

FILED
SUPREME COURT
STATE OF WASHINGTON
2/17/2023 12:14 PM
BY ERIN L. LENNON
CLERK

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

RESPONDENT,
v.

LARISA DIETZ,

PETITIONER.

Supreme Court No. 101640-9

PETITIONER'S RESPONSE TO
STATE'S MOTION TO
SUPPLEMENT RECORD ON
APPEAL AND MOTION

1. Identity of Responding and Moving Party.

Petitioner Larisa Dietz is the responding party to the State's motion to supplement the appellate record and asks for the relief designated in Part 2 of this motion.

2. Statement of Relief Sought.

Petitioner asks the Court to grant the State's motion to supplement the record with the lately entered findings and conclusions of law and moves this Court to allow Ms. Dietz an opportunity to argue the imposition of the exceptional sentence.

3. Facts Relevant to Motion.

1. Ms. Dietz was sentenced and filed a notice of appeal on September 13, 2021. The trial court imposed an exceptional sentence of 208 months, one month over

the high end standard range of 132 to 207 months, which included a deadly weapon enhancement.

2. The opening brief was filed May 23, 2022. She requested the State to prepare and enter written findings and conclusions of law for the exceptional sentence and was assured by the State's attorney on June 21, 2022, the intent was to prepare them.

3. Appellant motioned to file a supplemental brief on August 8, 2022, raising the legal issue of failure to enter written findings as required under RCW 9.94A.535, along with an additional constitutional legal issue. The Court denied the motion for additional briefing.

4. The State did not prepare, and the superior court did not sign written findings of fact and conclusions of law as required by RCW 9.94A.535 until September 2, 2022. Appellate counsel was not notified until the State sent an email to counsel on January 24, 2023, after Ms. Dietz sought review in this Court.

5. The Court of Appeals decided Ms. Dietz's case December 20, 2022, without the benefit of argument on

the exceptional sentence or the constitutional issue of ineffective assistance of counsel.

6. Ms. Dietz filed a Petition for Review which is set for the Court's motion calendar on May 2, 2023.

7. On January 27, 2023 the State filed a Motion to Supplement the Appellate Record pursuant to RAP 9.10 with this Court, arguing the denial by the Court of Appeals for appellant's supplemental brief left the issue unreviewed by the Court. Moreover, the State argued that since the findings had been filed in September 2022, the issue was now moot.

4. Grounds for Relief and Argument.

Pursuant to RAP 7.2(e), a trial court has authority to hear and determine (1) post-judgment motions authorized by the criminal rules or statutes and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The post-judgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision, then being reviewed by the appellate court, the permission of the appellate

court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by motion.

By entering the written findings of fact and conclusions of law, after the matter was in the Court of Appeals and after a request for supplemental briefing had been denied, the State took action in this case that had not yet been authorized by the Court of Appeals. The State failed to notify appellate counsel of the entry of the lately entered findings and conclusions. This issue is currently set before this Court on a hearing to decide the legal issue of whether this case should be remanded for entry of written findings of fact and conclusions of law as mandated by RCW 9.94A.535.

Ms. Dietz agrees entry of the findings and conclusions should be authorized, *but only* on condition that she is allowed the opportunity to contest the exceptional sentence if she chooses to do so. Otherwise, supplementing the record is blatantly prejudicial to Ms. Dietz. She has been deprived of the constitutional right to assign error to the written findings and conclusions and to provide legal argument. The dilatory entry of

findings of fact and conclusions of law, along with the denial of supplemental briefing assigning error to the lack of findings, is prejudicial to Ms. Dietz and serves no purpose other than to deny her a right to contest the exceptional sentence.

5. Conclusion

Ms. Dietz respectfully asks this Court to grant the State's authorized supplementation of the record and grant her the opportunity to contest the exceptional sentence.

Respectfully submitted on February 17, 2023.

Per RAP 18.17 this document contains 876 words.

s/ Marie J. Trombley
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CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the state of Washington, that on February 17, 2023, I mailed to the following US Postal Service first class mail, the postage prepaid, or electronically served, by prior agreement between the parties, a true and correct copy of the Response to the following: Clallam County Prosecuting Attorney (at jespinoza@co.clallam.wa.us).

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MARIE TROMBLEY

February 17, 2023 - 12:14 PM

Transmittal Information

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The following documents have been uploaded:

- 1016409_Answer_Reply_20230217121321SC872699_0667.pdf
This File Contains:
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A copy of the uploaded files will be sent to:

- jespinoza@co.clallam.wa.us
- jesse.espinoza@clallamcountywa.gov

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