

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 96291-0
)	
vs.)	
)	
JAMES JOEL ZESATI,)	STATE'S ANSWER TO
)	PETITION FOR REVIEW
)	
Petitioner.)	
_____)	

The State asks this Court to deny James Zesati's petition for review of the Court of Appeals' opinion affirming his convictions for one count of rape in the third degree and three counts of rape of a child in the third degree. State v. Zesati, unpublished, No. 75716-4-I (Wash. Ct. App. Aug. 6, 2018). The reasoning and authority set out in the Court of Appeals' opinion amply demonstrate that the criteria for review are not met in this case. However, the petition for review omits critical facts in one area that is not immediately apparent upon reading the Court of Appeals' opinion, necessitating this brief answer.

Zesati's recitation of the facts relevant to the alleged Brady violation is woefully incomplete. Most of the critical facts Zesati

omits are presented clearly in the Court of Appeals' opinion, such as the fact that the State emailed the transcript of I.Z.'s defense interview from Sinclair's trial to Zesati's counsel two days before I.Z. testified, and the fact that the State received an email receipt back within minutes verifying that the email to defense counsel had been opened. Zesati, No. 75716-4-I, slip op. at 4-5.

However, one critical fact that Zesati omits is not clear from the Court of Appeals' opinion. In holding that Zesati failed to show prejudice from the delayed disclosure, the Court of Appeals correctly noted that "the interview transcript merely repeated what I.Z. had already testified about." The court explained that "I.Z. testified at trial that she never disclosed Zesati's abuse to anyone before her mother walked in on them."¹ Zesati, No. 75716-4-I, slip op. at 6. The Court of Appeals' opinion understates the record in that regard.

Zesati knew before trial that I.Z. had specifically denied being abused by anyone other than Sinclair. I.Z. testified on direct

¹ Zesati complains that the mere failure to disclose is "categorically different" than the "specific and dishonest lie" that I.Z. told in the Sinclair defense interview when asked whether anyone other than Sinclair had ever abused her. Petition for Review at 14.

examination that her mother and grandmother had each specifically asked her, after Sinclair's abuse came to light, whether anyone else had ever abused her, and she told them both no because she was afraid of what would happen if she disclosed Zesati's abuse. 671-72, 781-82. This information was known to Zesati prior to trial. RP 93. On cross-examination, Zesati elicited a general statement from I.Z. that, before her mother walked in on Zesati raping her, she had denied abuse by anyone besides Sinclair whenever asked *by anyone*. RP 781.

Because Zesati was aware before trial that I.Z. had made specific denials of abuse by anyone other than Sinclair to several people,² the evidence in the Sinclair defense interview that I.Z. had made an identical denial to Sinclair's counsel was merely cumulative. Zesati cannot show that a plausible strategic option was foreclosed by the State's inadvertent failure to turn over

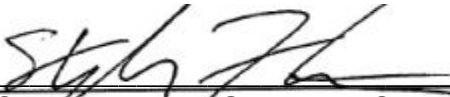
² The evidence also strongly suggested that I.Z.'s therapists had asked her about abuse by anyone else, and that she had denied it to them. Although I.Z.'s therapists did not testify, a sexual assault nurse examiner testified that I.Z.'s therapists would have been experts in their field, and that designing a program of treatment for a victim of sexual assault would involve eliciting a history of all the traumatic events in the victim's life. RP 1131-32. A stipulation by the parties informed the jury that I.Z.'s therapists knew they were required by law to report any allegation of abuse to Children's Protective Services, and that neither one ever made a report regarding alleged abuse by Zesati. RP 1335-36.

cumulative statements from the prior defense interview until two days before I.Z. testified.

Because the Court of Appeals' decision is consistent with prior decisions and does not involve a significant question of constitutional law or issue of substantial public interest that needs to be addressed by this Court, the State respectfully asks the Court to deny the petition for review.

Submitted this 14th day of September, 2018.

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