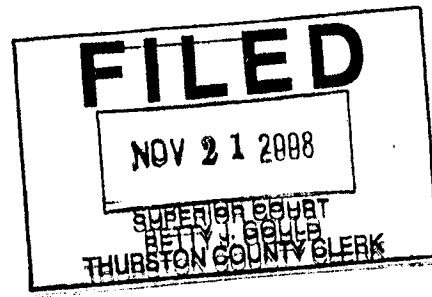


Exhibit J



<input type="checkbox"/>	EXPEDITE
<input checked="" type="checkbox"/>	No hearing set
<input type="checkbox"/>	Hearing is set
	Date: _____
	Time: _____
The Honorable Chris Wickham	

HONORABLE CHRIS WICKHAM

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

DAROLD R. J. STENSON,

No. 08-2-02080-8

Plaintiff,

ORDER DENYING IN PART AND
GRANTING IN PART DEFENDANTS'
MOTION TO DISMISS (PROPOSED)

v.

ELDON VAIL; STEPHEN SINCLAIR;
MARC STERN; CHERYL STRANGE;
WASHINGTON STATE DEPARTMENT
OF CORRECTIONS, and DOES 1-50

Defendants.

The Court, having considered Defendants' CR 12(b)(6) Motion to Dismiss, Plaintiff's Complaint and Amended Complaint for Declaratory Judgment and Injunctive Relief, the response of the Plaintiff, reply, sur-reply, and all other submissions on this motion, and the remaining files and records herein, does hereby find and ORDER that Defendants' Motion to Dismiss is DENIED in part and GRANTED in part as follows:

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS OR
TRANSFER - 1

68695-0001/LEGAL14959452.1

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1. Defendants' argument that this case should be dismissed because it is a collateral attack on the judgment is denied. Plaintiff requests judicial review of the method of execution for the Plaintiff and others which is broader than, and not directed at, a specific provision of the judgment or sentence.
2. Defendants' argument that this case should be transferred to the Washington Supreme Court is denied. CrR 7.8 does not provide a vehicle for transfer, and the Court is not aware of any such vehicle. With respect to the inquiry to be made under *Baze*, there is value in having a trial court consider evidence, enter findings and conclusions and provide a record for appellate court review. while The Court of Appeals and the Supreme Court are not equipped for discovery and fact finding.
3. Defendants' argument that this case should be dismissed because it is barred by *res judicata* is denied. The doctrine of *res judicata* precludes issues that were or should have been raised in prior actions. This doctrine does not apply. There are other inmates facing the death penalty so Mr. Stenson was not under an obligation to bring this challenge at an earlier time. Because the claims pled go beyond Mr. Stenson, there was no obligation that they be raised in his prior criminal proceedings.
4. Defendants' argument that this case should be dismissed on statute of limitations grounds is granted as to claims based on hanging, but denied as to claims based on lethal injection. As to hanging, the statute of limitations began to run at the time that the sentence became final. As to lethal injection, the statute of limitations period was reset when DOC amended its policy in June 2007 and again on October 25, 2008, Plaintiff is well within the statute.

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS OR
TRANSFER – 2

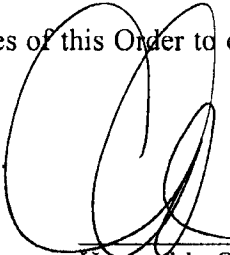
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5. Defendants' argument that this case should be dismissed for failure to state a claim is denied. The question is whether the Washington policy is substantially similar to the Kentucky policy. It is apparent that there have been some changes and there are differences from the Kentucky policy. The question is whether these differences are significant such that the Plaintiff could prove a violation of the Eighth Amendment. The issues are complicated and present a significant challenge for the trial court to evaluate and make factual findings. The Court cannot rule as a matter of law that Plaintiff cannot prove any set of facts showing that the Washington policy is unconstitutional.

6. The Clerk shall send uncertified copies of this Order to counsel for the Plaintiff and Defendants.

DATED this 21 day of November, 2008.



Honorable Chris Wickham

Presented by:

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Attorneys for Plaintiff

Approved as to Form

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JOHN J. SAMSON, WSBA #22187
Attorneys for Defendants

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS OR
TRANSFER - 3

68695-0001/LEGAL14959452.1

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