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NO. 101199-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

PAUL CHASE,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Paul Chase seeks discretionary review of a unanimous and unpublished Court of Appeals opinion affirming the trial court's denial of his motion for new counsel. On the eve of a final hearing, after over a year of litigation and numerous days of testimony, Chase sought new counsel. The trial court read Chase's pleading, heard from him at the hearing, engaged with him to focus his complaints on the salient issue, evaluated the entire case file, and considered its own observations of counsel's representation. With all of this information, the trial court properly considered and denied Chase's request.

Review of the Court of Appeals' affirming opinion is unwarranted because the opinion was based on the proper application of well-settled law to a fact-specific inquiry. Thus, it does not raise any significant question of law under the constitutions of the State of Washington or of the United States. RAP 13.4(b)(3). This court should deny review.

II. ISSUE PRESENTED FOR REVIEW

Did the Court of Appeals correctly affirm the trial court's denial of Chase's motion for new counsel, when the record shows that the trial court made a thorough investigation into Chase's complaints and had a sufficient basis for reaching an informed decision?

III. STATEMENT OF THE CASE

On February 13, 2014, the State charged Chase with one count of Theft in the First Degree and included a major economic offense aggravator. CP 258. The trial court appointed a Snohomish County Public Defender to represent Chase. RP (3/10/21) at 391. During pre-trial litigation, Chase's counsel moved to suppress several bank records relating to Chase's finances. The trial court denied his motion and Chase filed for interlocutory review. The Court of Appeals affirmed the trial court's decision. *State v. Chase*, 1 Wn. App. 2d 799, 407 P.3d 1178 (2017), *review denied*, 190 Wn.2d 1024, 418 P.3d 786 (2018).

Upon remand, after years of litigation and extensive negotiation, Chase, through counsel, successfully resolved his case with the State. RP (12/09/19) at 10. On October 4, 2019, Chase pleaded guilty to a reduced charge of Theft in the Second Degree. CP 228.

On December 9, 2019, the trial court sentenced Chase to 20 days of confinement, converted to 160 hours of community service. CP 208-22. The plea offer included a provision that Chase could litigate the amount of owed restitution. RP (12/09/19) at 19. The trial court scheduled a restitution hearing for March 13, 2020. RP (12/09/19) at 29.

The onset of the COVID-19 pandemic forced the trial court to continue the hearing on several occasions. The hearing commenced on August 19, 2020, and the trial court heard argument from both parties. RP (08/19/20). The trial court determined that it needed to review documents it had recently received, took the matter under advisement, and stated that it may

schedule another hearing following its review of those documents. *Id.* at 58, 65.

On December 18, 2020, the parties appeared before the court and resumed the hearing. RP (12/18/20). The State presented its first witness on the topic of restitution. *Id.* Defense counsel voir dired, cross-examined, and re-cross examined this witness. *Id.* The parties were unable to conclude the evidentiary hearing during the time allotted and the court recessed the hearing. *Id.*

On January 15, 2021, the hearing resumed, with the State calling three additional witnesses. RP (01/05/21). Defense counsel voir dired and cross-examined each witness. *Id.* At defense counsel's request, the State also brought back its witness who testified at the December hearing for additional cross examination. *Id.* at 220-26. The hearing was then recessed again to allow the parties more time to present evidence. *Id.* at 281-82.

On February 5, 2021, the hearing resumed. RP (02/05/21). The State called its fifth witness, whom defense counsel voir

dired and cross-examined. *Id.* at 300, 315, 327. After the State rested, defense counsel recalled this witness. *Id.* at 335. Defense counsel then called Chase to testify. *Id.* at 339. During cross-examination, Chase referred to a document that had never been provided to the State or the trial court. *Id.* at 371. The trial court suspended the hearing to allow the Defense to disclose that document to the court and the State. *Id.* 373. The trial court directed the parties to confer and ultimately scheduled a final hearing for March 19, 2021. *Id.* at 374; RP (03/19/21).

Two days before the final hearing, Chase filed a document entitled “Statement of Paul Chase,” in which he wrote that he was making a motion of ineffective counsel. CP 103-07. Chase enumerated twelve generalized complaints, only a few of which related to the restitution hearings. *Id.* The document concludes with Chase requesting a continuance until he is able to replace his attorney. *Id.* at 106.

On March 19, 2021, the parties appeared before the trial court to complete the restitution hearing. RP (03/19/21). The trial

court stated it had reviewed Chase's filing. *Id.* at 381. The trial court then gave Chase an opportunity to further explain his concerns. *Id.* at 382. Chase began by explaining frustrations with his lawyer regarding events that occurred prior to entering his plea. *Id.* at 382-86. Chase explained to the judge that the "big" complaint he had with his counsel was "key trial issues." *Id.* at 386. After several minutes, the court interjected and asked Chase to address his concerns salient to the restitution hearing. *Id.* at 386-87. Chase then largely repeated complaints related to matters prior to his plea. *Id.* at 387-88.

The trial court next inquired of Chase's counsel, who stated that he believed the Rules of Professional Conduct prohibited him from responding to Chase's claims and required termination of his representation. RP (3/19/21) at 389. The State objected to Chase's request as untimely. *Id.* at 390.

Following its review of the pleadings, argument, the record, and its own observations, the trial court denied Chase's motion. RP (3/19/21) at 396. The trial court explained it was

denying Chase's motion as untimely and also on the merits because Chase had not shown good cause to discharge his counsel. *Id.* The trial court informed Chase that if he presented a motion to proceed pro se, the trial court would consider that motion. *Id.* at 396-98. Chase did not move to proceed pro se, instead accepting the trial court's offer for a short recess to consult with his counsel. *Id.* at 399. The hearing then resumed, and Chase's counsel informed the trial court that following consultation with Chase, he no longer had concerns about his ability to continue representation. *Id.* at 400.

On April 16, 2021, the parties appeared before the trial court for its oral ruling regarding the amount of owed restitution. RP (04/19/21). The trial court ordered \$26,933.41 restitution to the Department of Revenue and explained the reasons for that decision. *Id.* Shortly thereafter, the State submitted a proposed written order. CP 13. On June 11, 2021, after giving defense counsel time to review that order consistent with the court rules, the trial court signed and entered the order. CP 13-16. In a

corresponding letter to the parties, the trial court informed Chase that it was not accepting online educational classes as community service hours under Washington law, citing *State v Law*, 154 Wn.2d 85, 106, 110 P.3d 717 (2005). CP 13-14. The trial court scheduled a review hearing for December 10, 2021, to assess Chase’s progress toward completing his community service hours. *Id.*

Chase appealed the trial court’s restitution order, claiming it erred in denying his motion to discharge his attorney and appoint new counsel. *State v. Chase*, No. 82846-1-I (Wash. Ct. App. Jul. 25, 2022). In a unanimous unpublished opinion, the Court of Appeals affirmed the trial court’s decision. *Id.*

IV. REASONS WHY REVIEW SHOULD BE DENIED

Under RAP 13.4(b), this Court will accept review of a Court of Appeals decision terminating review only when the decision falls under one of four enumerated factors. In his petition, Chase argues that this case falls under RAP 13.4(b)(3), which requires that “a significant question of law under the

Constitution of the State of Washington or of the United States is involved[.]” But the Court of Appeals’ decision affirming the trial court’s denial of the motion for new counsel does not present such a question. Because the opinion properly applied well-settled law to a fact-specific inquiry, this Court should decline further review.

A. The Court of Appeals’ Opinion Finding No Abuse of Discretion by the Trial Court Does Not Raise a Significant Constitutional Question

The Court of Appeals properly determined that the trial court appropriately exercised its discretion to deny the motion for new counsel, and that decision does not present a significant constitutional question warranting this Court’s review under RAP 13.4(b)(3).

Whether to grant a request to substitute counsel is a matter within the trial court’s discretion. *State v. Thompson*, 169 Wn. App. 436, 457, 290 P.3d 996 (2012). A trial court conducts a proper inquiry when it makes a thorough investigation, allows the defendant to present all concerns, and

then provides a sufficient basis for its discretionary ruling. *State v. Schaller*, 143 Wn. App. 258, 270, 177 P.3d 1139 (2007).

As the Court of Appeals determined, the trial court's inquiry here was thorough and complete. *Chase*, slip op. at 5-7. First, the trial court reviewed Chase's written filings. RP (03/19/21) at 381. Second, the trial court allowed Chase to further explain his complaints to the court at the hearing. *Id.* at 382. Third, when Chase failed to focus his complaints on the ongoing restitution hearing, the trial court engaged with him and asked him to do so, offering him additional time to present his argument. *Id.* at 386-87. Fourth, the court engaged in a thorough review of the court file while assessing Chase's motion, a review the court then set forth on the record. Moreover, the trial court discussed its own observations of counsel's representation during the many hearings that had transpired. As the Court of Appeals noted, the trial court detailed its observations that Chase's counsel had "zealously advocated on his behalf throughout the restitution process." *Id.* at 390-91. Based on all of

the above, the Court of Appeals correctly concluded that the trial court's inquiry into Chase's complaints was sufficient. *Chase*, slip op. at 7.

Chase argues that the Court of Appeals "failed to review the quality of the trial court's inquiry." Petition for Review 16-17, 21. But the Court of Appeals' opinion belies this contention. The Court of Appeals dedicated two pages of its opinion to assessing the adequacy of the trial court's inquiry, highlighting several areas of information related to Chase's relationship with his counsel that the trial court considered. *Chase*, slip op. at 5-7. Examples include the trial court's review of the following: Chase's written pleading, in which Chase explained why he believed his attorney was not timely communicating with him; Chase's oral argument, in which he complained further about his relationship with his attorney; and Chase's additional argument after the trial court requested Chase explain his complaints as they impacted his counsel's representation for the ongoing restitution hearing. *Id.*, slip op. at 6. The Court of Appeals

properly applied well-settled case law to conclude that the trial court conducted an appropriate inquiry.

Chase cites, without analysis, to *United States v Adelzo-Gonzalez*, 268 F.3d 772 (9th Cir. 2001), to support his claim that the trial court's inquiry was deficient. Pet. for Review 21-22. In *Adelzo-Gonzalez*, the defendant moved for new counsel at six weeks, two weeks, and then again two days before his trial. *Id.* at 777. The defendant, who was Spanish speaking and used an interpreter, explained to the court that his counsel had sworn at and threatened him. *Id.* at 778. Further, defense counsel explicitly called the defendant a liar in open court, and suggested to the judge that someone was coaching the defendant. *Id.* at 778. The trial court failed to address the serious conflict between counsel and the defendant, such as by inquiring of the interpreter, and instead made perfunctory remarks regarding counsel's competence before denying the motion. *Id.*

Here, however, the Court of Appeals finding that the trial court's inquiry was sufficient is supported by the record. An

adequate inquiry is one by which a trial court obtains sufficient information to reach an informed decision. *Thompson*, 169 Wn. App. at 461; *United States v. McClendon*, 782 F.2d 785, 789 (9th Cir. 1986). Unlike in *Adelzo-Gonzalez*, Chase waited until two days before the final of five hearings, spanning over seven months, to make his motion. The record is devoid of any suggestion that Chase's counsel acted with impropriety, let alone hostility. The trial court fully assessed Chase's complaints based on the information it obtained from his pleading, his oral argument, his additional oral argument following the court's engagement, the court file, and the judge's own observations regarding defense counsel's diligent representation over the course of seven years of litigation. The Court of Appeals conclusion is supported by the record.

Therefore, the Court of Appeals correctly concluded that the trial court had a sufficient basis for reaching an informed conclusion supporting its discretionary ruling. No significant

constitutional question is before this Court and further review should be denied.

B. The Court of Appeals Correctly Determined That Chase’s Arguments Regarding Timeliness Failed To Comply with RAP 10.3(a)(6)

As the Court of Appeals determined, Chase cited no legal authority in support of his argument regarding the trial court’s ruling that his motion was untimely, and he failed to develop the argument in his brief. Under RAP 10.3(a)(6), the Court of Appeals properly declined to address the argument. *Chase*, slip op. at 4 n. 6, citing to RAP 10.3(a)(6); see *State v. Dennison*, 115 Wn.2d 609, 629, 801 P.2d 193 (1990). This Court should decline to grant review in order to address an argument for the first time that Chase failed to adequately brief before the Court of Appeals. See *Crystal Ridge Homeowners Ass'n v. City of Bothell*, 182 Wn.2d 665, 678, 343 P.3d 746 (2015) (declining to reach argument where party failed to raise it prior to filing its petition for review “aside from a single passing remark in its opening Court of Appeals brief,” because “[t]his court generally

does not consider issues, even constitutional ones, raised first in a petition for review[.]”).

C. Even if Chase Had Adequately Raised His Timeliness Argument Before the Court of Appeals, It Nonetheless Does Not Warrant This Court’s Review

Even if Chase had adequately raised his argument on the trial court’s timeliness ruling before the Court of Appeals, that ruling does not warrant this Court’s review under RAP 13.4(b)(3) because it does not present a significant constitutional question.

When considering whether a trial court abused its discretion in denying a request for new counsel, an appellate court will review three factors: (1) the extent of the alleged conflict, (2) the adequacy of the trial court’s inquiry, and (3) the timeliness of the request. *In re Pers. Restraint of Stenson*, 142 Wn.2d 710, 723-24, 16 P.3d 1 (2001). Here, as discussed above, the trial court conducted an adequate inquiry into Chase’s complaint and the alleged conflict he based it on. The trial court also did not abuse its discretion by finding that Chase’s motion

for new counsel, filed two days before the last of five hearings conducted over seven months, was untimely.

Timeliness is a fact-specific inquiry. In *United States v. Moore*, the defendant made several attempts to substitute counsel, the first over a month before trial and the last still two weeks before trial began. 159 F.3d 1154, 1161 (9th Cir. 1998). The reviewing court found the motions timely. *Id.* By contrast, in *Stenson*, although the defendant twice considered firing his counsel, he did not bring his motion for substitution until after several weeks of jury selection. *Stenson*, 142 Wn.2d at 717. Calling the motion untimely, the trial court rejected it. *Id.* at 732. On review, this Court affirmed, noting that when the request for change of counsel comes during trial or on the eve of trial, the trial court may, in the exercise of sound discretion, reject the request. *Id.* at 732.

Here, as in *Stenson*, the trial court properly considered the motion's untimeliness before denying. Chase filed his motion only two days before the fifth and final hearing in a lengthy

proceeding devoted to determining an amount of owed restitution. CP 103-07. This was the first and only request Chase made to substitute counsel during seven years of litigation while represented by the same counsel. These hearings spanned an approximately seven-month period following the initial delay, with four days of evidentiary proceedings. These hearings involved days of testimony from six witnesses and submission of numerous exhibits subject to scrutiny by counsel and the trial court. Chase's counsel represented him at each hearing and served as his attorney on the case for approximately seven years. Chase himself recognized that his request required delay, as he incorporated a dual request to continue the hearing. CP 106. The trial court's determination that Chase's motion was untimely is fully supported by the record.

Chase contends that his motion was timely because "[t]he trial court did not issue a final ruling on the issue of restitution and community service until June 11, 2021, after multiple

pleadings and multiple additional hearings.” Pet. for Review 15.

His argument lacks merit.

Although the trial court did not enter its written order until June 11, 2021, the March 19, 2021, hearing was the final evidentiary hearing. RP (3/19/21). The only restitution hearing that followed was on April 16, 2021, convened for the sole purpose of the trial court delivering its oral ruling regarding the amount of owed restitution. RP (4/16/21). The State prepared a written order consistent with the trial court’s oral ruling and presented it the trial court shortly thereafter. CP 13. The trial court waited to sign the order until defense counsel had time to review it, consistent with the court rules. *Id.* On June 11, 2021, the trial court issued and entered its written order, consistent with its oral ruling delivered April 16, 2021. CP 15-16.

Because no further evidentiary proceedings were held after March 19, 2021, the trial court did not abuse its discretion by determining that Chase’s motion, submitted two days prior to the final evidentiary hearing and after the majority of the

evidence had been taken during the proceeding months, was untimely. Substitution of counsel at that time could have undone months of proceedings and caused months of additional delay as new counsel became familiar with the extensive case record and prepared to represent Chase. The date the trial court issued its written order has no bearing on whether Chase's motion for new counsel for the final evidentiary proceeding was timely.

Even if Chase had adequately presented his arguments regarding timeliness before the Court of Appeals, the record demonstrates that the trial court did not abuse its discretion in determining that his motion for new counsel was untimely, and the trial court's decision does not present a significant constitutional question. Review should be denied.

V. CONCLUSION

The Court of Appeals properly applied well-settled law to affirm the trial court's denial of Chase's last minute motion to substitute counsel. Nothing in the decision raises a significant

constitutional question. Accordingly, this Court should deny Chase's petition for review.

This document contains 3,214 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 24th day of October, 2022.

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NO. 101199-7

SUPREME COURT OF THE STATE OF WASHINGTON

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DECLARATION
OF SERVICE

I, Nicole Symes, declare as follows:

On October 24, 2022, I sent via the Washington State Appellate Court's Secure Portal, a true and correct copy of Answer to Petition for Review and Declaration of Service, addressed as follows:

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

DATED this 24th day of October, 2022, at Seattle,
Washington.



NICOLE SYMES

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

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