

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
Respondent,)	Supreme Court No. 94037-1
)	COA No. 74053-9-I
vs.)	
)	MOTION TO EXTEND
D.D.-H.,)	TIME TO FILE
Petitioner.)	PETITION FOR REVIEW
_____)	

I. IDENTITY OF MOVING PARTY

Petitioner, D.D.-H., by and through counsel of record, Nielsen, Broman & Koch, requests the relief stated in part II.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 1.2(c), 13.4(a), and 18.8(b), petitioner requests that this Court extend the time for filing his petition for review by one day, to January 5, 2017.

III. FACTS RELEVANT TO MOTION AND GROUNDS FOR RELIEF

1. The petition for review was due January 4, 2017. Counsel respectfully requests this Court grant a one-day extension of time to file the petition for review due to extraordinary circumstances and to prevent a gross miscarriage of justice.

2. The Court of Appeals affirmed D.D.-H.'s convictions in an opinion filed on December 5, 2016.¹ Under RAP 13.4(a), the petition for review was due 30 days later, on January 4, 2017. Counsel raised two issues in the petition for review filed on January 5, 2017, including (1) whether a juvenile court retains jurisdiction to toll a juvenile's community supervision period after the original community supervision period has

already ended, and (2) whether juveniles are entitled to notice before their community supervision period may be extended.

3. Counsel completed the final draft of the petition for review on January 3, 2017 and sent it to a Nielsen, Broman & Koch legal assistant to format it pursuant to the RAPs. This formatting includes creating a table of contents, a table of authorities, and a cover page. Counsel does not know how to do this formatting.

4. Unfortunately, counsel inadvertently miscalculated the 30-day deadline by one day, and accordingly mistakenly informed the legal assistant the petition for review was due on January 5 instead of January 4. Operating in good faith, but on counsel's mistaken information, the legal assistant was not able to finish formatting the petition for review until January 5.

5. Counsel filed the petition for review on January 5, still unaware of his calculating error. It was not until counsel was notified by this Court that his petition for review was due on January 4 that he realized his calculating error.

6. RAP 1.2(c) allows this Court to waive or alter the RAPs "in order to serve the ends of justice, subject to the restrictions in Rule 18.8(b) and (c)." RAP 18.8(b) permits the appellate court to extend the time within a party must file a petition for review "in extraordinary circumstances and to prevent a gross miscarriage of justice." Such circumstances are present where the filing was untimely due to "excusable error or circumstances beyond the party's control." Beckman v. DSHS, 102 Wn. App. 687, 694,

¹ An order correcting the opinion was issued by the Court of Appeals on December 12, 2016.

11 P.3d 313 (2000) (quoting Reichelt v. Raymark Indus., Inc., 52 Wn. App. 763, 765, 764 P.2d 653 (1988)).

7. This case presents extraordinary circumstances. Counsel completed the petition for review ahead of the filing date. The legal assistant was not able to timely format the petition because she was inadvertently misinformed as to its due date by counsel. These circumstances were entirely out of petitioner D.D.-H.'s control.

8. One additional day for filing the petition review is also necessary to prevent a gross miscarriage of justice. D.D.-H. must exhaust all available State remedies before he may seek habeas corpus relief in federal court. This includes filing a petition for review before the Washington Supreme Court. If his petition for review is denied based on counsel's late filing, then he will be denied the opportunity to seek any further state or federal relief.

9. Granting a one-day extension of time to file the already prepared petition for review would promote justice and facilitate this court's decision on the merits. RAP 1.2(a). D.D.-H. should not be penalized for appellate counsel's inadvertent calculating error. Counsel believes the petition raises two open issues of law and should be considered by this Court. There was no legitimate strategic or tactical reason for filing the petition one day late on January 5. If the petition for review is rejected for late filing, then undersigned counsel has provided D.D.-H. ineffective assistance of counsel. If this Court so determines, then this Court should allow counsel to withdraw and appoint D.D.-H. new counsel who can adequately represent his interests on appeal.

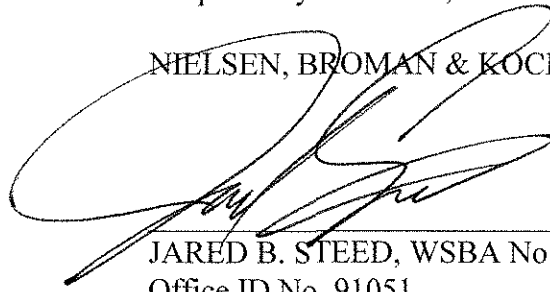
IV. CONCLUSION

Counsel has never previously requested an extension of time for filing a petition for review in this Court. For the above stated reasons, counsel respectfully requests that this Court grant this extension to prevent a gross miscarriage of justice.

DATED this 20th day of January, 2017.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A large, stylized handwritten signature in black ink, appearing to read 'Jared B. Steed', is written over a horizontal line.

JARED B. STEED, WSBA No. 40635

Office ID No. 91051

Attorneys for Appellant/Petitioner

NIELSEN, BROMAN & KOCH P.L.L.C.

January 25, 2017 - 11:14 AM

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