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SUPREME COURT
STATE OF WASHINGTON
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NO. 91368-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
Respondent,

v.

JOHN E. BETTYS,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable David R. Needy, Judge

STATE'S ANSWER TO MOTION TO STAY REVIEW

SKAGIT COUNTY PROSECUTING ATTORNEY
RICHARD A. WEYRICH, PROSECUTOR

By: Erik Pedersen, WSBA#20015
Deputy Prosecuting Attorney
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Mount Vernon, WA 98273
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ANSWER

John Bettys seeks to stay proceedings in this Court regarding his petition for review from the decision of the Court of Appeals. The Court of Appeals denied Betty's appeal finding the trial court had not modified the judgment and sentence because of changed circumstances, but "[r]ather, the extension of one month within which to provide treatment accomplished exactly what the court wanted in imposing sentence." *State v. Bettys*, COA# Slip. Op. issued January 20, 2015, at page 3.

Mr. Bettys seeks to "order the review stayed pending resolution of a CrR 8.3 motion in the trial court on the newly discovered evidence of governmental misconduct..." Appellant's Motion to Stay Review for Trial Court to Address Newly Discovered Evidence of Misconduct (hereinafter "Motion") at page 1.¹

Bettys contention apparently is that the State did not file "the required motion proving any legal error requiring modification of the final judgment & sentence entered November 26, 2013." Motion at page 3. He seeks to pursue a motion under CrR 8.3 in the trial court to pursue his claim that there was an improper exercise of trial court authority given the absence

¹ Bettys also sought to supplement the record here in a previous motion. Due to the State's other appellate and trial court obligations, no answer was filed. The items that Bettys seeks to use to supplement the record do not affect the trial court's decision to modify the judgment and sentence. Thus, the State believes it should be a matter of this Court's discretion whether to grant or deny that motion.

of a written motion under CrR 7.8. The State contends if Bettys pursues such motion it is likely the trial court will deny the motion given the Court of Appeals decision and the trial court's previous exercise of discretion.

Bettys has not provided a time frame for pursuing the motion. The State has not received the CrR 8.3 motion which Mr. Bettys apparently intends to pursue. And a review of the docket of Skagit County Clerk's Office as of today's date, July 17, 2015, by the undersigned reveals no such motion has been filed.

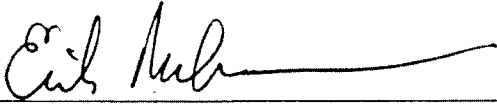
Additionally, RAP 7.2(e) allows a defendant to pursue postjudgment motions in the trial court without consulting with the appellate court. Only if that decision would change the decision being reviewed by the appellate court, must the permission of the appellate court be obtained prior to entry of the formal decision. To ensure prompt resolution of Bettys' motion, he should file the motion in the trial court. Then, if he prevails, he can seek the permission of this Court to enter the order in the trial court. As it stands, granting a stay of consideration of the petition for review would be for an indefinite period of time given that he has yet to even file the motion..

The State contends this Court should decline to grant the stay in light of the fact that Mr. Bettys has yet to even file the motion and has not shown he will likely prevail. This Court should continue evaluate Mr. Bettys' petition for review.

For the foregoing reasons, the State respectfully requests this Court deny the motion to stay proceedings.

DATED this 17th day of July, 2015.

SKAGIT COUNTY PROSECUTING ATTORNEY

By: 
Erik Pedersen, WSBA#20015
Senior Deputy Prosecuting Attorney
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Vickie Maurer, declare as follows:

I sent for delivery by: United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: John Bettys, #490445, addressed as Special Commitment Center, P O Box 88600, Steilacoom, WA 98388 and to John C. Dittman, Office of the Attorney General, P.O. Box 40116, Olympia, WA 98504-0116. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 17th day of July, 2015.


VICKIE MAURER/DECLARANT

OFFICE RECEPTIONIST, CLERK

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Supreme Court Clerk's Office

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91368-4
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