

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
 Respondent,)
)
)
 v.)
)
MELVIN XAVIER,)
 Petitioner.)
)
)
)
)

MOTION TO STAY

A. IDENTITY OF MOVING PARTY AND RELIEF SOUGHT

Melvin Xavier respectfully requests this Court stay consideration of his petition for review pending this Court's resolution of State v. Vasquez. Mr. Xavier makes this motion in the interest of justice and pursuant to RAP 1.2(c), RAP 7.3, and RAP 17.1(a).

B. GROUNDS FOR RELIEF AND ARGUMENT

Mr. Xavier filed a petition for review on December 20, 2023. The State has not filed an answer. The matter is currently set on this

Court's calendar for consideration on April 8, 2024.

Among the issues of which Mr. Xavier seeks this Court's review is whether the trial court misunderstood its discretion at his resentencing when it told Mr. Xavier it could not consider mitigation evidence and failed to conduct a de novo sentencing proceeding. This Court has accepted review a case that addresses the scope of resentencing proceedings: State v. Vasquez, No. 102045-7. This case is scheduled for argument in this Court on February 15, 2024. Mr. Xavier cited Vasquez in a Statement of Additional Authorities filed on December 21, 2023.

Staying Mr. Xavier's petition would conserve judicial resources and ensure equitable review. Given that Vasquez will require this Court to address the scope of a trial court's discretion to consider mitigating evidence at resentencing hearings, it is in the interest of justice to stay Mr. Xavier's case until the Court resolves that case.

This document is in 14-point font and contains 264 words, excluding the exemptions from the word count per RAP 18.17.

DATED this 13th day of February, 2024.

s/ Jan Trasen

JAN TRASEN (41177)
Washington Appellate Project (91052)
1511 Third Ave. #610
Seattle, WA 98101
Telephone: (206) 587-2711
Fax: (206) 587-2710
jan@washapp.org
wapofficemail@washapp.org

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 102663-3**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

- respondent Randall Sutton
[rsutton@co.kitsap.wa.us]
[kcpa@co.kitsap.wa.us]
Kitsap County Prosecutor's Office
- appellant
- Attorney for other party



MARIA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: February 13, 2024

WASHINGTON APPELLATE PROJECT

February 13, 2024 - 4:28 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,663-3
Appellate Court Case Title: State of Washington v. Melvin Antonio Xavier III
Superior Court Case Number: 20-1-00507-8

The following documents have been uploaded:

- 1026633_Motion_20240213162822SC802592_4570.pdf
This File Contains:
Motion 1 - Stay
The Original File Name was washapp.021324-06.pdf

A copy of the uploaded files will be sent to:

- KCPA@co.kitsap.wa.us
- jcross@kitsap.gov
- rsutton@kitsap.gov

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Jan Trasen - Email: jan@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20240213162822SC802592