

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/28/2018 3:01 PM  
BY SUSAN L. CARLSON  
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	NO. 96171-9
Respondent,	)	
	)	MOTION TO STRIKE IMPROPER
vs.	)	PORTIONS OF PETITION FOR
	)	REVIEW
DUSTIN JAMES EGUIRES,	)	
	)	
Petitioner.	)	
_____	)	

**I. IDENTITY OF MOVING PARTY**

The respondent, State of Washington, asks for the relief designated in Paragraph II.

**II. STATEMENT OF RELIEF SOUGHT**

The State requests that this Court strike portions of Eguires' Petition for Review filed on August 2, 2018. Eguires' Petition includes three appendices which have never been part of the record for review. Further, Eguires' Petition primarily addresses an issue which was not raised before either the trial court or the Court of Appeals.

### **III. GROUNDS FOR RELIEF SOUGHT**

#### **A. The three appendices upon which Eguires bases his Petition for Review have never been part of the trial record**

In support of his Petition for Review, Eguires has attached three appendices which purport to show (A) a map of Yakama Nation tribal land, (B) Stacey Eguires' title document for a residence located at 14150 Fort Road, White Swan, WA 98952, and (C) Stacey Eguires' certificate of tribal enrollment. *See* Petition for Review Appendix A, B, and C.

Under RAP 9.1(a), “[t]he ‘record on review’ may consist of (1) a ‘report of proceedings’, (2) ‘clerk’s papers’, (3) exhibits, and (4) a certified record of administrative adjudicative proceedings.” RAP 9.1(a). While a petitioner may include an appendix, nothing permits a petitioner to include materials not part of the record on review. *See* RAP 13.4(c)(9); *see also* RAP 10.3(a)(8) (“An appendix to the brief if deemed appropriate by the party submitting the brief. An appendix may not include materials not contained in the record on review without permission from the appellate court.”).

None of the documents that appear in Eguires' appendices were part of the record before either the trial court or the Court of Appeals. The items have not been authenticated as nothing has been submitted to “support a finding that the matter in question is what its proponent claims” it to be. *See* ER 901(a). No attempt has been made to add the documents to the record. *See* RAP 9.11(a).

Given that the three appendices are not part of record for review, the State respectfully requests that this Court strike each appendix from Eguires' petition for review.

**B. Eguires' first proposed issue for review was not raised before the Court of Appeals**

While Eguires raises two issues for review, the substance of Eguires' brief focuses on whether Eguires received ineffective assistance of counsel based on trial counsel's alleged failure to challenge jurisdiction to execute the search warrant. *See* Petition for Review. This issue was neither raised before nor decided by the Court of Appeals. *See State v. Eguires*, No. 34651-0-III, 2018 Wash. App. LEXIS 1536 (June 14, 2018) (unpublished opinion).

"An issue not raised or briefed in the Court of Appeals will not be considered by this court." *State v. Halstien*, 122 Wn.2d 109, 130, 857 P.2d 270 (1993). Although a limited exception to this rule exists for "issues pertain[ing] to jurisdiction," *see State v. Laviollette*, 118 Wn.2d 670, 680, 826 P.2d 684 (1992), Eguires does not challenge the trial court's assertion of jurisdiction over his person. Instead, Eguires argues that trial counsel provided ineffective assistance by failing to challenge the State's jurisdiction to execute the search warrant on property allegedly located on tribal land. *See* Petition for Review. As such, Eguires' argument from pages five through twelve, raising an issue that was not brought before the Court of Appeals, should be stricken from his Petition for

Review and not considered by this Court.

#### **IV. Conclusion**

This Court should strike that the three appendices as well as the pages five through twelve of Eguires' Petition for Review that addresses a new allegation not raised before the Court of Appeals.

Respectfully submitted this 28th day of August, 2018

/s/ Michael J. Ellis  
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DECLARATION OF SERVICE

I, Michael J. Ellis, state that on August 28, 2018, by agreement of the parties, I emailed a copy of MOTION TO STRIKE IMPROPER PORTIONS OF PETITION FOR REVIEW to Mr. Jack Fiander at towtnuklaw@msn.com.

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

DATED this 28th day of August, 2018, at Yakima, Washington.

\_\_\_\_\_/s/Michael J. Ellis\_\_\_\_\_  
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for Respondent

**YAKIMA COUNTY PROSECUTING ATTORNEY'S OFFICE**

**August 28, 2018 - 3:01 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96171-9  
**Appellate Court Case Title:** State of Washington v. Dustin J. Eguires  
**Superior Court Case Number:** 15-1-01517-1

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- 961719\_Answer\_Reply\_20180828145909SC258296\_8849.pdf  
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- 961719\_Motion\_20180828145909SC258296\_7431.pdf  
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Motion 1 - Strike  
*The Original File Name was Motion to Strike.pdf*

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