displayed inflammatory behavior by running off the stand, unexcused, during the beginning minutes of cross-examination and into the arms of a domestic violence advocate while crying, the judge should have sua sponte ordered a mistrial or at least curative instruction. Instedd, the judge chastized defense counsel, thus limiting the scope of cross-examination of the primary witness which was highly prejudicial. It is important to note that the witness was caught lying at the time of the meltdown which later testimony corroborated.

(b) If you did not exhaust your state remedies on Ground , explain why: **EXHAUSTED IN:**

SAG -- @ Pages 1, 19-23

RM - @ Page 21

PFR - @ Pages 8, 9-10 Excluding subsections 2, 3, & 4 on Page 9

(c) **Direct Appeal of Ground**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground

GROUND EIGHT: Raises the issue that the Cumulative Effect of all constitutional errors should be considered. Based upon 6th & 14th Amendments.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

This is a purely legal ground which arguably does not require any supporting facts.

(b) If you did not exhaust your state remedies on Ground , explain why: **EXHAUSTED IN:**

RM-- ISSUE V.3 @ Pages 1, 22-23

PFR - ISSUES C10 Page 16, & C10.c Pages 17, also on 15, A11, A32-A33

(c) **Direct Appeal of Ground**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground

GROUND 9: Petitioner's pro se Motion to Modify Clerk's Ruling raised a 14th Amendment due process issue as to allowing the State to amend their cost bill, where RAP Rule 14.4(a) only allows for supplementation. It is also important to note that both the Appellate and Supreme Courts provide no reasoning for their decisions and refuse to supply any transcripts from the day of Ruling so defendant can fine tune his argument.

(a) Supporting facts.
The Prosecutor filed an amended cost bill which was a total replacement for the original cost bill. RAP 14.4(a) however only allows for supplementation. The amended cost bill also lacked the required showing that the additional charge was made by supplementation within 10 days after the expense was incurred. The Petition for Review at pg 6 establishes from case law that there is no "relation back" principle in the appellate courts; therefore, the amended cost bill was untimely. The same page argues based upon case law that an amendment which does not reserve any part of the original has the effect of totally replacing the original. Granting costs based upon an amendment which was either improper or late arguably violates substantive due process; 14th Am.

(b) If you did not exhaust your state remedies on Ground , explain why:

First raised in Court of Appeals as OBJECTION TO AMENDED COST BILL and in a MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO AMENDED COST BILL.
Then raised in Petition for Review, primarily Issues C3 and C4 at pp 5-6.
Then raised again in the Court of Appeals by a Motion to Modify Clerk's Ruling, which had granted all the costs requested in the amended cost bill.

(c) **Direct Appeal of Ground**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ❒ Yes ❒ No

(4) Did you appeal from the denial of your motion or petition? ❒ Yes ❒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ❒ Yes ❒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground

PLEASE NOTE THAT THIS PAGE IS CONTINUED FROM PAGE 11

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea: Edwin Joseph DeCosta, Department of Assigned Counsel 949 Market St., Suite 334, Tacoma, Wa. 98402

(c) At trial: Edwin Joseph DeCosta, Department of Assigned Counsel 949 Market St., Suite 334, Tacoma, Wa. 98402

(d) At sentencing: Edwin Joseph DeCosta, Department of Assigned Counsel 949 Market St., Suite 334, Tacoma, Wa. 98402

(e) On appeal: Stephanie C. Cunningham, Attorney at Law 4616 25th Ave. NE, No. 552, Seattle, Wa. 98105

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

AO 241

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

This petition is timely filed. It is filed less than one year after the end of direct review.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

19. Therefore, petitioner asks that the Court grant the following relief: overturn my J&S, and remand for a new trial.

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

AO 241

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on July 28th, 2010 (month, date, year).

Executed (signed) on July 28th, 2010 (date).

James B. Stockhold

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.