

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	101279-9
Respondent,)	No. 37343-6-III
)	
vs.)	MOTION TO
)	CONSOLIDATE
ALEJANDRO MARTINEZ,)	APPEAL WITH
Appellant.)	No. 37344-4-III
_____)	

I. IDENTITY OF MOVING PARTY

Appellant, by and through counsel of record, Nielsen Koch & Grannis, PLLC, requests the relief stated in part II.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 3.3, 1.2(a), and 18.8(a), Mr. Alejandro Martinez (Alex) requests that this Court consolidate his appeal with his codefendant's appeal, State v. Eduardo Martinez, Court of Appeals No. 37344-4-III, now Supreme Court No. 101124-5.

III. FACTS RELEVANT TO MOTION AND GROUNDS FOR RELIEF

1. Alex and his brother, Eduardo, were tried together. Their appeals were originally consolidated, pursuant to RAP 3.3(a). Alex successfully moved to deconsolidate their appeals after Eduardo's appeal

was significantly delayed. Despite the deconsolidation, the court of appeals heard oral argument and issued decisions in both cases on the same dates.

2. Alex moved for reconsideration on July 18, 2022. Eduardo did not seek reconsideration, instead filing a petition for review on July 28, 2022. Eduardo's case is now set for consideration by the Washington Supreme Court on November 8, 2022. Alex is filing his petition for review contemporaneously with this motion. If the appeals are not consolidated, it is likely that Alex's petition will not be considered until December 2022 or January 2023, after Eduardo's petition.

3. The appeals should be consolidated once again, because there is an overlapping issue in the brothers' petitions for review. Specifically, both Alex and Eduardo have petitioned the trial court's restriction of voir dire by not allowing them to inquire into jurors' potential biases against Mexican immigrants. The appeals should be consolidated, because Eduardo did not raise this issue in the court of appeals and so Alex's briefing on the issue is more developed. For that same reason, the court of appeals decision in Eduardo's case does not address the issue. Given the significant question of constitutional law, the Washington Supreme Court should have the benefit of full briefing on the issue.

4. Undersigned counsel notified counsel for the State, Mr. Terry Bloor, on September 13, 2022 of her intent to move to consolidate the appeals. Any response from the State will be due before Eduardo's petition is considered on November 8, 2022, and so consolidation should not create any significant hardship for the State.

5. This Court has authority to order the appeals to be reconsolidated. RAP 3.3(b) provides: "The appellate court, on its own initiative or on motion of a party, may order the consolidation of cases or the separation of cases for the purpose of review. A party should move to consolidate two or more cases if consolidation would save time and expense and provide for a fair review of the cases." Consolidation would both save time and provide for a fair review of both Alex's and Eduardo's appeals.

IV. CONCLUSION

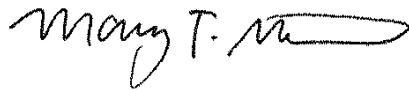
For the reasons discussed, counsel respectfully requests that this Court grant the motion and consolidate the appeals.

DATED this 14th day of September, 2022.

I certify this document contains 472 words, excluding those portions exempt under RAP 18.17.

Respectfully submitted,

NIELSEN KOCH & GRANNIS, PLLC

A handwritten signature in black ink, appearing to read "Mary T. Swift", with a horizontal line extending from the end of the signature.

MARY T. SWIFT, WSBA No. 45668
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Attorney for Appellant

NIELSEN, BROMAN & KOCH P.L.L.C.

September 14, 2022 - 8:08 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 37343-6
Appellate Court Case Title: State of Washington v. Alejandro S. Martinez
Superior Court Case Number: 98-1-00742-1

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