

No. 49029-3-II

**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON

Appellant,

v.

WAYLON JAMES HUBBARD,

Respondent.

**MOTION OF AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

Prachi V. Dave, WSBA No. 50498
Nancy Talner, WSBA No. 11196
ACLU OF WASHINGTON FOUNDATION
901 5th Avenue, Suite 630
Seattle, Washington 98164
(206) 624-2184
pdave@aclu-wa.org
talner@aclu-wa.org

Attorneys for Amicus Curiae

The American Civil Liberties Union of Washington (“ACLU”) respectfully moves pursuant to RAP 10.1(e) and 10.6 to file a brief as *amicus curiae* in this matter. The Brief of *Amicus Curiae* (“Brief”) is filed with this Motion. In support of this Motion, *amicus* offer the following information:

I. IDENTITY AND INTEREST OF *AMICUS*

The ACLU is a statewide, nonpartisan, nonprofit organization of over 50,000 members and supporters, dedicated to the preservation of civil liberties and civil rights. The ACLU strongly supports efforts to reduce the harmful consequences of the criminal justice system, including reducing barriers to reentry. It has worked for years on both policy and legal advocacy to reduce barriers to reentry. It has also participated as *amicus* in numerous Washington cases on reentry issues and on many other criminal justice related issues.

II. FAMILIARITY WITH ISSUES AND SCOPE OF ARGUMENT ON REVIEW

Counsel for *amicus* have obtained copies of, and are familiar with: the ruling and record of the lower court and the briefing submitted to this court by the Parties. *Amicus* is familiar with the scope of the Parties’ arguments and has not unduly repeated arguments raised or likely to be raised by the Parties.

III. ISSUE TO BE ADDRESSED BY *AMICUS*

Whether the trial court correctly ruled that Mr. Hubbard's certificate of discharge should have an effective date of the date on which all available documents show he successfully completed all the conditions of his sentence, consistent with RCW 9.94A.637's language and intent, as well as this state's policy of reducing barriers to re-entry following completion of sentence requirements.

IV. WHY *AMICUS* BRIEFING WILL ASSIST THE COURT

The state of Washington has, through RCW 9.94A.637, provided for obtaining a certificate of discharge to document completion of a sentence and restore the rights lost by felony conviction, plus begin the waiting period for vacating the conviction and clearing the record. This procedure has been available under the law for several decades, at least since 1981. The concern regarding the date on the certificate of discharge arises because if the State's argument in this appeal is accepted, many Washingtonians would suffer additional burdens to reentry contrary to the language and intent of the statute. A fully informed decision is essential and the additional argument provided by the ACLU *amicus* brief will be helpful to the Court's analysis. RAP 10.6(a). *Amicus* is able to provide the Court with a broader perspective than the individual case and helpful

analysis of the statutory and societal concerns raised by RCW 9.94A.637.

V. CONCLUSION

For the foregoing reasons, the ACLU respectfully requests that the Court grant leave to file the *Amicus* Brief filed concurrently with this Motion.

Respectfully submitted this 23rd day of January 2017.

By: /s/Prachi V. Dave

Prachi V. Dave, WSBA No. 50498
Nancy Talner, WSBA No. 11196
ACLU OF WASHINGTON FOUNDATION
901 5th Avenue, Suite 630
Seattle, Washington 98164
(206) 624-2184
pdave@aclu-wa.org
talner@aclu-wa.org

Attorneys for *Amicus Curiae*

**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

No. 49029-3-II

State of Washington v. Waylon James Hubbard

DECLARATION OF SERVICE

I declare, under penalty of perjury, under the laws of the State of Washington, that on the date below, I caused to be served a copy of the Motion of American Civil Liberties Union of Washington for Leave to File *Amicus Curiae* Brief via email and submission to the Division II JIS Link system to the following parties with consent to electronic service:

COUNSEL FOR APPELLANT

Mark McClain, WSBA 20909
Prosecuting Attorney
Pacific County Prosecutor's Office
P.O. Box 45
South Bend, Washington 98586
mmclain@co.pacific.wa.us

COUNSEL FOR RESPONDENT

Sarah Glorian, WSBA No. 39914
Northwest Justice Project
218 N. Broadway Street, Suite 1
Aberdeen, Washington 98520
SarahG@nwjustice.org

Signed this 23rd day of January 2017, at Seattle, King County, WA.

/s/ Prachi V. Dave

Prachi V. Dave, WSBA No. 50498
ACLU OF WASHINGTON FOUNDATION
pdave@aclu-wa.org
901 Fifth Avenue, #630
Seattle, WA 98164
(206) 624-2184