IN THE SUPREME COURT
OF THE STATE OF OREGON

DANTE R'MARCUS FARMER Plaintiff-Respondent, Petitioner on Review, v. JEFF PREMO, Superintendent, Oregon State Penitentiary Defendant-Appellant, Respondent on Review	Marion County Circuit Court Case No. 07C16834 Court of Appeals No. A152447 Supreme Court No. S065259

BRIEF OF *AMICUS CURIAE* CRIMINAL JUSTICE REFORM CLINIC IN SUPPORT OF PETITIONER FARMER

Review from Decision of the Oregon Court of Appeals

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I. STATEMENT OF *AMICUS CURIAE*

Lewis & Clark Law School's Criminal Justice Reform Clinic (CJRC) is a legal clinic dedicated to students receiving hands on legal experience while engaging in a critical examination of and participation in important issues in Oregon's criminal justice system. Under the supervision of Lewis & Clark Law School faculty, CJRC students work on a variety of cases, clemency petitions, and issues. CJRC works in collaboration with attorneys and organizations in Oregon on various research reports, data driven projects and legal briefs designed to understand and improve Oregon's criminal justice system.

The case before the Court addresses whether the Oregon Court of Appeals erred when it reversed petitioner Dante Farmer's post-conviction trial court judgment granting him relief and remanding his case for a new trial. CJRC became involved with petitioner as a potential clemency candidate and consequently has thoroughly investigated petitioner's case.

Petitioner has endured a long litany of injustice over the last 17 years since his initial arrest and conviction that goes far beyond the narrow scope of a post-conviction appeals court. The injustices that have occurred throughout petitioner's case create serious doubts as to his guilt. Petitioner has always claimed his innocence, but as with many cases where there is no DNA evidence to provide a

conclusive exoneration, relief after a jury decision is an almost impossible high bar to reach.

CJRC is especially concerned about ways in which the legal system fails defendants such as petitioner, who exist in a limbo where their innocence is not provable to the narrow current standards currently available, but the credibility of their convictions are seriously damaged. Over the last twenty years, CJRC's director, Professor Aliza Kaplan, has undertaken significant work on many cases of wrongful conviction and miscarriages of justice.

Petitioner has very limited avenues available to pursue justice for himself in the State of Oregon. Without the intervention of this Court, petitioner has only one possibility—the rare circumstance of an extra-judicial grant of mercy from the executive. This Court has found that clemency is not a substitute for legal process in *Anderson v. Gladden*: "The prospect of a court holding itself powerless to remedy a manifestly erroneous conviction obviously would not adorn the administration of justice."[1] Justice requires that this Court resolve this case so that the necessity for the Governor's intervention need not arise.

Amicus submits this brief in support of petitioner to present relevant information to the Court about the entirety of his legal story. *Amicus* hopes to assist

[1] 234 Or 614, 626, 383 P2d 986 (1963).

the Court in understanding the scope of the injustice petitioner has endured and why relief is a necessary remedy.

II. SUMMARY OF ARGUMENT

The legal system has failed petitioner Dante Farmer. Its failure is more than deficient lawyering, overzealous prosecution, a missing eyewitness, or an unfair trial—some of the key factors in his legal ordeal. The system has failed petitioner because it (1) provides no mechanism for someone who is factually innocent of the crime of which he is convicted, but is without the narrow scope of acceptable evidence required to prove it and (2) because it provides petitioner with no way to remedy the further injustice he has suffered since his conviction while trying to reverse his conviction and to clear his name.

Convicting an innocent person violates Article I, section 10 of the Oregon Constitution requiring "complete justice."[2] However, if a defendant is wrongfully convicted in Oregon, he possesses very limited options. Currently, to prevail under the Post-Conviction Hearing Act (PCHA), an innocent defendant must locate new evidence that could not have been presented at trial,[3] and the new evidence must

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[2] Or Const, Art 1, § 10 provides, "No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property or reputation."

[3] ORS 138.530.

prove a constitutional error was committed in the original proceedings.[4] If not, then under the current Oregon law, the fact that a defendant is innocent of the crime for which he has been convicted is legally irrelevant.

Current law excludes relief for wrongfully convicted defendants whose convictions occurred because of a combination of mistakes and injustices each of which might not necessarily meet the very high legal standard required for a constitutional violation under the PCHA—but when analyzed together for their overall impact, it is obvious justice has been denied.

In order to fulfill the constitutional right to "complete justice" there are circumstances in which a post-conviction court should look beyond the specific, established reasons for granting a new trial to consider how a number of factors act in concert to cause a substantial risk of a miscarriage of justice and therefore warrant the granting of a new trial.

Petitioner's case exemplifies the circumstance in which "complete justice" has been denied. Petitioner has asserted his innocence for 17 years. But because his conviction was based only upon the testimony of one eyewitness to the crime, and an ex-girlfriend and her father who both harbored severe animosity toward him, petitioner cannot provide the specific new evidence that is currently required to reach the standard necessary to prove innocence. Yet there is far more evidence

[4] ORS 138.530(1)(a).

that demonstrates that petitioner did not commit the crime. Furthermore, the vital eyewitness testimony of a witness, who saw the crime occur at close quarters, who called 911 to report it, and who categorically stated that petitioner was innocent of the crime, but who was not located until after the verdict, was *never* heard by the jury.

Since the post-conviction trial court correctly granted petitioner relief and remanded the case for a new trial in 2012, based on six counts of ineffective assistance of counsel, petitioner has faced additional unfair obstacles and interference in proving his innocence for which Oregon's legal system provides no recourse. At a release hearing in 2013, the State, determined to win at all costs, misled the court about facts from the trial and presented a fictitious narrative of petitioner as a dangerous gang-member presently operating within the walls of Oregon State Penitentiary, for which petitioner has no right to appeal and which cost petitioner his opportunity for release.

Further, the Oregon Court of Appeals decided petitioner's post-conviction appeal even though his attorney submitted a patently deficient brief with no legal arguments in response to the State's appeal and then abandoned petitioner by failing to show up for oral argument. Petitioner received absolutely no advocacy before the court. It is a fundamental premise of our adversarial system that both sides of a controversy present the issues at stake. The United States Supreme Court

has articulated, "concrete adverseness," as a necessity in our justice system because it "sharpens the presentation of issues upon which this court so largely depends for illumination of difficult constitution questions."[5] Furthermore, the Court of Appeals permitted this one-sided appeal to occur knowing that under the PCHA, petitioner has no right to redress that his post-conviction appellate attorney provided ineffective assistance of counsel. The impact of this is obvious—the Court of Appeals accepted the State's unrebutted arguments.

It is surely time for Mr. Farmer's nightmare to end. Deficient to non-existent advocacy at nearly every stage has enabled an unsound conviction to stand for over seventeen years. *Amicus* implores this Court to reverse the Court of Appeals' decision.

III. ARGUMENT

A. The State of Oregon has failed petitioner because he is innocent of the crime of which he was convicted, but without a narrow category of newly discovered evidence there is no mechanism available for him to overturn his conviction on the basis of innocence.[6]

In Oregon, unlike in many other states, it is an almost impossible task for a wrongly convicted defendant to have his conviction overturned. Over thirty years,

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[5] *Baker v. Carr*, 369 US 186, 205, 82 S Ct 691 (1962) (discussing standing).

[6] *Amicus* relies on the facts as set out for the petitioner's brief on the merits where petitioner cites the extensive findings of fact made by the post-conviction trial court in its opinion granting relief, a copy of which is attached to petitioner's brief on the merits at ER-1-34. Further, *Amicus* cites to exhibits and the trial record provided by petitioner with his brief on the merits.

the innocence movement has spread across the nation; there have been over 2100 people exonerated since 1989.[7] In Oregon though, unlike in 16 other states that now recognize innocence as a freestanding claim, neither the courts nor the legislature have created a procedural mechanism to permit a freestanding claim of innocence.[8]

The Oregon Constitution specifically protects innocence under Article I, section 10, which protects innocence by requiring "complete justice."[9] Oregon case law indicates that "complete justice" is not just about ensuring procedural requirements are followed, but that substantive justice is found too.[10] Yet despite this provision, Oregon law makes it almost impossible for a defendant to make an innocence claim.

1. **Oregon's Post-Conviction Hearing Act currently only provides a ground for relief for innocence if petitioner has newly discovered evidence that proves his innocence.**

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[7] National Registry of Exonerations, https://www.law.umich.edu/special/exoneration/Pages/about.aspx (last visited February 1, 2018).

[8] Arizona, Arkansas, Delaware, Maryland, Minnesota, Ohio, Tennessee, Utah by Statute; California, Connecticut, Missouri by Writ of Habeas Corpus; Illinois, New Mexico, New York by State Constitution, Montana and Texas by United States Constitution.

[9] Or Const, Art 1, § 10.

[10] In *State v. Reynolds*, 250 Or App 516, 280 P3d 1046 (2012), the Court of Appeals described the "complete justice" requirement as a mandate to accomplish the "ends of justice." Further, the Oregon Constitution also protects innocence under Article 1 section 16, which declares that, "Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense."

The PCHA requires a court to grant a petitioner post-conviction relief if petitioner establishes, "[a] substantial denial in the proceedings resulting in petitioner's rights under the Constitution of the United States, or under the Constitution of the State of Oregon, or both, and which denial rendered the conviction void."[11] A convicted petitioner is only entitled to relief under the PCHA if he can establish a denial of his constitutional rights.

A claim may be raised under ORS 138.530(1)(a) on the ground that newly presented evidence of innocence proves petitioner was denied "complete justice" in the original proceedings. A claim may also be raised under ORS 138.530(1)(c) on the ground that newly presented evidence of innocence proves that the sentence imposed is cruel and unusual or disproportionate.

A claim of innocence, therefore, must be tailored to work in a way that simultaneously proves petitioner's innocence and establishes one of these two constitutional rights have been denied in the conviction—but the claim can *only* rely on newly presented evidence to prove that defendant was in fact innocent of the crime.[12] In addition, the claim must not have been asserted nor could have reasonably been asserted on direct review.[13] This singular focus on newly

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[11] ORS 138.530.
[12] ORS 138.530(1)(a) on the grounds that newly presented evidence of innocence proves petitioner was denied complete justice under Article 1, section 10 of the Oregon Constitution.
[13] ORS 138.550(2).

discovered evidence excludes any other claim that might be the result of other mistakes and injustices that occurred in the process.

Petitioner was immediately ineligible to make a claim under the PCHA because he does not have newly discovered evidence—his conviction was built upon flimsy eyewitness testimony and the words of two people with a grudge against him. There was no physical evidence to tie him to the crime. Yet the jury never heard vital evidence and testimony that existed at the time, evidence that would have contradicted and undermined what that they did hear. Petitioner was wrongly convicted as a consequence. The irony is that a weak conviction built on no physical evidence and dubious testimony is essentially impossible to overturn in Oregon on the basis of innocence.

2. Oregon law has failed petitioner because it does not provide a ground for relief when a conviction is the result of a "confluence of factors" that when analyzed together resulted in a denial of "complete justice."

The PCHA should include a ground for relief for a innocence claim that allows a post-conviction trial court to weigh all the circumstances of the conviction to determine if errors were made that resulted in an innocent defendant being convicted. The Massachusetts Supreme Judicial Court (SJC) has adopted a "confluence of factors" test in post-conviction proceedings that allows the court to consider, "the unique confluence of events in light of the totality of the

circumstances."[14] The analysis focuses on whether "justice may not have been done."[15]

In *Commonwealth v. Rosario*, the Massachusetts' SJC affirmed the lower court's granting of a new trial because "justice was not done."[16] Defendant Rosario was convicted of murdering eight people in a fire that he confessed to starting in 1982.[17] The voluntariness of defendant's confession was thoroughly argued at trial, but when presented with science that concluded the fire could equally have been accidental, the court re-examined the circumstances surrounding the confession.[18] The defendant was suffering from Delirium Tremens (DT's) caused by alcohol withdrawal at the time, but three psychiatrists who examined him missed the diagnosis at his trial.[19] Furthermore, the interpreter from his interrogation provided a sworn affidavit in which he stated that police officers added in their own accusations to defendant's signed statement and did not translate the most incriminating statements into Spanish, even though the defendant did not speak

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[14] *Commonwealth v. Rosario*, 74 NE 3d 599, 607, 477 Mass 69 (2017).
[15] *Id.*
[16] *Id*. at 609. Mr. Rosario brought a post-conviction motion for a new trial pursuant to Mass. R. Crim. P. 30(b).
[17] *Id*. at 601.
[18] *Id*. at 605.
[19] *Id*. at 604.

English.[20] Finally, the police used three tactics in the interrogation that are known to elicit false confessions.[21]

None of the evidence surrounding Rosario's confession was newly discovered, but the SJC analyzed it all together under the "confluence of factors" test and determined that justice required a retrial. The SJC agreed with the lower court that Rosario was entitled to a new trial because it was the only way that justice could be served—the DTs diagnosis, affidavit from the interpreter, and data about coercive interrogation tactics combined with the alternate theory of how the fire was started created by the fire science looked at all together "could have influenced the jury's verdicts."[22] If the jury had truly known all of the circumstances, it would have considered the evidence differently and likely Rosario would never have been convicted.

Like in *Rosario*, the case at hand "presents a situation in which a confluence of factors combined to create a substantial risk of a miscarriage of justice."[23] Petitioner's case is just like *Rosario* because in both cases the jury found petitioner guilty of murder beyond a reasonable doubt, but without all the relevant facts and testimony. Although Oregon's Constitution claims to require "complete justice," unlike in Massachusetts, petitioner has no way to raise a *Rosario* type claim in any

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[20] *Id*. at 608.
[21] *Id.*
[22] *Id.* at 609.
[23] *Id*. at 607.

post-conviction proceeding. Therefore, petitioner has no path that would allow a court to analyze how a jury might have viewed the evidence from his case if it had actually heard *all* the evidence—especially because the missing evidence at trial emphatically asserted petitioner's innocence and pointed to the guilt of another man.

a. Had the jury heard testimony from Lakeisha Thompson it would have undermined its confidence in the State's sole eyewitness, Paul Muldrew.

The jury never heard Lakeisha Thompson's testimony, who would have stated that she was close to the shooting when it occurred, that she saw the shooter, and most crucially that the shooter was not petitioner. ER-14. She would have stated that in fact the shooter looked more like Donald Baines, ER-14, whom the defense team believed killed Monterossa. ER-13.

The only eyewitness to the crime that the jury heard was the State's witness, Muldrew, who was also close by when the shooting happened. ER-5. However, when police questioned him that night, he inexplicably failed to identify petitioner as the shooter, even though they had met several times before. ER-9. Instead, he provided a generic description of the shooter that was inconsistent with Thompson's identification, ER-9, and it took him weeks more to make a photo identification. ER-10. More frustratingly, the State never bothered to include a

photo of Baines, the alternate suspect who resembled petitioner, in the photo spread from which Muldrew made the identification. ER-13.

The jury's confidence in Muldrew's testimony stems from the fact that no conflicting eyewitness testimony was offered. The State has argued that because the jury heard Thompson's 911 call during the trial, the jury did not lose anything by not hearing her testimony. Ex 117 Vol 22, Tr 26-7. The State is disingenuous because it is obvious that a 911 call in which a witness to a crime answered the operator's general questions about the clothing, height and ethnicity of the shooter are a far cry from testimony that the shooter who she saw was specifically not petitioner. Had the jury heard both witnesses, the State's case against petitioner would have been dramatically weakened because its case depended almost entirely upon Muldrew's identification.

b. Had the jury heard the testimony of Franklin Wong that Baines's gun was likely the gun used to kill Monterossa, it would have significantly undermined the State's theory of the crime.

The jury never heard defense expert Wong testify that Donald Baines's gun was "likely" the gun used to shoot Monterossa, nor did it hear him testify that contrary to the State's claims, Baines's gun was in fact operational at the time of the murder. ER-12. The jury did hear that Baines was in the neighborhood and that he matched Muldrew's description. ER-13, Ex 117 Vol 16 Tr 180. Obviously, the

facts introduced about Baines as a likely shooter would have been more impactful if the jury heard that Baines's gun was likely the gun used in the murder.

A witness also told Detective Barry Renna, the lead police detective, that word on the street was that Baines was involved in the murder of Monterossa because he was selling bunk weed in Baines's turf. Ex 117 Vol 12 Tr 35. APP-1. However, Renna failed to pursue that line of investigation and did not show Baines photo to Muldrew or Feliu. ER-13. Had the jury learned that the gun was both operational and likely the gun used in the murder, then the defense's theory would have been more persuasive to the jury and it would have further undercut the State's theory that petitioner committed the crime.

c. The State's key witnesses, Garvin Franklin Jr. and Jennifer Franklin's testimonies conflicted with the physical evidence of the crime and would have been far less credible to the jury if Thompson and Wong's missing testimonies had been presented.

The State's case primarily consisted of Muldrew's eyewitness testimony and the testimony of petitioner's ex-girlfriend Jennifer and her father Garvin about petitioner's alleged confessions, confessions that he vehemently denies ever having made. Had the jury heard from Thompson that petitioner was not the shooter and from Wong that Baines's gun was likely used to kill Monterossa, it is likely that Garvin and Jennifer's testimony would have resonated far less with the jury.

Petitioner's ex-girlfriend Jennifer and her father's testimonies were infused with personal animosity toward petitioner and were incorrect regarding the facts of the crime—even so, neither witness believed that petitioner was guilty. ER-11-12. Garvin testified that petitioner told him that he put a .357 to Monterossa's head and the gun "just went off." ER-11. He believed petitioner was just "puffing." ER-11. He called the police to report petitioner though, because he wanted to split petitioner up from his daughter. ER-12. However, Monterossa was not shot in the head, the gun was not held up against his body, and Monterossa was not shot from behind, as Garvin claimed. ER-12. Rather, Monterossa was shot in the chest, from the front, and the gun was not held up to his body, it was from a distance. ER-12.

Garvin and Jennifer's testimonies were taken seriously because the jury had heard from Muldrew that petitioner was responsible for the shooting and thus the discrepancies in Garvin's testimony were less glaring than they would have been if the additional evidence that petitioner did not do the shooting, and that the gun used to kill Monterossa was likely Baines's, was presented.

Petitioner would not have been convicted had all the testimony been heard because the State did not have a convincing case that petitioner committed the crime. The State presented no physical evidence tying petitioner to the crime. The State confiscated petitioner's clothes, which did not match Muldrew's description of the shooter, and forensic examiners found neither blood nor gunshot residue on

it either. ER-10-12-13. The State also provided no motive —the State's best suggestion, made in its closing argument, was that petitioner must clearly hold life cheap. EX 117 at Vol 18 Tr 91-92. The State counted on Muldrew's uncontested testimony and the testimonies of Garvin and Jennifer to support Muldrew. However, just as in *Rosario*, the jury was given an incomplete picture of the crime and this resulted in petitioner being convicted.

If the jury does not hear vital exculpatory evidence that would have likely led to an acquittal, then regardless of who's fault it is, or how foreseeable the mistake was, "complete justice," requires a new trial.

B. Misconduct by both the State and petitioner's former post-conviction appellate attorney does not provide a basis for post-conviction relief in this Court but it does compound the injustice in the totality of this case.

When the post-conviction trial court reversed petitioner's conviction and remanded his case for a new trial, petitioner believed his troubles were over. He considered that the court's decision vindicated him and even though the reversal did not specifically rule upon his innocence, petitioner believed that the court's letter opinion supported his innocence and that he would have an opportunity to prove his innocence in a new trial.

Unfortunately for petitioner that was not the case. First, the State adopted a "win at any cost" approach to the release hearing and went to excessive lengths to ensure that petitioner not be released pending his new trial. Second, the Court of

Appeals decided the petitioner's post-conviction appeal despite the fact that petitioner's attorney provided no advocacy whatsoever. This resulted in the Court of Appeals reversing the trial court's ruling even though the transcript of the oral argument clearly proves that the court was aware of the lack of advocacy but chose to permit the one-sided appeal to proceed regardless of the consequences to petitioner.

1. Petitioner's opportunity for release following the reversal of his conviction was thwarted when the State misled the court about facts on the record and presented misleading evidence to persuade the court it had reached the standard required under ORS 135.240 to deny bail.

Following the reversal of his conviction in 2012, petitioner filed a motion for release under the applicable statute for a release hearing.[24] The State seemed to disapprove of the petitioner even executing his right to the hearing. During the hearing, the State pointed to the rarity of the procedural posture inferring to the court that it was a most unusual occurrence for a defendant to actually have the

[24] ORS 138.650(3) provides that petitioner may petition for release under his statutory and constitutional right to have bail set pending a new trial. ORS 135.240 is the applicable statute and requires the State to show that, "proof is evident or presumption strong that the person is guilty." In *Rico-Villalobos v. Guisto*, 339 Or 197, 208, 118 P3d 246 (2005), this Court concluded that the framers of Article 1, section 14 of the Oregon Constitution wanted to ensure a high threshold of proof before someone could be held without bail, even when accused of murder.

audacity to exercise his statutory and constitutional right.[25] Indeed, the Oregon Department of Justice (DOJ) attorney described it as "unprecedented" in her experience.[26]

Petitioner, meanwhile, was in the position of having to climb an insurmountable mountain despite the fact that the post-conviction court had reversed his conviction for substantive reasons that indicated he was not guilty. The State persuaded the court that it should give no deference to the post-conviction trial court's ruling. It misled the court about the timeline and circumstances of Muldrew's identification of petitioner; it misrepresented facts surrounding Baines's culpability; and it introduced a brand-new theory of the crime in which petitioner was a gang member "earning his stripes," based upon no evidence. Petitioner's attorney meanwhile, did not call any witnesses to rebut the State's case except for one Correction's Officer whom he called to rebut the State's brand new theory, nor did he challenge many of their more blatantly untrue narratives with easily located facts.

While this Court has ruled that hearsay can be used in a bail hearing,[27] the parameters of what evidence the court permitted the State to use to meet its burden

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[25] Audio Recording, Marion County Circuit Court, Matter of Dante Farmer v. Brian Belleque, Release Hearing 07C16834 (2013), Tape: 13h38m36s, 43.45-44.15.
[26] *Id.*
[27] *Rico*-Villalobos, 339 Or at 208.

of proof was broad to the point of absurdity. When petitioner's attorney did object to the State's more outlandish assertions, the court repeatedly struck down each challenge by pointing to the very low threshold permitted in bail hearings. Consequently, his motion was denied and petitioner lost his opportunity for freedom. In fact, he has so far been incarcerated six years since he was granted a new trial.

a. The State incorrectly claimed that under ORS 138.650(3), the release hearing court should give no deference to the post-conviction trial court's factual findings.

During the release hearing, petitioner's attorney referenced the post-conviction trial court's focus on the facts surrounding petitioner's conviction and gave his opinion that Judge Tripp seemed to believe that defendant was innocent of the crime.[28] This was based primarily on the fact that in her letter opinion Judge Tripp specifically emphasized the (1) factual inaccuracies in petitioner's supposed confessions to his ex-girlfriend and her parents—confessions that petitioner has always vehemently denied making, (2) credibility that she found Lakeisha Thompson held after having heard her testimony directly, and (3) credibility that she believed Wong's testimony would have held with the jury, had it been heard. [29]

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[28] Farmer Release Hearing 07C16834 (2013), Tape: 13h38m36s, 24:54-26:19.
[29] *Id*.

To counter petitioner's attorney's words, the State argued that because ORS 138.650(3), provides no explicit language commanding deference to the post-conviction court's decision, there should be none.[30] However, there is also nothing in the language indicating that there should be no deference given to the court's decisions. The statute itself mentions nothing on the subject of deference.[31] Due to the rarity of a post-conviction release hearing, there is no case law that addresses this issue directly.

However, this Court has repeatedly ruled on the issue of deference to trial courts' factual findings and the deference those findings command. Surely, the factual findings of a post-conviction court should be given some deference, especially in a release hearing that determines issues of culpability. In *State v. Johnson*, this Court ruled, when the State wished to disregard a trial court ruling, that:

> Our standard of review does not permit us to dismiss a trial court's ruling so lightly. It is familiar doctrine that we are bound by a trial courts finding of fact, if there is evidence in the record to support them. . . . Thus, unless the evidence in a case is such that the trial court as finder of fact could decide a particular factual question in only one way, we shall in the future consider

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[30] Farmer Release Hearing (2013) Tape: 13h38m36s 19:25-20:25 and 42.20-43.45.
[31] ORS 138.650(3) provides as relevant: "An appeal under this section taken by the defendant stays the effect of the judgment. If the petitioner is incarcerated, the court may stay the petitioner's sentence pending the defendant's appeal and order conditional release or security release, in accordance with ORS 135.230 to 135.290."

> ourselves equally bound by a trial courts acceptance or rejection of evidence.[32]

While petitioner recognizes that there is a distinct difference between a trial court and a post-conviction trial court, it is hard to envision that this Court would conclude that no deference should be given to findings made by a post-conviction trial court at a release hearing for the same conviction. However, following the State's argument, the release hearing court made its decision based upon the strength of the state's sole eyewitness, Paul Muldrew, and the testimony of ex girlfriend, Jennifer and her father Garvin.[33]

b. The State, when questioning Renna, misled the court as to the timeline and circumstances of the identification process of Muldrew, its sole eyewitness to the murder.

At the release hearing, the State introduced Renna to testify about his part, as lead detective, in the investigation and conviction of petitioner. The State's case was built upon the strength of eyewitness Muldrew, so it was vital for the State that the release hearing court believe that his identification was credible. The following testimony occurred at the release hearing:

> State: Did Mr. Muldrew describe the shooter, later identified as Mr. Farmer, as a light skinned black man with braids, a mustache, or a little beard, wearing a blue or black jacket."
> Renna: He did.
> State: Was he able to describe to you what he believed was the murder weapon?

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[32] *State v. Johnson,* 335 Or 511, 523, 73 P3d 282 (2003).
[33] Farmer Release Hearing (2013) Tape: 14h38m39s 1:59-3:22, 4:40-6:03.

> Renna: He said that it was, I believe, a 357.
> State: Now this description that Mr. Muldrew provided to you of the shooter. Did that description in fact match the physical description of the suspect in the case, Mr. Farmer? (Refers court to picture of Mr. Farmer).
> Renna: It did.
> State: At the time you arrested Mr. Farmer did you in fact find Mr. Farmer in possession of a reversible blue and black jacket such as the one that several witnesses have described?
> Renna: I did.
> State: Did you then also after receiving this description from Mr. Muldrew, show him what is commonly referred to as a police six pack?
> Renna: Yes I did.
> State: And this police six pack that you showed to Mr. Muldrew (refers court to exhibit 4), the photo montage, was Mr. Muldrew able to pick out from that photo montage the individual he stated was responsible for the shooting on January 24th?
> Renna: He was. He pointed to the photo of Mr. Farmer. He said, that's him." I asked him what he meant. He responded by saying he shot Robert.[34]

This conversation misconstrues the timeline and circumstances that surrounded Muldrew's identification of petitioner. On the night of the shooting, the police interviewed Muldrew who gave the above description of the shooter. ER-9. At no point during this interview did Muldrew mention to the police that he knew the shooter or recognized him, even though they had met several times previously and knew each other. ER-9.

Four days after the shooting Muldrew discussed the shooting with Feliu, who provided evidence at trial that she had seen petitioner earlier in the afternoon

[34] Farmer Release Hearing (2013) 09h25m38s, 16:06-17:56.

when she said he came to her house looking for Monterossa. ER-4. The two of them testified that they met to discuss the murder and to try to figure out "who did it" and "why." ER-10; Ex 117 Vol 7 Tr 115-16. It took a further two weeks before Muldrew finally identified petitioner as the shooter in a photo throw-down prepared by Renna. ER-10. Renna also failed to show Muldrew or Feliu photographs of Baines at this time, even though he was also identified as a suspect. ER-13.

This testimony that the State elicited from Renna conveyed the impression that Muldrew's identification was emphatic and immediate, when in reality Muldrew, who knew petitioner, failed to identify him as the shooter until after he had discussed who might have committed the crime with Feliu, who was not even a witness to the crime.

Because Muldrew was the State's only eyewitness to the crime, and the jury never heard the other eyewitness Thompson, it is especially problematic that the State allowed the release hearing court to believe his identification was decisive and immediate when it was not.

Furthermore, the State asserted that Muldrew said that the shooter was wearing a black reversible coat, identical to the one in petitioner's possession when he was arrested. Actually, Muldrew identified the shooter as wearing a dark, puffy

"First Down" coat and black pants with a white stripe down the side, ER-9, which was an inaccurate description of what petitioner wore that day.

Petitioner's friend Tina Bolain whom petitioner spent part of the afternoon with, and his ex-girlfriend and parents, who testified against him, all confirmed that he was wearing blue sweatpants with no stripe down the side and a plain black coat. ER-10. Finally, the police seized petitioner's coat when they arrested him and forensic examiners found neither blood nor gunshot residue on it. ER-10, 12-13.

c. The State, when questioning its witness Renna, misrepresented the evidence that existed against Baines, when Renna falsely asserted that no one ever claimed he was responsible for the shooting.

At the release hearing, the State sought to discredit petitioner's long held theory that Baines was the shooter. The following testimony occurred at the release hearing when the State questioned Renna about the investigation into the murder:

> State: Detective, in the underlying trial in this case, did defense imply during the course of the trial that another man, a Donald Baines, was actually responsible for this murder?
> Renna: Yes.
> State: During the course of your entire investigation, did anyone, did any witness ever report to police, any police officer, a first hand observation of Mr. Baines at the scene that night?
> Renna: No.
> State: Did anyone report even a second hand rumor that Mr. Baines himself had committed this shooting?
> Renna: No.
> State: Did you ever find anything, in your opinion, connecting Donald Baines to the shooting?
> Renna: I never found any evidence that would indicate that, I heard a rumor that he had been in the area.

> State: But no one had ever said, through rumor, that he was responsible for the shooting, is that accurate?
> Renna: That's accurate.
> State: Did you find any evidence indicating that he committed the shooting?
> Renna: No. [35]

However, this was untrue. Six days after the murder, Renna received information that Baines was seen riding his bicycle away from the shooting. ER-13. He also learned that "word on the street" was that Baines killed Monterossa over a "turf beef." ER-13. It was further rumored that Monterossa, who was new to Oregon having recently moved up from California, was selling weed in Baines's territory. Ex 117 Vol 12 Tr 35. Renna, when he testified at the underlying trial, confirmed that Baines "was connected with" the area where the murder occurred and also testified that Baines's appearance was consistent with Muldrew's description of the shooter. ER-13.

Finally, the gun that the State's expert witness could not rule out as the gun used to kill Monterossa, which was found at Baines's residence, was fully functional when police retrieved it from the home, ER-13, contrary to the State's claim in its closing argument when trying to minimize the relevance of the gun as evidence indicating Baines's guilt.[36]

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[35] Farmer Release Hearing (2013) 09h25m38s, 38:02-39:12.
[36] Farmer Release Hearing (2013) 13h38m36s, 17:05-17:19

When cross-examining Renna, petitioner's attorney was unable to locate a copy of the police report written during the initial investigation, written after Renna had learned all of the above facts, in order to impeach Renna's testimony.[37] APP-1 This failure to locate the vital exhibit showing that police detectives ignored evidence of Baines's involvement, was made worse by the fact that the release hearing judge confirmed that he had not looked at any exhibits or memoranda from the prior proceedings and did not do so before making his ruling.[38] Thus, once again petitioner's advocate failed him as the State over-reached.

d. At the release hearing, the State introduced a new theory of the crime involving petitioner as a gang member "earning his stripes," based on a letter petitioner wrote in 2008 in gang vernacular, when in fact petitioner, as a religious leader and pastor within Oregon State Penitentiary, was trying to help a young man move away from gang culture.

The State introduced a new theory of the crime at the release hearing which was based upon a letter petitioner wrote in 2008 to a young man in trouble on the streets of Portland, and a letter petitioner wrote to his wife in 2001.[39] The letters were written in gang vernacular. The State used the 2008 letter, written seven years after the crime, to spring-board into a speculative argument in which petitioner

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[37] *Id*. at 1:02:01-1:04:01.
[38] *Id.* at 1:03:42-1:03:08.
[39] *Id*. at 1:22:01-127:14.

committed the crime in 2001 because he wished to "earn his stripes."[40] The State never introduced this motive, or indeed any other motive for why petitioner might have committed the crime at his underlying trial. Ex 117 at Vol 18 Tr 91-92. Other than these two letters, the State presented no evidence to support this theory.

The State's new argument had petitioner as a dangerous Crip gang member[41] who could never have had any legitimate reason to be the Woodlawn Park area because it was Blood territory.[42] Thus, the State argued, petitioner's presence at Dekum Street when Monterossa was killed could only be explained if he was there to commit a bad act.[43] This was a preposterous argument considering it the neighborhood where petitioner grew up, where he had spent his entire life, and where his mother, grandfather and most of his friends lived.[44] Petitioner's attorney objected to this testimony repeatedly on the grounds that it was never a part of the underlying trial, because it was highly speculative, and irrelevant. The court overruled his objections.[45]

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[40] Farmer Release Hearing (2013) 13h38m36s 1:30:19-01:32:52.
[41] Petitioner grew up in North Portland and like many teenagers who had unstable or non-existent family lives he depended on his friends for a sense of identity. In his neighborhood that meant picking a gang to affiliate with. He decided to be a Crip. However, he has never been at any point in his life an active gang member. He lived in the culture because he was a part of the community.
[42] *Id*. at 1:30:19-01.
[43] *Id.* at 1:31:15-1:32:05.
[44] Petitioner's mother lived one block from the shooting as did his grandfather. He had lived in the neighborhood his entire life.
[45] Farmer Release Hearing (2013) 13h38m36s 1:23:12-1:25:10; 1:35:52-1:36:30.

While petitioner wrote the letter in 2008 and sent it from Oregon State Penitentiary, it was returned to the institution for lack of proper address. Officer John Birch from the Security Threats Group intercepted the letter. However, Officer Birch testified that he believed that petitioner was actually trying to reach out to help someone, not to be "gangster."[46] The language use violated institutional rules and petitioner was given a violation.[47] However, Officer Birch explained that in his experience, petitioner needed to write in that language style because it was his intent to reach out to help a young man avoid gang culture; gang vernacular would be more likely to resonate with the individual.[48] Officer Birch regretted giving petitioner a violation, and he had in fact attempted to have the violation reversed after reflecting on the content of the letter.[49]

The State however, pursued the incorrect narrative that petitioner was currently a gang member operating within the walls of the penitentiary, based upon his 2008 letter, despite the fact that petitioner's life was then dedicated to studying toward and being ordained and licensed by the World Christian Ministries as a Bishop, which he completed in 2012. APP-2 He has taken part in leadership of Gospel Worship Services with St. Paul Missionary Baptist Church under Rev. Wooten and Pastor Hicks at Emmanuel Temple Church. APP-2. Further, petitioner

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[46] Farmer Release Hearing (2013) 11h23m32s, 6:20-6:45.
[47] *Id.* at 4:20-34.
[48] *Id*. at 5:11-44.
[49] *Id*. at 5:52-6:20.

has recently graduated from the Urban Ministry Institute's Christian Leadership Studies training program for Urban Ministry with the hope that one day he will operate as a minister within his community. APP-2. Petitioner's life is far removed from being a gang-member despite what the State has continued to assert. APP-2.

To strengthen its argument, the State called Detective Todd Gradwahl, a detective in the Gang Enforcement Team in North Portland, to testify that the area in which Monterossa was killed was a Blood affiliated neighborhood, and that Woodlawn Park, where petitioner said he smoked marijuana with Monterossa that day, was heavily aligned with the Woodlawn Park Bloods.[50] The State also asked Gradwahl to speculate as to whether he thought it possible that an identified Crip might have committed this murder to earn his stripes—which he did. [51]

This entire line of testimony had no basis in fact and was presumably offered to invoke distrust and hostility toward petitioner by playing into stereotypes that are commonly inflicted upon young black men. The State further bulldozed Officer John Birch, who had known petitioner since his incarceration in 2001, when he attempted to testify that he had never had any contact with petitioner that would indicate any gang activity.[52]

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[50] Farmer Release Hearing (2013) 09h25m38s, 1:29:45-1:30:55.
[51] *Id.* at 1:31:02-15.
[52] *Id.* at 11h23m32s;11:04-13:03.

e. Following the court's denial of his motion for release, petitioner could not appeal the decision under ORS 135.240 because the statute provides no right to appeal.

ORS 135.240 does not provide a right to appeal a bail hearing court's decision.[53] Therefore, just as with his trial, petitioner lost even though the State's case was built upon the flimsiest of evidence, now including a speculative false narrative indicating that petitioner was a gang member operating in the Oregon State Penitentiary—a claim it would have discovered is patently false if it had taken even the most minimal good-faith investigation. APP-2.

Following the reversal of his conviction, the State through this hearing, has been permitted to hold petitioner for yet another six years of his life while it challenges the correct ruling of the post-conviction trial court that petitioner deserves a new trial.

2. The Oregon Court of Appeals reversed the post-conviction trial court's decision even though petitioner received no advocacy before the court.

When the State challenged the post-conviction trial court's reversal of petitioner's conviction, petitioner's attorney submitted a response brief that failed to address any of the legal arguments raised by the State.[54] Instead, the brief depended on copying and pasting large chunks of the trial court's letter opinion in

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[53] ORS 135.240 does not make any reference to any rights of appeal associated with a bail hearing.

[54] Brief for petitioner-respondent, *Farmer v. Premo*, 283 Or App 731, 390 P3d 1054 (2017) (No A152447) 2013 WL 9839402.

lieu of an argument. Further, his attorney failed to show up for oral argument leaving petitioner with absolutely no advocacy before the Court of Appeals.

The Court of Appeals was well aware that petitioner was essentially unrepresented. The court began the one-sided oral argument with the following exchange:

> Court: Mr. Smith what is the legal effect of the respondent's failure in his brief to counter the legal arguments that you raise on behalf of the State in the opening brief?
>
> Mr. Smith: May it please the court, Paul Smith on behalf of the Superintendent. I guess I hadn't thought about that question. It's clear that respondent's brief appears to do nothing more than quote back the trial courts letter opinion. In this case, I think this court still has an independent obligation to assess whether the post-conviction court erred and we contend that the court did err. So I guess, off the top of my head I am not sure if there is any legal effect in terms of this court's obligations and this court has an obligation to review the assignments of error and determine whether the post-conviction court erred or not.[55]

It is clear from this exchange that the court knew that petitioner's attorney had presented no discernable advocacy, but it permitted the one sided oral argument to continue despite the fact that it only addressed the legal arguments raised by the State. Furthermore, the court knew that petitioner has no right to relief for ineffective assistance of counsel in a post-conviction appeal under the PCHA.

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[55] Audio recording of oral argument at 0:25-1:43, Oct 28, 2014, *Farmer*, 283 Or App 731.

The relevant statute, ORS 138.530(1)(a) provides the grounds under which a court must grant post-conviction relief. The statute provides in part:

> Post-conviction relief pursuant to ORS 138.510 (Persons who may file petition for relief) to 138.680 (Short title) shall be granted by the court when one or more of the following grounds is established by petitioner:
>
> (a) A substantial denial in the proceedings resulting in petitioner's conviction, or in the appellate review thereof, of petitioner's rights under the Constitution of the United States, or under the Constitution of the State of Oregon, or both, and which denial rendered the conviction void.[56]

This statute explicitly limits post-conviction relief to the circumstances surrounding the original conviction and its direct appellate review of the conviction. The PCHA provides no right to relief for ineffective assistance of counsel during post-conviction proceedings. It is therefore especially egregious that the Court of Appeals reversed the post-conviction trial court's decision. The court was fully aware that the indigent petitioner's post-conviction appellate attorney provided him with no advocacy when he failed to address any of the legal issues raised by the State and then abandoned him completely by failing to show up for oral argument.

The Anglo-American system of law depends on a robust adversarial process. Wigmore explains its importance at trials:

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[56] ORS 138.530(1)(a).

> Our dispute resolution system is premised on the belief that the adversarial system will produce the "truth" and that cross-examination is the best method for discovering the "truth."
>
> It may be that in more than one sense, [cross-examination] takes place in our system which torture occupied in the mediaeval system of the civilians. Nevertheless it is beyond any doubt the greatest legal engine ever invented for the discovery of truth. However difficult it may be for the layman, the scientist, or the foreign jurist to appreciate its wonderful power, there has probably never been a moment's doubt upon this point in the mind of a lawyer of experience. Cross-examination, not trial by jury is the great and permanent contribution of the Anglo-American system of law to improve methods of trial procedure.[57]

Our faith in the adversarial process to lead a trier of fact to the truth is not limited to the trial process. The United States Supreme Court has frequently written about its necessity for two sides to present the issues at stake, requiring "concrete adverseness," which is necessary because it, "sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."[58] If a court only hears one side of a legal argument, then it lacks the tools necessary to be certain the correct outcome is reached.

Justice cannot be found when a court appointed lawyer's deficiency is so flagrant that he provides essentially no advocacy whatsoever—and when no cognizable claim exists to remedy the deficiency. This is especially so when the stakes are so high. Petitioner has already served more than seventeen years in

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[57] John Henry Wigmore, 5 *Evidence in Trials at Common Law* § 1367, 32 (1979).
[58] *Baker*, 369 US at 205.

prison for a crime he has always adamantly insisted he did not commit. The injustice petitioner has endured has been exacerbated by the fact that the Court of Appeals proceeded to reverse the post-conviction trial court's decision without benefitting from that fundamental necessity that guides our system—adversity—two sides, both with a concrete stake, both laying out the issues so that a court can arrive at the truth.

IV. CONCLUSION

For the foregoing reasons, *amicus* asks this Court to reverse the Court of Appeals decision and affirm the post-conviction judgment that reversed petitioner's conviction and remanded for a new trial. In the alternative, *amicus* requests that this court grant or order, "such other relief as may be proper or just." ORS 138.520.

DATED February 19, 2018

Respectfully Submitted,

CRIMINAL JUSTICE REFORM CLINIC

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APPENDIX

Pursuant to ORAP 5.52, *Amicus* CJRC submits the following, as indexed below.

INDEX

0130 01 / 0900 / DET. DIV. / CUSTODY OFFICER JOHN BLAIR

CRINER, LLOYD S.

M/B 080464

2723 NE 9TH

287-0808

APPENDIX 1

RIGHTS - SAID B. RUNNA

"YES" TO EACH RIGHT

DOPE HOUSE / BLUE HOUSE MID-BLK.

TONY LIVES THERE -

THERE YESTERDAY - THEN TO

AARON PETERSONS BARBER SHOP

THEN TO STORE -

45-55 YOA -

BYRONE BRANCH WORKS AT SAME

BRANCH SAYS "RAT" DID

HOMICIDE - BRANCH SITTING

ON PORCH DRINKING 40 oz &

SAT RAT RUN AFTER HOMICIDE

= TURF BEEF

RAT. M/B 19 - 20, BLOOD

TALL, THIN, MRS. ARRU.

APP # 2

World Christianship Ministries

PO Box 8041 - Fresno, CA. 93747
Phone Number
(559) 297-4271

Date: February 13, 2012

This letter confirms that Bishop Danté R. Farmer was ordained and licensed by this ministry on the above date as independent Christian clergy.

World Christianship authorizes the individuals that we ordain the authority to perform all standard Christian religious services including the rite of marriage, in accordance with state law, and begin their own independent church or ministry as they deem appropriate.

The issuance of this letter confirms that this individual accepts the beliefs of World Christianship as evidenced by the following verses of The Holy Christian Bible: Christ (as stated in Acts 15:11), the Gospel (as stated in 2 Timothy 3:16) and the spreading of the Christian Faith (as stated in Mark 16:15).

Rev D McCloy

Administrator/Bishop or Admin. Assist.
World Christianship Ministries

Note: Ordination credentials from WCM are not valid for entrance to jails or other penal facilities

APP #2

World Christianship Ministries

United in Christ

Certificate of Ordination

This is to certify that the below named individual has been Ordained and Licensed into the Christian Ministry as Independent Clergy on: February 13, 2012.

Danté R. Farmer

World Christianship Ministries authorizes this individual the authority to perform standard Christian services on behalf of the Christian faith and in accordance with the teachings of the Holy Bible.

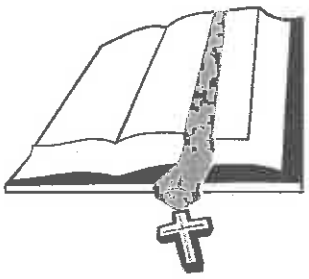
Administrator/Bishop or Admin. Assistant
World Christianship Ministries
Fresno, CA. 93747-8041 USA
Acts 15:11, Mark 16:15, 2 Timothy 3:16

Ordination Committee

Note: Ordination credentials from WCM are not valid for entrance to jails or other penal facilities

APP # 2

World Christianship Ministries



Bible Study Programs

This certificate is hereby awarded with honors to

Bishop Dante R. Farmer

upon successful completion of the

As Jesus Taught It

Bible study course on March 21, 2012.

wcm.org

Administrator-Bishop or Admin. Assist.
World Christianship Ministries
Bible Study Programs
Fresno, CA. 93747-8041 USA

APP #2

SHEPPARD WEALTH

Andrew D. Papendieck
Principal / Wealth Manager
andy@sheppardwealth.com

800 Willamette St., Suite 800
Eugene, OR 97401

11-6-17

Re: Dante Farmer

To whom it may concern:

I'm writing this in support of the effort to bring justice in the criminal case against Dante Farmer. I first met Dante nearly seven years ago in my role as a volunteer at the Oregon State Penitentiary. Dante has been a consistent and faithful participant in the chapel programs I helped facilitate during this entire time. His strong moral character and genuine faith brought him into an inmate leadership role for our Christian journaling class at the prison, a role he continues to hold currently. He is clearly looked up to by those who participate in our class as someone who lives out what he believes. His clear conduct record throughout his many years of incarceration is further evidence of his integrity.

I've also spent time with Dante in my visits to other prison programs outside the chapel. This has allowed me to gain greater clarity of who he is as a person. As a 17 year volunteer at OSP, I've developed a number of friendships with men serving long sentences. Many of these men have established a history of "clear conduct" at OSP for many years. It is through their eyes that I gain a better understanding of who someone is and how they live their life inside prison walls. Without exception, Dante is admired and respected by these men as well.

I personally attended a post conviction appeal hoaring* for Dante's case several years ago. I will refrain from going into the facts of his case and leave that to those much more qualified than me. I will simply ask you to add my name to the many individuals who are shocked and outraged by the glaring injustice evident in the prosecution's case against Dante Farmer.

When justice is served and he is released, I have no doubt that Dante will live an exemplary life outside prison walls just as he has on the inside. I lead a transitional support ministry called Genesis Reintegration Program, also known as G.R.I.P. Our entire volunteer group thinks highly of Dante and is committed to support him as he transitions back into society.

Respectfully,

Andy Papendieck

Director, Genesis Reintegration Program

OSP Volunteer of the Year Recipient, 2011 & 2014

*referring to the release hearing 2013.

Mobile: 541-543-6600 Phone: 541-972-3252 Fax: 541-223-7470

APP #2

RJMJ
Enterprises, Inc.

To whom it may concern,

I am a 65 year old who runs his own business and am the director of prison ministries for Cedar Mill Bible Church in Portland. I am married with two daughters and two grandsons. I've been a resident of Oregon since 1985 when Intel Corporation, for whom I worked 26 years, moved our family to Oregon.

I began serving as an Oregon Department of Corrections Home for Good Oregon mentor under the auspices of Prison Fellowship, and have served as a religious services volunteer since 2014. It is in that latter capacity where I help facilitate The Urban Ministry Institute (TUMI) at Oregon State Penitentiary (OSP).

TUMI (https://www.tumi.org/) equips leadership for the urban church, especially among the poor, in some 500 locations worldwide. About half of these institutes are inside prisons.

I met Dante Farmer when he joined the TUMI class inside OSP three years ago. While I don't know much about his past, here's what I can attest to about his current life:

- He's an "A" student who faithfully attends class, completes all of his homework assignments, participates fully in the case study and sermon presentations, and serves as a role model for other students
- He has a gentle spirit that is obvious to all and regularly encourages his fellow classmates toward upright behavior
- He makes conscious choices to avoid situations and environments where trouble might arise and wisely uses his time to work on the demanding reading, writing and other TUMI assignments
- He's demonstrated compassion for the less fortunate by serving in the OSP infirmary and giving comfort to those who are sick and some who are dying.

My hope is that I will be able to start a TUMI on the outside in Portland once my commitment with the TUMI inside OSP is completed. I envision that Dante could be part of that TUMI leadership team and provide a positive influence on urban youth that might help them be a positive contributor in their community and avoid lawless behavior.

I respect Dante's amazing transformation from his pre-prison days until now. As an employer, I would welcome him to work for my company without hesitation.

Please feel free to contact me with any questions.

Regards,

D. Rick Johnson

17472 NW Gilbert Lane Portland, OR 97229 503/803-6193 Fax 503/645-3257

APP # 2

To whom it may concern, 9-29-17

My name is Dana Stephenson, and met Dante Farmer the first day of school in The Urban Ministry Institute in the Oregon State Penatentary almost four years ago.

I admit my fist impression of him was, "Great, we have a gang banger in the class." But I was compelled to introduce myself to him due to the nature of what the class was about to study, and the fact we were going to be together for possibly the next four years. Turns out—the cover was untelling of the man contained within.

These last three years has revealed a story of what this man was really about. We would all be a better person if we were to use Dante as a model. Dante has truely shown that he is a 'doer' of words, not just a 'sayer' who is hypicritical like so many others are. During my personal obsearvations, he is very considerate polite, and very humble, even when he is unaware that he is being observed interacting with his peers. In class he fully participates and displays an extremly high level of comprehension of the materials covered, volcentering insight that has helped me gain a perspective on some topics. This man would in my opinion be an asset to society who could benefit from his transformation were he given the chance to practice what he's gained from within the walls of O.S.P.

Thank you for your time in reading this

Respectfully

Dana Stephenson

APP ~~X~~ 2

10/8/17

To whom it may concern,

I first met Dante Farmer in a Christian Journaling Bible study class at OSP prison some eight years ago. From outward appearances Dante reminded me of many of the black inmates that I encounter in prison. Having a stocky build and tattoes on his arms I imagine my first reaction may have been to remain "stand offish" for fear of encountering those "no trespassing zones" that exist in prison between inmates of different skin color and different criminal backgrounds. But any such fears were quickly dispelled with Dante for I soon encountered in him a man who was genuinely disposed to serving God, and I felt the Spirit of the new creation that governed him bear witness to that same Spirit within myself, and all such barriers of the prison yard gave way to Christian brotherhood.

I recall Dante was working in the kitchen at that time we first met, and he was effective in encouraging many of his co-workers to join the Christian Journaling class we attended. I also recall that my friend Andrew Hale that I had known from County Jail also worked in the Kitchen and had told me that he and Dante along with a few others held a bible study each day during breaks that Dante led. Having learned this, also gave me a good impression of Dante, and provided me an example of Christian discipleship that I too should emulate.

More recently, Dante and I have been attending together a college level Christian leadership Seminary program. It has been a three and a half year commitment that we are about six months from completing. In this class that meets for three hours each week each member often has the opportunity to lead discussion groups, or to share their

testimony in front of the class, or to conduct a bible study or sermon. Each of these opportunities allow the class participants to witness the work that God is doing in each of our lives, and again I can testify as to having been impressed by the maturity of Dante as a Christian leader, and as a man commited to living out the example of Christ in his life. Notably, Dante has shared on occasion the challenges he has faced in prison with regards to his prison term, his family relationships, and challenges of daily prison life, and always his testimony is secured by his strong abiding faith in God.

Also, more recently, I was impressed by having the opportunity to observe first hand, yet unnoticed, one of Dante's workplace bible studies. Dante works now the late night shift in the infimary and several months ago I had to spend the night in the infimary prior to my hernia operation the next morning. Dante's shift started after I had gone to bed yet I could hear him late at night mentoring one of his co-workers in scripture and recounting the message taught at a recent Apologetics seminar Dante and I had recently attended. Again, Dante's commitment to serve God in sharing the gospel continues to be an example for me.

In prison I work in an office where we send shop drawings to the furniture factories along with the detailed Sales Orders to produce custom made office furniture. Recently an office staff member, who is also a Christian, commented to me how the shop floor staff who are not believers point to the Sales Order and demand that it specify exactly what is necessary because to them it is "the Bible", yet if they were asked to live their life with the same conviction to the actual Bible, they would fall short. Dante, however, does not fall short, and the new man he has become in Christ would be an asset to any community. Dan Symonds

Vance WORDEN #1034696

APP XX 2

To whom it Concerns:

I have known Dante Farmer for over 3 years now. He and I were called to study in the Seminary program, T.U.M.I. (The Urban Ministry Institute). Dante is one of the most influential persons to me, in this program.

To me, the character traits Dante demonstrates is what is needed throughout our entire society as a whole. Dantes thoughtfullness on all of the teachings is of the highest quality and influences all of the students in our Class. Dante not only proclaims this positive attitude, but, Dante also demonstrates this quality in his actions. Even when he is not in Class!

Dante has a way of bringing people to him in a positive way. This comes from his own positive character. This is the way that I know Dante. This is the way our entire society must learn to become. This can only happen through positive demonstration of character like that of Dante Farmer.

He is a POSITIVE Leader!

Thank you,

Vance Worden

APP #2

to whom it may concern

My name is Damon Revis I have known Dante farmer about three years me and Dante worked in the kitchen I realize he is a inspiration to me as a christain This man is full of integrity. As we met in the dining hall to report to work. We open our bibles and share scriptures As i Observed Dante He carried himself as a humble and a good person. when i was enrolled in tumi there He was in class anticipate with tumi. I deafently could say He's a good person

Damon Revis

APP ⅩⅩ2

To whom it may concern,

I am a fellow student with Mr Dante Farmer in The Urban Ministry Institute. He has been a great student and man of God. God has blessed him with the skills to preach & teach the word. Mr Farmer is both in school and in general population someone you can count on and look up to. What Im trying to say is he is a great possitive person we all can look up to. I beleive in my heart that God is going to use him in great ways outside these walls.

He has already touch many lives inside these walls. He shows how we to can change our lives. My hopes is that this letter will open your hearts and minds to seeing the man we see and love.

God Bless

Sincerely, Shelby E Croft #832592I

CERTIFICATE OF COMPLIANCE

I certify that (1) BRIEF OF AMICUS CURIAE complies with the word count limitation in ORAP 5.05(1)(b) and (2) the word count of this brief, as described in ORAP 5.05(2)(a) is 9103 words.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05 (4)(f).

/s/Venetia Mayhew_____
Venetia Mayhew (OSB # 176082)
Email: vmayhew@lclark.edu
Criminal Justice Reform Clinic
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10015 SW Terwilliger Blvd.,
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