

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DETENTION OF )  
)  
) No. 93953-5  
ROBERT LOUGH, )  
)  
Appellant. ) STATE'S MOTION TO MODIFY  
) DEPUTY CLERK'S RULING  
) COMBINING PETITIONS FOR  
) REVIEW AND TO DISMISS  
) PRO SE PETITION FOR  
) REVIEW  
)  
)  
\_\_\_\_\_ )

1. IDENTITY OF MOVING PARTY

Respondent, the State of Washington, seeks the relief designated in part 2.

2. STATEMENT OF RELIEF SOUGHT

The State asks the Court to modify the Deputy Clerk's ruling combining Lough's counsel's petition for review and Lough's "pro se petition for review" into a single over-length petition for review. The State also asks the Court to dismiss Lough's "pro se petition

for review” as it is untimely, successive, and not allowed by the Rules of Appellate Procedure.

3. FACTS RELEVANT TO MOTION

At the conclusion of a lengthy trial, a unanimous jury found that Lough is a sexually violent predator under chapter 71.09 RCW. Lough filed a timely direct appeal, and the Court of Appeals affirmed his civil commitment in an unpublished decision. In re Detention of Lough, COA No. 73223-4-I. Lough’s appellate counsel filed a petition for review, which is pending under the above-captioned cause number.

Lough attempted to file a pro se statement of additional grounds in the Court of Appeals, but that document was “placed in the court file without action” because RAP 10.10(a) provides that a pro se statement of additional grounds may be filed only in a criminal case.<sup>1</sup> Lough filed a motion to modify that ruling, and the motion to modify was denied by a panel of judges.<sup>2</sup>

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<sup>1</sup> The Court of Appeals Administrator’s notation ruling is attached.

<sup>2</sup> The Court of Appeals’ ruling is attached.

Lough then filed a motion for discretionary review in this Court seeking review of the Court of Appeals' rejection of his pro se statement of additional grounds. The Clerk of this Court issued a letter informing Lough that his motion for discretionary review was untimely, and would be dismissed unless he filed a motion for extension of time explaining why it was necessary to consider an untimely motion "to prevent a gross miscarriage of justice."<sup>3</sup> Lough filed a motion for extension of time, but it provided "no explanation" for why the motion for discretionary review was untimely, and accordingly, the motion for discretionary review was dismissed.<sup>4</sup>

Lough has now filed a "pro se petition for review," again seeking review of the Court of Appeals' rejection of his pro se statement of additional grounds. Lough's appellate counsel filed a motion "to file an over length combined petition for review," asking to join Lough's "pro se petition for review" with the petition for

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<sup>3</sup> A copy of the Clerk's letter is attached.

<sup>4</sup> A copy of the Clerk's letter dismissing the motion for discretionary review is attached.

review currently pending on the underlying direct appeal.<sup>5</sup> The Deputy Clerk of this Court granted that motion.<sup>6</sup>

4.   GROUNDS FOR RELIEF AND ARGUMENT

RAP 17.7 provides that a party may object to a ruling by a commissioner or clerk by filing a motion to modify that ruling. The State asks this Court to modify the ruling of the Deputy Clerk combining Lough's "pro se petition for review" with Lough's appellate counsel's petition for review. The subject matter of Lough's "pro se petition for review" has already been litigated to the extent allowed by the Rules of Appellate Procedure. The rules do not provide a mechanism to revive this matter by combining it with a properly-filed petition for review.<sup>7</sup>

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<sup>5</sup> A copy of appellate counsel's motion is attached.

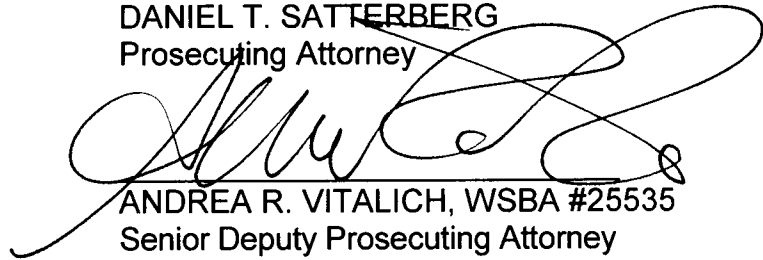
<sup>6</sup> A copy of the Deputy Clerk's notation ruling is attached.

<sup>7</sup> The State will not be responding further to the petition for review that was properly filed, as the State believes the Brief of Respondent and the Court of Appeals' opinion are sufficient to address the issues presented.

For the reasons set forth above, the State asks this Court to modify the Deputy Clerk's ruling combining Lough's "pro se petition for review" with appellate counsel's petition for review, and further asks this Court to dismiss Lough's "pro se petition for review" because it is untimely and successive.

Submitted this 24<sup>th</sup> day of March, 2017.

DANIEL T. SATTERBERG  
Prosecuting Attorney

A large, stylized handwritten signature in black ink, appearing to read 'A. Vitalich', is written over the typed name and title of the signatory.

ANDREA R. VITALICH, WSBA #25535  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
OFFICE ID #91002

*The Court of Appeals  
of the  
State of Washington*

RICHARD D. JOHNSON,  
Court Administrator/Clerk

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
TDD: (206) 587-5505

**RECEIVED**

**By KCPAO, SVP Unit at 8:23 am, Jun 16, 2016**

June 15, 2016

Andrea Ruth Vitalich  
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516 3rd Ave Ste W554  
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Robert Lough  
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greg@washapp.org

CASE #: 73223-4-I  
Detention of Robert Lough

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on June 10, 2016, regarding appellant Lough's statement of additional grounds for review:

"This is a civil appeal. As such, there is no provision in the Rules of Appellate Procedure for the filing of a Statement of Additional Grounds for Review. Therefore, the statement filed on June 6, 2016 will be placed in the court file without action".

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

ssd

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals  
of the  
State of Washington*

DIVISION I  
One Union Square  
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**RECEIVED**

By KCPAO, SVP Unit at 3:53 pm, Aug 29, 2016

August 29, 2016

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travis@washapp.org

CASE #: 73223-4-I  
Detention of Robert Lough

Counsel:

Please find enclosed a copy of the Order Denying Motion to Modify the Clerk's ruling entered in the above case today.

The order will become final unless counsel files a motion for discretionary review within thirty days from the date of this order. RAP 13.5(a).

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

enclosure

ssd

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

In the Matter of the Detention of )  
 )  
ROBERT LOUGH, )  
 )  
Appellant. )  
\_\_\_\_\_ )

No. 73223-4-1  
ORDER DENYING  
MOTION TO MODIFY

Appellant Robert Lough has moved to modify the court administrator/clerk's June 10, 2016 ruling rejecting for filing appellant's pro se Supplemental Statement of Additional Grounds. Respondent State of Washington has filed an answer. We have considered the motion under RAP 17.7 and have determined that it should be denied.

Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 29<sup>th</sup> day of August 2016.

FILED  
COURT OF APPEALS DIV. 1  
STATE OF WASHINGTON  
2016 AUG 29 PM 3:38

Trickey, J

Verdine  
Leach, J.



SUSAN L. CARLSON  
SUPREME COURT CLERK

ERIN L. LENNON  
DEPUTY CLERK/  
CHIEF STAFF ATTORNEY

**THE SUPREME COURT**  
STATE OF WASHINGTON



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[www.courts.wa.gov](http://www.courts.wa.gov)

November 14, 2016

**LETTER SENT BY E-MAIL**

Robert Lough (sent by U. S. mail only)  
P.O. Box 88600  
Steilacoom, WA 98388

Jennifer G'Dalia Ritchie  
Andrea Ruth Vitalich  
King County Courthouse  
516 3rd Avenue, Room W400  
Seattle, WA 98104-2388

Hon. Richard D. Johnson, Clerk  
Court of Appeals, Division I  
600 University Street  
One Union Square  
Seattle, WA 98101-1176

**RECEIVED**

**By KCPAO, SVP Unit at 9:11 am, Nov 15, 2016**

Travis Stearns  
Washington Appellate Project  
1511 3rd Avenue, Suite 701  
Seattle WA 98101-3647

Re: Supreme Court No. 93825-3 - In re Detention of: Robert Lough  
Court of Appeals No. 73223-4-I

Clerk, Counsel and Mr. Lough:

The Court of Appeals forwarded to this Court Mr. Lough's "MOTION FOR DISCRETIONARY REVIEW" and it was received on November 14, 2016. The Court of Appeals file for the matter was also received. The case has been assigned the above referenced Supreme Court cause number. A copy of the motion is enclosed for counsel.

The motion seeks review of the Court of Appeals order dated July 29, 2016, which denied a motion to modify the Clerk's ruling that rejected Mr. Lough's supplemental statement of additional grounds. Pursuant to RAP 13.5(a), a motion for discretionary review must be filed within 30 days after the decision is filed. The motion for discretionary review was filed at the Court of Appeals on November 3, 2016, and therefore it is late.

The Petitioner may seek an extension of time in which to file the motion for discretionary review by serving and filing a motion for extension of time to file a motion for discretionary review. The motion for extension of time should explain in detail the circumstances that resulted in the motion for discretionary review being filed late. Any such motion should be served upon the Respondent and filed with this Court by December 14, 2016. Any request for an extension of time should be supported by an appropriate affidavit establishing both extraordinary circumstances and that granting the motion would prevent a gross miscarriage of justice. See RAP 18.8(b). (Copy enclosed for Mr. Lough.)



Page 2  
No. 93825-3  
November 14, 2016

The due date for filing an answer to the motion for discretionary review is stayed pending the filing of a motion for extension of time.

If a motion for extension of time is not filed by December 14, 2016, this matter will be dismissed as untimely filed.

**Counsel are advised that future correspondence from this Court regarding this matter will most likely only be sent by an e-mail attachment, not by regular mail. This office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory.**

Sincerely,



Susan L. Carlson  
Supreme Court Clerk

SLC:bw

Separate enclosures for counsel and Mr. Lough

SUSAN L. CARLSON  
SUPREME COURT CLERK

ERIN L. LENNON  
DEPUTY CLERK/  
CHIEF STAFF ATTORNEY

**THE SUPREME COURT**  
STATE OF WASHINGTON



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December 19, 2016

**LETTER SENT BY E-MAIL**

Robert Lough (**sent by U. S. mail only**)  
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Steilacoom, WA 98388

Jennifer G'Dalia Ritchie  
Andrea Ruth Vitalich  
King County Courthouse  
516 3rd Avenue, Room W400  
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Hon. Richard D. Johnson, Clerk  
Court of Appeals, Division I  
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Seattle, WA 98101-1176

**RECEIVED**

**By KCPAO, SVP Unit at 1:04 pm, Dec 19, 2016**

Travis Stearns  
Washington Appellate Project  
1511 3rd Avenue, Suite 701  
Seattle WA 98101-3647

Re: Supreme Court No. 93825-3 - In re Detention of: Robert Lough  
Court of Appeals No. 73223-4-I

Clerk, Counsel and Mr. Lough:

The "APPELLANT'S PRO SE MOTION FOR EXTENSION OF TIME" was received and filed on December 16, 2016.

As explained in my initial letter opening this case, the motion for discretionary review filed at the Court of Appeals by Mr. Lough on November 3, 2016, seeks review of the Court of Appeals order dated July 29, 2016, which denied a motion to modify the Clerk's ruling that rejected Mr. Lough's supplemental statement of additional grounds. Pursuant to RAP 13.5(a), a motion for discretionary review must be filed within 30 days after the decision is filed. The motion for discretionary review was not filed within that 30-day period and therefore Mr. Lough was provided an opportunity to file a motion for extension of time explaining the reason his motion for discretionary review was filed late. The motion for extension of time was filed on December 16, 2016. In regard to the motion for extension of time, the following ruling is entered:

**The motion provides no explanation for why the motion for discretionary review was not filed by the due date of 30 days after the July 29, 2016, Court of Appeals letter. (The motion seems to be focused on seeking review of the Court of Appeals'**



Page 2  
No. 93825-3  
December 19, 2016

**final decision in this matter which was filed on November 7, 2016, four days before Mr. Lough filed the motion for discretionary review. The motion for discretionary review filed by Mr. Lough only addresses the Court of Appeals' July 29, 2016, order that affirmed the Clerk's ruling that rejected his statement of additional grounds for review.) Therefore, the motion for extension of time is denied and this matter is dismissed as untimely filed.**

It is noted that counsel for Mr. Lough has now filed a petition for review seeking review of the November 7, 2016, opinion filed by the Court of Appeals. That case will be opened and assigned a different Supreme Court number.

Sincerely,



Susan L. Carlson  
Supreme Court Clerk

SLC:bw

**THE SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,  
Respondent,

v.

ROBERT LOUGH,  
Petitioner.

Supreme Court No. 93953-5

MOTION TO FILE AN  
OVER LENGTH  
COMBINED PETITION  
FOR REVIEW

**I. IDENTITY OF MOVING PARTY**

Petitioner, Robert Lough, moves this Court for a motion to file an over length combined petition for review.

**II. STATEMENT OF RELIEF SOUGHT**

So that justice might be served, Mr. Lough moves the Court for entry of an order permitting him to file a combined petition for review in excess of the twenty page limit.

**III. GROUND FOR RELIEF SOUGHT**

1. Mr. Lough is asking to file a combined petition for review in excess of the twenty page limit.

2. RAP 13.4(f) provides that an answer to a petition for review should not exceed 20 pages. However, RAP 1.2(a) and (c) direct

the court to liberally interpret the rules to facilitate the decision of cases on the merits and to waive or alter provisions to serve the ends of justice.

3. This was a particularly long and complex trial, with a 3,700 page transcript. The issues raised in both the original petition and the pro se petition by Mr. Lough involve new and complex issues not raised in this court before. The over length brief is necessary to explain these complex issues and provide framework for the legal and factual background and the legal analysis is presented as concisely as possible.

4. As Mr. Lough's attorney, I filed a petition for review which was twenty pages long. In addition to the issues I raised in my brief, Mr. Lough also petitioned this Court separately on whether the Court of Appeals decision in refusing to reconsider his pro se petition to seek review of the Court of Appeals order denying consideration of his Statement of Additional Grounds was done in error. This petition was seven pages long.

5. The interests of justice also favor accepting the two petitions as a combined over length petition. These are complex issues. It is expedient to consider them together, and considering both of them provides Mr. Lough with fair due process.

IV. CONCLUSION

For all of these reasons, Mr. Lough requests this Court grant his motion for a combined over length petition.

DATED this 23 day of March 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

TRAVIS STEARNS (WSBA 29935)  
Washington Appellate Project (91052)  
Attorneys for Appellant

### 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. 93953-5**, 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 or residence address as listed on ACORDS:

- respondent Andrea Vitalich, DPA  
[paosvpstaff@kingcounty.gov] [paoappellateunitmail@kingcounty.gov]  
[Andrea.Vitalich@kingcounty.gov]  
King County Prosecuting Attorneys-SVP/Detention Unit
- petitioner
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: March 23, 2017



SUSAN L. CARLSON  
SUPREME COURT CLERK

ERIN L. LENNON  
DEPUTY CLERK/  
CHIEF STAFF ATTORNEY

**THE SUPREME COURT**  
STATE OF WASHINGTON



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[www.courts.wa.gov](http://www.courts.wa.gov)

March 24, 2017

**LETTER SENT BY E-MAIL ONLY**

Travis Stearns  
Washington Appellate Project  
1511 3rd Avenue, Suite 701  
Seattle, WA 98101-3647

Jennifer G'Dalia Ritchie  
Andrea Ruth Vitalich  
King County Courthouse  
516 3rd Avenue, Room W400  
Seattle, WA 98104-2388

Re: Supreme Court No. 93953-5 - In re the Detention of: Robert Lough  
Court of Appeals No. 73223-4-I

Counsel:

On March 23, 2017, this Court received the "MOTION TO FILE AN OVER LENGTH COMBINED PETITION FOR REVIEW" in the above referenced matter. The Supreme Court Deputy Clerk entered the following ruling regarding the motion:

**"Motion granted. The two petitions for review will be combined."**

The petition for review will be set for consideration without oral argument by a Department of the Court; see RAP 13.4(i). If the members of the Department do not unanimously agree on the manner of the disposition, consideration of the petition will be continued for determination by the En Banc Court.

The Respondent is advised that any answer to the petition for review may be served and filed with this Court by April 24, 2017. The parties are directed to review the provisions set forth in RAP 13.4(d), regarding the filing of any answer to petition for review and any reply to answer.

Usually there is approximately four to five months between receipt of the petition for review in this Court and consideration of the petition. This amount of time is built into the process to allow an answer to the petition and for the Court's normal screening process. At this

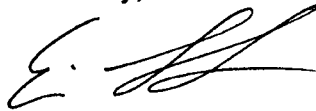


Page 2  
No. 93953-5  
March 24, 2017

time it is not known on what date the matter will be determined by the Court. The parties will be advised when the Court makes a decision on the petition.

Any amicus curiae memorandum in support of or in opposition to a pending petition for review should be served and received by this Court and counsel of record for the parties and other amicus curiae by not later than 60 days from the date the petition for review was filed; see RAP 13.4(h).

Sincerely,

A handwritten signature in black ink, appearing to read "E. Lennon", written in a cursive style.

Erin L. Lennon  
Supreme Court Deputy Clerk

ELL:jd

Certificate of Service by Electronic Mail

Today, in accordance with a standing electronic service agreement, I directed electronic mail addressed to the attorney for the appellant, Travis Stearns, at wapofficemail@washapp.org, containing a copy of the State's Motion to Modify Deputy Clerk's Ruling Combining Petitions for Review and to Dismiss Pro Se Petition for Review in, IN RE THE DETENTION OF Robert Lough, Cause No. 93953-5-1, in the Supreme Court of the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Kelly Jensen

Name

Done in Seattle, Washington

3-24-17

Date

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Robert Lough, the appellant, at P.O. Box 88450 Steilacoom, WA 98388, containing a copy of the State's Motion to Modify Deputy Clerk's Ruling Combining Petitions for Review and to Dismiss Pro Se Petition for Review, in RE THE DETENTION OF ROBERT LOUGH, Cause No. 93953-5, in the Supreme Court of the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Kelly Stansen

Name

Done in Seattle, Washington

3-24-17

Date

**KING COUNTY PROSECUTING ATTORNEY SVP UNIT**

**March 24, 2017 - 2:59 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 93953-5  
**Appellate Court Case Title:** In re Detention of Robert Lough  
**Superior Court Case Number:** 09-2-29232-9

**The following documents have been uploaded:**

- 939535\_20170324145611SC596167\_0074\_Motion.pdf  
This File Contains:  
Motion 1 - Modify Deputy Clerks Ruling  
*The Original File Name was 2017-03-24 States Motion to Modify Deputy Clerk Ruling Combining Petitions for Review and to Dismiss Pro Se Petition for Review.pdf*

**A copy of the uploaded files will be sent to:**

- wapofficemail@washapp.org
- Andrea.Vitalich@kingcounty.gov
- travis@washapp.org

**Comments:**

---

Sender Name: Kelly Lorenzen - Email: Kelly.Lorenzen@kingcounty.gov

**Filing on Behalf of:** Andrea Ruth Vitalich - Email: Andrea.Vitalich@kingcounty.gov (Alternate Email: paosvpstaff@kingcounty.gov)

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Seattle, WA, 98104  
Phone: (206) 477-8519

**Note: The Filing Id is 20170324145611SC596167**