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Court of Appeals
Division II
State of Washington
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FILED
SUPREME COURT
STATE OF WASHINGTON
11/14/2023
BY ERIN L. LENNON
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NO. 102424-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

State of Washington,
Respondent

v.

Jeremy Blaine Fenney,
Appellant

Answer to
Motion to Strike

The Supreme Court should deny Respondent's Motion to Strike. Mr. Fenney has not raised new issues in his Petition for Review.

In the Court of Appeals, Jeremey Fenney challenged his 3,700-month exceptional sentence. He argued that it is clearly excessive under RCW 9.94A.585. Opening Brief, pp. 6-7. He

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BACKLUND & MISTRY
Attorneys at Law
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

asked the Court of Appeals to vacate the sentence and remand the case for a new sentencing hearing. Opening Brief, p. 7.

He makes the same challenge in his Petition for Review. Petition, pp. 3-10. He is also asking for the same remedy: vacation of his sentence and remand for a new sentencing hearing.¹ Petition, p. 5. Mr. Fenney's Petition does not add any issues to his argument explaining why the sentence is excessive or why he is entitled to the relief he has requested.

Respondent's objection is to a possible explanation for how the sentencing court reached its decision. Petition, pp. 5-10. As outlined in the Petition, the lengthy sentence may have resulted from implicit racial bias. Petition, pp. 5-10.

Respondent is asking the court not to consider this possibility. Motion to Strike, pp. 1-5. The Supreme Court should

¹ Respondent's motion does not concern Mr. Fenney's challenge to a condition of community custody.

reject Respondent’s request when deciding whether to grant review.

An objective observer—one who is aware that implicit, institutional, and unconscious biases have influenced sentencing decisions—could view race as a factor in the 3,700-month exceptional sentence. Petition, pp. 9-10. Mr. Fenney asked this court to “consider the possibility that implicit bias impacted the lower court’s decision.” Petition, p. 10.

This is not a new basis for vacating the sentence. Instead, the sentencing court’s possible bias bears on factors this court considers in deciding whether to grant review under RAP 13.4(b).

The Supreme Court will accept a petition for review if it “involves an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b)(4). The framework for assessing whether an excessive sentence could

have been the product of implicit bias is an issue of substantial public interest.² RAP 13.4(b)(4).

Mr. Fenney was not required to present the Court of Appeals with a basis for granting review. He appealed as a matter of right under RAP 2.2(a). The Court of Appeals accepted review when the Notice of Appeal was filed. RAP 6.1.

The Supreme Court should deny Respondent's Motion to Strike. Mr. Fenney does not raise any new issues. As he did in the Court of Appeals, he argues that his sentence is clearly excessive, and asks the court to vacate the sentence and remand for a new sentencing hearing.

The Supreme Court should grant review of the issues raised in the petition.

I certify that this document complies with RAP 18.17, and that the word count (excluding materials listed in RAP 18.17(b)) is 459 words, as calculated by our word processing software.

² Citations to RAP 13.4(b) were inadvertently omitted from the Petition.

Signed on November 14, 2023 in Olympia, Washington.

Respectfully submitted,

BACKLUND & MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for Appellant

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BACKLUND & MISTRY
Attorneys at Law
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

BACKLUND & MISTRY

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