NO. 102534-3

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER MILES GATES,

Petitioner.

STATE'S ANSWER TO PETITION FOR REVIEW

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A. INTRODUCTION

Gates claims that five separate issues in the unpublished decision of the Court of Appeals meet the demanding standard under RAP 13.4(b) for granting supreme court review. State v. Gates, No. 83243-3-I, slip op. (Ct. App., filed 10/9/23). He is mistaken. On many of the issues, the petition relies on selective and misleading recitations of the facts and law and there is very little explanation as to precisely what ruling or legal holding calls for review under RAP 13.4(b). On the time-for-trial issues, for example, the petition *alludes* to alleged constitutional problems that—for plainly tactical reasons—were never actually briefed or argued in the Court of Appeals. Moreover, the primary rule-based argument under CrR 8.3 was never made in the trial court, meaning there are no rulings on critical factual matters. Also, multiple constitutionally-based allegations regarding the right to counsel are levelled by insinuation rather than by cogent legal analysis supported by facts. On the self-defense argument, Gates substitutes rhetoric

for facts in order to create the perception that race-based arguments were made to the jury, when no such arguments were made.

The other issues raised in the petition suffer from similar deficiencies. This case is a poor vehicle for decision-making on any of these issues because the issues either do not exist at all or they are simply not squarely presented in this case.

B. STANDARD FOR ACCEPTANCE OF REVIEW

"A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b). Gates's petition cites the rule multiple times in a conclusory and passing manner, but

conspicuously fails to analyze what particular constitutional provisions are at issue, how the decision below conflicts with similar decisions of this Court, or how the claim is significant enough or squarely enough presented as to call for this Court's review. Review should be denied.

C. ISSUES PRESENTED

1. CrR 8.3 permits a court to dismiss a case for governmental misconduct resulting in prejudice, but missteps on the part of defense counsel have never been deemed a basis to find "governmental misconduct" under CrR 8.3. CrR 3.3(h) declares that trial delays not covered by CrR 3.3 are not the basis to dismiss a case for pre-trial delays, unless the Sixth Amendment rights to counsel or to a speedy trial justify reversal of a conviction. Here, Gates never raised a CrR 8.3 argument in the trial court, has not shown how the CrR 8.3 argument overcomes his failure to present it, has not shown that public defenders are governmental agents, does not claim on appeal that his Sixth Amendment Rights to Counsel or a

Speedy Trial were violated, and he has not shown that the decision by the Court of Appeals conflicts with any decisions of this Court. Should review be denied under RAP 13.4(b) as to his unpreserved and faulty CrR 8.3 claim and the hinted-at but not developed Sixth Amendment claims?

2. A prosecutor commits race-based misconduct where he or she injects race into a criminal case in a matter designed to improperly bias the jury. Here, Gates and his lawyer developed a theory of self-defense based on Gates's own history and experiences of violence within a self-described subculture of people committing violent acts with guns; Gates's lawyer at trial argued that the jury was required to evaluate the reasonableness of his actions in light of that theory. The State responded that the reasonable person standard was objective and that it did not turn on the subjective experiences of people in a violent subculture who might be hypervigilant. Neither the defense nor the prosecution cast these arguments in terms of race. Did the Court of Appeals correctly reject the claim that

the prosecutor, who simply argued the objective standard and noted that Gates's argument would create a double standard for people with violent backgrounds, did not commit misconduct or race-based misconduct, and is review of this holding unmerited under RAP 13.4(b)?

3. The Privacy Act prohibits recording private conversations without consent. A Lyft driver had an audio and video recording device in his car with a sign warning customers that they would be recorded. Gates was not a customer in the car and no conversations with Gates were recorded, but the recording device accidentally captured the sights and sounds as Gates shot Baker on a public street. No conversation between the Lyft driver and the customer was admitted into evidence. Did the Court of Appeals properly hold that the conversation was not private based on this Court's precedent and is there no aspect of this holding that meets the standards of RAP 13.4(b)?

4. Robbery has long been held to be a crime of dishonesty admissible under ER 609. Gates has not shown that

the interpretation of the rule is clearly incorrect, harmful, or otherwise out of step with prevailing authority. Should Gates's request for review be denied under RAP 13.4, especially where rulemaking is available to consider his proposed changes?

5. Jury instructions are adequate if they correctly set forth the law and allow the defendant to argue his case. Gates has not shown that the court's decision to give pattern instructions instead of his proposed instruction conflicts with this Court's precedent on the subject. Should review be denied?

D. STATEMENT OF THE CASE

The State prepared an exhaustive statement of the case in the Brief of Respondent below and the Court of Appeals likewise described the facts in some detail. An exhaustive summary will not be repeated here. Br. of Resp. at 8-55; Gates, slip op. at 2-9. Several discrete themes run through Gates's petition, however, and those will be addressed succinctly herein.

First, as to the substantive facts, Gates's petition essentially repeats the story he told through his own testimony from trial, to wit: that he reasonably shot at a man he thought was going to shoot him. Gates fails to mention, however, many facts that conflict with this story. For instance, he fails to mention that the video evidence showed that Baker was not approaching Gates before Gates fired, that Baker, although armed, had his gun in his pocket as Gates started shooting, and that the gun Baker possessed did not have a round in the chamber, meaning it had not been readied for firing. Br. of Resp. at 48-49. Gates admitted that he merely assumed Baker was armed; he did not know that. 7/15/21RP 90-91. On cross-examination, Gates claimed that the fact he and his friends followed Baker and Smith out of the Cedar Room was entirely coincidental but conceded that it appears that the only reason both men were looking at Gates was because he was looking at them. 7/15/21RP 87-88, 105.

Gates also fails to mention that he had earlier smuggled a gun past security at the nightclub, demonstrating that he was armed and amidst a whole crowd of drinking and partying people inside the nightclub. 7/15/21RP 31-32. The jury could have interpreted this conduct as a sign of hypervigilance or malice. Either way, it was relevant to his claim of self-defense in shooting a person he had never met before. Gates also does not mention that, despite Gates's insistence to the contrary, video evidence proved that Baker did not pull a gun from his pocket until after Gates had fired at him. Ex. 4.

Gates also fails to mention that immediately after he shot Baker to death, he and his girlfriend skipped calmly past the nightclub, their nonchalance captured on video from the nightclub. Br. of Resp. at 48-49 (citing Ex. 4 at 12:10-12:15). They neither told people that someone behind the club was harmed nor asked anyone to call the police. 7/15/21RP 135-36. This evidence, too, would likely have influenced the jury's assessment of whether Gates acted out of fear or malice.

Additional facts relevant to Gates's claims will be set forth below.

E. THIS COURT SHOULD DENY THE PETITION FOR REVIEW

Gates raises five separate issues in his petition. As explained below, none meet the criteria for supreme court review under RAP 13.4(b).

1. THE COURT OF APPEALS PROPERLY REJECTED THE SINGLE RULE-BASED TIME FOR TRIAL CLAIM RAISED ON APPEAL.

Gates argues in his petition that he should have been brought to trial in a timely fashion. Pet. at 29-37. His claim relies on the unpreserved rule-based argument he made below, but it also relies on insinuations as to Sixth Amendment errors that he never argued in the trial or appellate courts, likely because he realized that the law and facts did not support those arguments. If Gates believes that the Sixth Amendment claims have merit, he can and should bring those claims in a personal restraint petition, where they can be measured against actual

facts rather than one-sided narratives. State v. McFarland, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995).

a. Relevant Facts.

Gates's arguments on this issue were initially framed around hearings held in open court. This framing failed to account for sealed declarations and proceedings in which Gates and his trial lawyers explained why the case progressed slowly toward trial. The trial judge made key observations and rulings in these closed proceedings. On appeal, the State arranged for these hearings to be transcribed, summarized the facts and conclusions that could be drawn from the sealed material, and then filed an unredacted Brief of Respondent under seal which made extensive references to the sealed materials. Br. of Resp. at 8-43, 62-63, 76-87. Appendix A to that brief is a table summarizing those events.

Gates asserts in his petition that "[t]he case sat for nearly two years before the pandemic" without any work being done. Pet. at 11. This assertion woefully fails to capture the depth

and complexity of this record. All continuances of trial were granted at the request of the defense and Gates personally asked for or acquiesced in multiple continuances. Br. of Resp. at 67.

Gates's assertion of fact is drawn from statements made by lawyers for the Department of Public Defense (DPD), including the deputy director of DPD, Gordon Hill, who repeatedly and candidly admitted he and the director did not know the record in the case. 9/4/20RP 349-50 ("And when I, as the deputy director of the Department of Public Defense -- again, I don't have their conversations. I don't have their briefings. I don't have their notes. I don't know. What I see on the surface of the case to me says enough."); 357 ("…I don't know this case. I don't know the facts. I haven't assessed prejudice…"); Id. ("I don't control the litigation in his case. I don't know the facts of his case.").

The highly experienced prosecutor, Ms. Adrienne McCoy, vehemently disagreed with this assessment, advising

the court that the case had been ready for trial within 18 months of charging.

> A year and a half after the case is filed, right, we're ready to go to trial, except for one more expert that the defense has decided that they want to call. Fine. The witness interviews were done. The evidence view had been done. The lawyers and the investigators had gone down to SPD evidence and looked through everything. Discovery was complete except for the defense expert issue.

9/4/20RP 353. See also 9/4/20RP 354 ("So if we're going to have someone come in here and give an opinion that SCRAP [Society of Counsel Representing Accused Persons] is ineffective, then there needs to be a more complete documentation of what this opinion thinks SCRAP hasn't done."); 355 ("I'm very troubled by this assertion of ineffective. I mean, the Court knows how many murder cases I try, and this one was ready to go to trial.").

The judge ultimately allowed substitution of counsel for Gates, finding that Gates himself, had been a substantial

contributor to the delays. Br. of Resp. at 37-40 citing (9/4/20RP 361-66).

There was no further development of the record or findings on these matters because no motion to dismiss was brought at trial and appellate counsel chose not to pursue a Sixth Amendment right to counsel claim on appeal.

b. The Rule-Based Time for Trial Claims Raised on Appeal Do Not Merit Review and There Is No Record upon Which to Decide Hinted-at Constitutional Claims.

Gates asserts that "the trial court had the authority and the duty to dismiss this case" under CrR 8.3 and that the appellate court "read the rule out of existence." Pet. at 29-30. The Court of Appeals did not read the rule out of existence, it held that Gates could not challenge the timing of his trial under CrR 8.3 because he never raised that rule-based claim in the trial court. RAP 2.5(a). Slip op. at 13. Without the "notice and hearing" required by CrR 8.3(b) there are no findings on the

key factual questions of whether there was either mismanagement or prejudice.

Gates does not show in his petition how that key ruling merits review by this Court. Indeed, the failure to make a record to support dismissal under CrR 8.3 seems rudimentary and would preclude any effective review by this Court, especially as to the thorny factual issues in this long record.

Ignoring these fundamental problems, Gates argues that the Court of Appeals erred for three reasons: a) the State did not raise this argument in its brief; b) Gates could not have raised the argument because he effectively had no lawyer at the time; and c) the trial court could have and should have raised CrR 8.3 sua sponte. Pet. at 31-32. These arguments are baseless.

First, an appellate court may refuse to review a claim under RAP 2.5, regardless of whether the State has raised the waiver argument, where the record is insufficient for effective review. State v. Kirkpatrick, 160 Wn.2d 873, 881, 161 P.3d 990, 994 (2007), overruled on other grounds by State v. Jasper,

174 Wn.2d 96, 271 P.3d 876 (2012). Second, it is simply not true that Gates was without counsel to object below. His newly appointed lawyer undoubtably knew of the reasons he (new counsel) had been appointed and could have raised a CrR 8.3 claim if the argument had merit. Third, although a trial court *may* raise CrR 8.3 sua sponte, there is no authority which *requires* the court to do so, especially in the novel circumstance here, where it is alleged without authority that public defenders are part of the "government" for purposes of CrR 8.3.

In short, Gates's sole basis for seeking dismissal of his murder conviction, CrR 8.3, is an argument that was not preserved. Gates does not explain why the Court of Appeals' decision on this point, which is dispositive, merits review by this court under RAP 13.4.

The Court of Appeals also relied upon CrR 3.3(h), which provides that a case shall not be dismissed for reasons other than those set forth in CrR 3.3, unless the defendant shows a constitutional violation. Slip op. at 10-18. This discussion was

likely dicta, because the holding that Gates failed to preserve a CrR 8.3 argument is sufficient to dispose of his claim. Still, even if an alternative basis for the lower court's reasoning, this language does not merit review by this Court. The language cited in CrR 3.3(h) has previously been examined and Gates fails to show that it conflicts with this Court's jurisprudence. The cases he cited to justify dismissal of the charges under CrR 3.3 predate the significant changes to the rule. Gates does not show in his petition how this discussion warrants review.

The remainder of Gates's petition on this issue relies on rhetoric rather than legal analysis. He attempts to imbue the petition with a Sixth Amendment flavor by asserting: that the State "did not provide him counsel as guaranteed by the Constitution," Pet. at 1; that his case "sat" for two years before the pandemic because his lawyers did not work on the case, Pet. at 11; or that he was "constructively denied counsel," Pet at 20; and by suggesting that the trial court agreed but refused to dismiss the case, Pet. at 29. These claims are both factually

unsupported and inapposite, since he never raised the Sixth Amendment in the Court of Appeals.

The trial court made no finding or conclusion that Gates was constructively denied counsel. Such a claim requires analysis of United States v. Cronic, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984). But Gates merely asserts a "deprivation of counsel" without arguing or applying relevant constitutional standards to show how or whether he truly suffered a total deprivation of counsel under the Sixth Amendment. Nor did he raise an argument predicated on ineffective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Nor did he assert that his constitutional right to speedy trial was violated under Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

Moreover, his factual assertions are unsupportable. As shown in the State's briefing below and in the Court of Appeals' opinion, Gates's lawyers worked hard to prepare his

case, but Gates frequently interfered, tried to micromanage the defense, created conflict with his well-intentioned lawyers, and often told the court that he did not want to proceed to trial immediately. The trial court's findings detail its careful supervision of the trial preparation in the case. Gates unfairly refers to the trial court as "disrespectful" simply because the trial court found as a matter of fact that Gates caused much of the pretrial delay. A finding of fact that a defendant shares blame for delay is hardly "disrespectful," especially when the finding is fully supported by the record.

Gates's factual assertions also rely heavily on comments from the DPD deputy director. But these conclusory allegations were strongly repudiated by the prosecutor, and the deputy director admitted that he knew nothing about the facts of the case. Moreover, the judge did not rule there had been ineffective assistance, only that there had been a breakdown in the attorney-client relationship, and the court found that Gates

played a major role in that breakdown through his baseless allegations against his assigned lawyers.

These Sixth Amendment issues – trial delay occasioned by defense counsel's unavailability or malfeasance – must be presented in the form of a personal restraint petition for proper development of the facts.

In short, Gates failed to preserve the novel rule-based claim that he tried to raise on appeal and he never advanced any subsidiary constitutional arguments that might be reviewable by this Court. These claims do not meet the criteria for granting review under RAP 13.4.

2. SELF-DEFENSE ARGUMENTS AND FALSE CLAIMS OF RACISM.

Gates argues that the prosecutor committed race-based misconduct in closing argument when she refuted his self-defense arguments. This claim should be rejected outright because it is based on a fabrication rather than the record.

The heading for this argument proclaims: "After Mr. Gates correctly told the jury it had to assess the reasonableness of his actions *in light of his experiences as a young, Black male* in Seattle, the prosecutor falsely described Mr. Gates as seeking "a different law" *for Black* people." Pet. at 38 (italics added). The italicized words substitute appellate counsel's rhetoric for the actual words in the verbatim report of proceedings.

Neither the prosecutor nor trial defense counsel tied Gates's violent experiences and ingrained habits to race.

Gates's trial lawyer argued that Gates was part of a subculture of people who frequented nightclubs and had experienced violence, including shootings. He argued that people like Gates with such experiences saw legitimate threats where others did not, and that the jury needed to view the shooting through that subjective lens.

The prosecutor directed the jurors to their instructions and argued that a self-defense claim includes an objective component in addition to a subjective one, and that allowing the

question to turn on a person's subjective experiences would create different standards for different people under the law. In other words, just because you and your friends have been shot at does not mean that you have a right to shoot someone who does not objectively or reasonably pose an imminent threat. There is no separate standard of self-defense for those who live amidst violence. As the Court of Appeals correctly observed, the prosecutor's argument was a fair rebuttal to the defense argument and the response was rooted in the law.

It bears repeating that neither trial counsel for Gates nor the prosecutor mentioned or alluded to race in their discussion about Gates's subjective experiences and beliefs. These subjective experiences and the attendant arguments were not tied to race until Gates filed his opening brief on appeal.

Unfortunately, appellate counsel doubled-down on the falsehoods in the reply brief below and in the petition for review. Counsel asserted that implicit in the prosecutor's argument "is the assumption that the objective 'reasonable

person' standard means a middle-aged white person with experiences in privileged white communities." Reply Br. of Appellant at 37; Pet. at 42. The Court of Appeals expressly and pointedly dismissed this argument, Slip op. at 40, n.19.

Gates's rhetoric is designed to inflame rather to elucidate or explain. It inserts a race-based statement where none existed in the record. Neither Gates nor the State tied their arguments to race, and the State certainly made no statement resembling the "middle-aged white person" or "privileged white communities" rhetoric that Gates inserted into his briefing.

Nor would reference to the objective standard have been understood as linked to race. The objective standard of self-defense is rooted in reasonableness, in the common sense experiences of all human beings. It is not rooted in any particular race, or neighborhood, or strata of society. The prosecutor's argument did not stray from the normal understanding.

It is possible that Gates's focus on race in his petition is derived from his personal views on self-defense. Gates, himself, wanted to argue in the trial court that his race was relevant to his perception of violence. Br. of Resp. at 28-29 (detailing statements made in Gates's sealed declaration). Gates's trial lawyer properly refrained from making any such argument, likely because the argument would falsely suggest that Black people are prone to violence. It should go without saying that such an argument is racist, flatly incorrect, and offensive. The argument would have been precluded in the trial court. This is why both defense counsel at trial and the prosecutor phrased their arguments in terms of people who had experienced violence rather than framing the arguments as matters of race.

Gates also relies on alleged conflict between this case and State v. Wanrow, 88 Wn.2d 221, 559 P.2d 548 (1977) and State v. Janes, 121 Wn.2d 220, 850 P.2d 495 (1993). Those

cases are inapposite and Gates's reliance on them shows that he misunderstands the self-defense standards.

When weighing a claim of self-defense, the jury must consider the facts and circumstances known to the shooter. These facts and circumstances include everything the shooter knew or saw in the moments before shooting, and also includes knowledge about the assailant who is being resisted. For example, in Wanrow and Janes, the defendants faced and shot abusers, not some random person from the community, and in both cases the defendants knew about the past abuse.

For instance, Wanrow shot Wesler knowing that Wesler was suspected of molesting a boy currently in the house, that Wesler was suspected of trying to burglarize the house in the previous days, that Wesler (a large man) was drunk at the moment, and that Wesler had just approached a young boy on a couch and said, "My what a cute little boy." It was in this context that Wanrow's knowledge about Wesler was relevant. Similarly, Janes, a juvenile, shot a man who had abused Janes

for years. In both cases, the shooter's knowledge about the person shot was part of the shooter's subjective knowledge a jury had to consider.

The jury was not, however, required to consider as "objective" that Wanrow or Janes might have a hair-trigger with a gun simply because they had been abused in the past. This confuses the subjective and objective standards. The jury still had to apply an objective standard of reasonableness to the question of self-defense.

Gates tries to place himself in the same position as Wanrow and Janes to argue that because he's had violent experiences in the past, a jury had to consider that history of violence in making an objective determination on self-defense. This is flatly incorrect. Such a reading would mean that a person marred by past violence at the hands of others now has a free pass to shoot someone he incorrectly sees as a threat. This would replace the objective standard with the shooter's subjective one. The jury had to consider a history of violence

in Wanrow and Janes because those persons *shot the person who had imposed violence on them*.

But Gates had never met Baker before shooting him. Thus, Gates had no subjective knowledge about Baker that was relevant to the subjective standard question. And a history of violence with others does not supplant the objective test.

The parties in this case never argued that race was relevant to the jury's decision—that argument was inserted into this case on appeal. Moreover, Gates's history of violence was irrelevant to the objective standard and the prosecutor properly said as much. For these reasons, Gates's arguments do not call for review by this Court.

3. THE PRIVACY ACT HOLDING DOES NOT MERIT REVIEW BY THIS COURT.

Gates argues that review should be granted because the Privacy Act portion of the decision below conflicts with precedent and is a matter of substantial import. Pet. at 48-51. A Lyft driver and his passengers, perfect strangers to each other

before the driver responded to the customer's request for a ride, bantered about banal subjects for about three minutes before capturing on video and audio the scene as Gates shot Baker. The Lyft driver had a posted sign that warned patrons that they would be audio and video recorded. The Court of Appeals rejected Gates's argument that the recording violated the Privacy Act after carefully examining this Court's precedents that instruct on how to determine whether a conversation is private. Slip op. at 18-22 (discussing State v. Clark, 129 Wn.2d 211, 232, 916 P.2d 384 (1996); State v. Kipp, 179 Wn.2d 718, 317 P.3d 1029 (2014)). The court considered the subjective intent of the parties to the conversation, the reasonableness of their expectations, the short duration and banal subject matter of the chat, the location in the Lyft driver's vehicle which was being used for transportation for compensation, the fact that the driver and passenger had never met, and Gates's assertion that the recording was criminal. Slip op. at 19-20. The court

reasonably concluded based on all these factors that the conversation was not private.

In support of review, Gates simply alleges that "the court was wrong" and cites RAP 13.4(b) (1) and (4) without further analysis as to which portion of the court's analysis might conflict with precedent or why these facts raise an issue of substantial public import. A conclusory assertion and a mere citation to the rule do not establish a basis for this Court's review.

4. IT IS NOT CLEAR ERROR TO TREAT ROBBERY AS A CRIME OF DISHONESTY UNDER ER 609; ANY CHANGE TO THE RULE SHOULD OCCUR THROUGH RULEMAKING.

Gates argues that this Court should overturn multiple precedents that have stood for approximately 45 years and hold that a prior robbery conviction may not be used to impeach a criminal defendant because it might taint the jury. Pet. at 51-58. However, the jury in this case never learned Gates had been convicted of robbery; it was told only that he had been

convicted of a crime of dishonesty. The Court of Appeals rejected Gates's argument for a number of reasons. Review should be denied for those reasons, but also because Gates has not made a sufficient showing to disturb long-standing precedent that allows such impeachment.

The cases that Gates argues should be overturned considered and rejected the arguments Gates presents now. While Gates's arguments raise debatable matters of policy, they hardly establish that this Court's multiple precedents are "clearly incorrect" and harmful, as would be required to disturb the stabilizing effect of the doctrine of stare decisis. In re Stranger Creek & Tributaries in Stevens Cnty., 77 Wn.2d 649, 653, 466 P.2d 508, 511 (1970).

Moreover, these cases interpreted a rule, ER 609, promulgated after careful study by the Judicial Council Task Force, made up of representatives from legislative, judicial, and executive branches, and from the Washington bar association. See K. Tegland, 5A Washington Practice, Evidence,

Chairman's Introduction to the Washington Rules of Evidence, at XIV.

ER 609 has stood as interpreted by this Court for decades and countless trial court judges in countless cases have relied on this Court's interpretation of the rule when admitting evidence. Gates has not demonstrated that the interpretation of this rule is out of step with the majority of jurisdictions. State v. Otton, 185 Wn.2d 673, 684, 374 P.3d 1108 (2016) (refusing to overturn precedent interpreting ER 801(d)(1)(i)). If the rule is to change, such change should come prospectively only, through the rulemaking process where all interested parties may be heard, rather than through a judicial bolt from the blue that would apply to numerous cases adjudicated in good faith reliance on the rule. In re Pers. Restraint of Carlstad, 150 Wn.2d 583, 593, 80 P.3d 587 (2003).

5. REVIEW IS NOT WARRANTED SIMPLY TO CORRECT ALLEGED INSTRUCTIONAL ERROR WHERE THE JURY WAS INSTRUCTED IN ACCORD WITH THE LAW AND GATES WAS ABLE TO ARGUE HIS THEORY OF THE CASE.

Gates's fifth and final request for review turns on the trial court's refusal to give a jury instruction on justifiable homicide in resistance to a felony, an argument that Gates advanced pro se in a Statement of Additional Grounds for Review. Pet. at 59-60. The Court of Appeals rejected his argument because the additional instruction would have been repetitious. Slip op. at 23-29. Gates's petition does not grapple with the reasoning of the lower court and merely cites to RAP 13.4 without further argument or elaboration. This is not a showing sufficient to justify review.

F. CONCLUSION

For the foregoing reasons, the petition for review should be denied.

This document contains 5,146 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 8th day of January, 2024.

Respectfully submitted,

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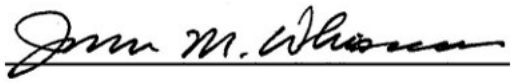
By: 
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Filed with Court:	Supreme Court
Appellate Court Case Number:	102,534-3
Appellate Court Case Title:	State of Washington v. Christopher Miles Gates

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