

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 94294-3
Respondent,)	
)	ANSWER TO STATE'S
vs.)	MOTION TO STRIKE
)	
THOMASDINH BOWMAN,)	
Petitioner.)	
_____)	

I. IDENTITY OF ANSWER PARTY

Petitioner Thomasdinh Bowman, by and through counsel of record, Kevin A. March of Nielsen, Broman & Koch, requests the relief stated in part II.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 10.1(h), RAP 18.8(a), and RAP 1.2(a), Bowman asks that his pro se reply not be stricken but considered in due course.

III. FACTS RELEVANT TO ANSWER

1. Bowman filed a petition for review that contained counsel's arguments as well as pro se arguments. The State did not object to the hybrid nature of the petition in its answer.

2. Through counsel, Bowman moved for an extension to file a pro se reply in support of review on May 8, 2017, asking that the due date be extended until May 22, 2017. The motion was granted the same day. The State never objected.

3. Bowman filed his reply late on May 22, 2017; the court received the reply on May 23, 2017 and, “in the interests of justice,” accepted it by ruling of May 24, 2017.

4. On May 30, 2017, the State filed a motion to strike the reply, contending in part that “[l]itigants who are represented by appellate counsel are not permitted to personally file pleadings with the appellate courts, with the exception of a Statement of Additional Grounds in a direct appeal. RAP 10.10.” Mot. to Strike at 2.

5. On May 30, 2017, a few hours after the State’s motion to strike was filed, the clerk stated that any answer should be served and filed by June 6, 2017.

IV. ARGUMENT

For the first time in the State’s motion to strike, the State objects to Bowman’s filing of pro se pleadings. The State’s objection comes too late and would otherwise deprive criminal litigants of an opportunity to seek review of their pro se issues in this court. In any event, by claiming that Bowman’s pro se arguments were unsupported by the law and the record, the State expressly invited the reply it is now objecting to.

1. The State’s objection to Bowman’s filing of pro se arguments was waived by its prior failure to object to the pro se arguments

The State claims there is no authority for Bowman to file pro se pleadings because he is represented by counsel. Mot. to Strike at 2-3. The State, however, saw Bowman filed a hybrid petition for review containing his pro se arguments. Nowhere in its answer to the petition for review did the State claim that Bowman was not permitted to seek

review of pro se issues rejected by the Court of Appeals. The State also saw that Bowman sought leave to file a pro se reply when counsel moved to extend time to enable Bowman to do so. The State did not answer this motion or object.¹ Given that the State has not responded or objected to the filing of Bowman's hybrid or pro se pleadings until now, it has waived its opportunity to do so. The State's objection to Bowman's filing of pro se pleadings comes too late and this court should not consider it.

2. The State is mistaken that a represented litigant cannot seek this court's review of pro se issues rejected by the Court of Appeals

According to the State, the only pro se pleading a represented criminal litigant can file is the statement of additional grounds (SAG) pursuant to RAP 10.10. Mot. to Strike at 2. Bowman filed a SAG; it was summarily rejected by the Court of Appeals without meaningful analysis. Bowman disagrees with the Court of Appeals' treatment of his SAG issues and has asked this court to review them. Nothing in the rules or case law prohibits him from doing so.

RAP 10.1(h) permits the court to "authorize or direct the filing of briefs on the merits other than those listed in this rule." RAP 1.2(a) expresses an overarching preference to consider cases on their merits to promote justice rather than on compliance or noncompliance with particular rules. As this court has stated in discussing the importance of the SAG procedure,

Recognizing a hopeful pro se's procedural opportunity for recourse short of complete self-representation is consistent with our jurisprudence in the area of self-representation. It acknowledges reasonable limits on the right may be necessary in some cases because of countervailing prudential and

¹ The State might claim that, because the deputy clerk ruled on the motion to extend time on the same day it was filed, it had no opportunity to object or answer the motion. However, RAP 17.4(c)(2) provides that clerk would have treated the State's responsive pleading, had there been one, "as a motion for reconsideration of the ruling." The State opted to forgo this option.

constitutional considerations. But where a defendant presents good cause not outweighed by countervailing concerns, courts must proceed in a manner that respects the defendant's exercise of the right to self-representation.

State v. Rafay, 167 Wn.2d 644, 654, 222 P.3d 86 (2009) (citations omitted). Consistent with its statements in Rafay, this court has considered pro se arguments raised in a statement for additional grounds on their merits or to grant other relief, despite that the litigant is represented by counsel. E.g., State v. Hirschfelder, 170 Wn.2d 536, 550, 242 P.3d 876 (2010) ("generously" considering argument raised in SAG as equal protection claim); State v. Harvey, 175 Wn.2d 919, 920-22, 288 P.3d 1111 (2012) (remanding for transcription of proceedings that would colorably support SAG argument); State v. Ramos, 171 Wn.2d 46, 48-49, 246 P.3d 811 (2011) (explaining procedural history of pro se claim raised in SAG that community placement condition was too vague).

Under the State's logic, a litigant may not ever seek further review in this court of SAG issues rejected by the Court of Appeals, even where the Court of Appeals was incorrect. But depriving a litigant of further review of their SAG issues is inconsistent with this court's precedent, with RAP 1.2(a), and with RAP 10.1(h). The State's logic is also clearly inconsistent with the practices of the clerk's office, which permitted Bowman to file even a belated a pro se reply in the "interests of justice," i.e., to promote a decision on the merits. The court should permit Bowman to advance his pro se claims and deny the State's motion to strike his reply brief.

3. To the extent any of Bowman's arguments in reply fail to comply with RAP 13.4(d), the State has only itself to blame

Finally, the State got exactly what it asked for when it claimed in its answer to the petition for review that, with respect to the pro se issues, "the petition for review cites no

legal authority [or] cites general legal principles but includes only conclusory statements that error occurred, with no explanation of the reason why review should be accepted” Ans. to Pet. for Review at 4. Bowman intended his pro se reply to respond to the State’s allegations by providing the legal authority and argument the State claims is lacking. In other words, the State’s arguments expressly invited Bowman’s reply. The State’s motion to strike should be denied.

IV. CONCLUSION

Bowman’s pro se reply should not be stricken.

DATED this 6th day of June, 2017.

Respectfully submitted,

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