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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Appellant,

Supreme Court No. 91211-4

Court of Appeals No. 44761-4-II

Clark County Superior  
Court No. 11-1-00704-9

v.

MOTION FOR EXTENSION OF  
TIME TO FILE PETITION FOR  
REVIEW

DARIN RICHARD VANCE,

Defendant/Respondent.

**I. IDENTITY OF MOVING PARTY**

COMES NOW the Defendant/Respondent, Darin R. Vance, by and through his attorneys, David T. McDonald and Steven W. Thayer, and moves the Court for the relief as requested in Part II of this motion.

**II. STATEMENT OF RELIEF SOUGHT**

The Respondent seeks an extension of time in which to file the Respondent's Petition for Review from 5:00 pm on January 8, 2015 until the time of the filing of the Petition on Friday January 9, 2015. This motion is supported by the attached Declaration of Counsel which is incorporated by this reference.

**III. FACTS RELEVANT TO THE MOTION**

On December 9, 2014, the Court of Appeals issued its opinion in this matter. On

1 – MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW

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1 January 9, 2015, I filed the Petition for Review on January 9, 2015 and a check for the filing fee  
2 was mailed on January 12, 2015 to the court.

3 On January 16, 2015 at approximately 4:30 p.m., I received a letter from the  
4 Court via e-mail that stated the Petition for Review had been filed one day late and directed that I  
5 could file a motion for extension of time.

6 I was out of the country at the time the Court of Appeals filed its opinion but I  
7 reviewed the opinion on my return and calculated the due date for the Petition for Review as  
8 January 8, 2015. In calculating that 30 day period with a due date of January 8, 2015, I included  
9 the date of filing of the Court of Appeals opinion in my calculation. Unfortunately, I now  
10 learned that January 8, 2015 would have been period of 31 days from the date of the filing of the  
11 opinion if one includes the filing date.  
12

13 Subsequently, on January 7, 2015, as I was working on the Petition for Review, I  
14 discussed the case with another criminal defense colleague who reminded me that under RAP  
15 18.8, the date of the filing of the Court of Appeals opinion did not count in calculating the 30 day  
16 period for filing the Petition for Review.

17 At that point, believing that I had correctly calculated the due date of January 8,  
18 2015 with the inclusion of the date of the filing, I determined that the actual due date for the  
19 Petition for Review was January 9, 2015 and acted accordingly. Again, I have now learned that  
20 date was incorrect.  
21

22 On Friday, January 16, 2015, after I received the letter from this Court stating  
23 that I had filed the Petition for Review a day late, I immediately contacted the Court as I was  
24 sure that I had filed it correctly. At that point, the clerk and I each counted out the days one by  
25 one on the calendar and it was at that time that I recognized my errors as set forth above. The  
26

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1 January 16, 2015 letter also states that the filing fee needed to be paid. My understanding from  
2 the clerk's office was that if the Petition is filed electronically, the payment needs to be sent via  
3 first class mail and my office drafted a check that was sent to the Court on January 12, 2015 and  
4 should have arrived at the Court prior to the Court's January 16, 2015 letter.

5 **IV. GROUNDS FOR RELIEF SOUGHT**

6  
7 RAP 18.8(a) & (b) allow for the court to exercise its discretion for the extension  
8 of time where defective filings were upheld due to 'extraordinary circumstances,' i.e.,  
9 circumstances wherein the filing, despite reasonable diligence, was defective due to excusable  
10 error and the lost opportunity to have the court review a completed and filed petition on its  
11 merits would constitute a gross miscarriage of justice. In this case, I simply miscalculated the  
12 30-day period of time in which to file the petition by one day and, as a result, filed the brief in  
13 the manner that I erroneously believed to be timely. In addition, under RAP 18.9(a), the court  
14 can impose terms where appropriate and the court can consider that fact in determining the  
15 appropriateness of granting the motion for extension of time.  
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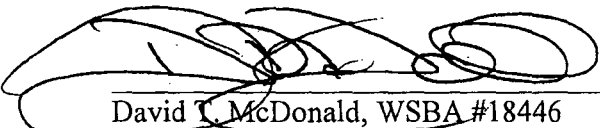
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1           Moreover, Washington Constitution, Article I, section 22, provides that a  
2 defendant has a right to the effective assistance of counsel. In this case, the trial court dismissed  
3 Mr. Vance's case but the Court of Appeals reversed. Therefore we respectfully request that the  
4 Court allow this motion and not let the fact that Mr. Vance's counsel miscalculated the 30-day  
5 time frame, a good faith error, operate to prevent the Court from reviewing his petition for  
6 review on the merits.

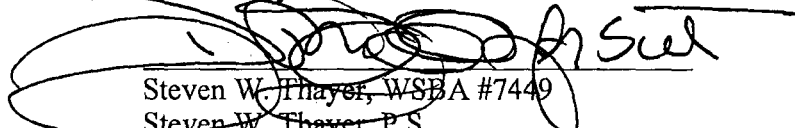
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DATED THIS 19th day of January 2015.

Respectfully submitted,



David T. McDonald, WSBA #18446  
David T. McDonald, P.C.  
510 SW 3rd Avenue, Suite 400  
Portland, OR 97204-2543  
(503) 226-0188  
Of Attorneys for Darin R. Vance



Steven W. Thayer, WSBA #7449  
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360-694-8290  
Of Attorneys for Darin R. Vance

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
  
Plaintiff/Appellant,  
  
v.  
  
DARIN RICHARD VANCE,  
  
Defendant/Respondent.

Supreme Court No. 91211-4  
  
Court of Appeals No. 44761-4-II  
  
Clark County Superior  
Court No. 11-1-00704-9  
  
DECLARATION OF COUNSEL  
IN SUPPORT OF MOTION FOR  
EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW

I, DAVID T. MCDONALD, make this declaration in regard to the above-captioned matter.

1. I am one of the attorneys of record representing Mr. Vance;
2. On December 9, 2014, the Court of Appeals issued its opinion in this matter. On January 9, 2015, I filed the Petition for Review and a check for the filing fee was mailed on January 12, 2015 to the Court.
3. On January 16, 2015 at approximately 4:30 p.m., I received a letter from the Court via e-mail that stated the Petition for Review had been filed one day late and directed that I could file a motion for extension of time.
4. I was out of the country at the time the Court of Appeals filed its opinion

1 – DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW

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1 but I reviewed the opinion on my return and calculated the due date for the Petition for Review  
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3 included the date of filing of the Court of Appeals opinion in my calculation. Unfortunately, I  
4 now learned that January 8, 2015 would have been period of 31 days from the date of the filing  
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7           5. Subsequently, on January 7, 2015, as I was working on the Petition for  
8 Review, I discussed the case with another criminal defense colleague who reminded me that  
9 under RAP 18.8, the date of the filing of the Court of Appeals opinion did not count in  
10 calculating the 30 day period for filing the Petition for Review.

11           6. At that point, believing that I had correctly calculated the due date of  
12 January 8, 2015 with the inclusion of the date of the filing, I determined that the actual due date  
13 for the Petition for Review was January 9, 2015 and acted accordingly. Again, I have now  
14 learned that date was incorrect.  
15

16           7. On Friday, January 16, 2015, after I received the letter from this Court  
17 stating that I had filed the Petition for Review a day late, I immediately contacted the Court as I  
18 was sure that I had filed it correctly. At that point, the clerk and I each counted out the days one  
19 by one on the calendar and it was at that time that I recognized my errors as set forth above.

20           8. The January 16, 2015 letter also states that the filing fee needed to be paid.  
21 My understanding from the clerk's office was that if the Petition is filed electronically, the  
22 payment needs to be sent via first class mail and my office drafted a check that was sent to the  
23 Court on January 12, 2015 and should have arrived at the Court prior to the Court's January 16,  
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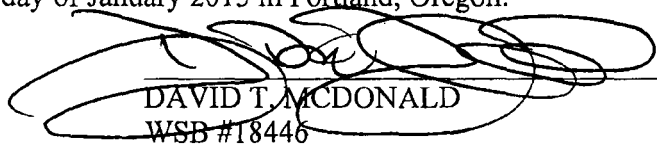
2 – DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR EXTENSION OF  
Page TIME TO FILE PETITION FOR REVIEW

1 2015 letter (a copy of the letter and the check stub are attached and incorporated by this  
2 reference).

3 Certification of Declarant:  
4

5 I declare under penalty of perjury under the laws of the State of Washington that  
6 the foregoing is true and correct.

7 DATED this 19th day of January 2015 in Portland, Oregon.

8   
9 DAVID T. McDONALD  
10 WSB #18446

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**David T. McDonald**

Courtroom Lawyer

Admitted to State & Federal Courts in Oregon & Washington

510 S.W. 3rd Ave., Suite 400 (503) 226-0188

Portland, OR 97204 Fax: (503) 226-1136

January 12, 2015

Clerk  
Court of Appeals  
Division II  
950 Broadway  
Ste 300, MS TB-06  
Tacoma, WA 98402-4454

Re: **State of Washington v. Darin Richard Vance**  
**NO. 44761-4-II**

Dear Clerk:

Please find enclosed a check in the amount of two hundred dollars (\$200.00) for our filing fee in the above captioned case. A petition for review was filed with the Court of Appeals on Friday, January 9, 2015 via email.

Please contact our offices if you have any questions regarding this matter.

Sincerely,



Carol Duncan  
Assistant to Mr. McDonald

Enclosure



DAVID T. McDONALD, P.C.

10818

Washington State Supreme Court  
01/09/15

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IN THE SUPREME COURT  
STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	Supreme Court #91211-4
	)	Court Appeals #44761-4-II
vs.	)	Clark County #11-1-00704-9
	)	
DARIN RICHARD VANCE,	)	<b>DECLARATION</b>
	)	<b>OF SERVICE</b>
Petitioner.	)	
_____	)	

I declare that on January 19, 2015, a true copy of the foregoing Motion for Extension of Time to File Petition for Review and supporting Declaration was served on the following:

Rachael R. Probstfeld (via email)  
[Rachael.probstfeld@clark.wa.gov](mailto:Rachael.probstfeld@clark.wa.gov)

Clerk, Supreme Court of Washington  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

I declare under penalty of perjury of the laws of the State of Oregon that the foregoing is true and correct.

Signed at Portland, Oregon this 19<sup>th</sup> day of January 2015.



Carol Duncan, Legal Assistant  
[carol@mcdonaldpc.com](mailto:carol@mcdonaldpc.com)

**OFFICE RECEPTIONIST, CLERK**

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**To:** Carol Duncan; Rachael Probstfeld  
**Subject:** RE: State v Vance No. 91211-4

Received 1-20-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Carol Duncan [mailto:carol@mcdonaldpc.com]  
**Sent:** Monday, January 19, 2015 4:57 PM  
**To:** OFFICE RECEPTIONIST, CLERK; Rachael Probstfeld  
**Subject:** State v Vance No. 91211-4

Dear Clerk:

Attached please find Respondent's Motion for Extension of Time to File Petition for Review.

Thank you for your attention to this matter.

Sincerely,

Carol Duncan  
Assistant to David T. McDonald  
503-226-0188 (ph)  
503-226-1136 (f)