

1
2
3
4
5 **THE SUPREME COURT**
6 **STATE OF WASHINGTON**
7

8
9
10 STATE OF WASHINGTON,
11 Respondent,
12 vs.
13 BRIAN T. DECKER,
14 Appellant/Petitioner.
15
16
17
18
19

MOTION FOR EXTENSION OF TIME
SUPREME COURT CASE NO.
94576-4
COURT OF APPEALS CASE NO.
73949-2-1

20
21
22 I
23 INTRODUCTION

24 Pursuant and in response to this Court's June 2, 2017 letter,
25 Appellant/Petitioner, Mr. Brian T. Decker and his attorney wishes to acknowledge
26 their gratefulness in being provided the opportunity to respond, and, by and through
27
28
29
30

1 his attorney of record, Andrew L. Magee, WSBA# 31281 respectfully submits –
2 and asks be granted – this Motion for Extension of Time.
3

4 It is respectfully submitted, furthermore, that should the Court wish to exact
5 any punitive measure against the Appellant/Petitioner, that such be directed to the
6 attorney of record, Mr. Magee, rather than Appellant/Petitioner inasmuch as it is
7 Mr. Magee’s responsibility to see to it that all rules and the Rules of Appellate
8 Procedure (RAP) are complied with and that it would be unfair to deny Mr. Decker
9 his opportunity to Petition this Court for Discretionary Review for a failure by his
10 attorney to comply with the rules.
11
12
13
14

15 II
16 FACTS

17 This Court accurately reflects and recounts the record in its June 2, 2017
18 letter. The original decision of The Court of Appeals was made on March 27, 2017
19 and by rule, a Petition for Discretionary Review would otherwise be due April 26,
20 2017.
21
22

23 Mr. Decker, however, and upon review of that decision both planned on; (a)
24 Petitioning this Court for Discretionary review, and; (b) Moving the Court of
25 Appeals to (i) reconsider its decision, and (ii) publish the otherwise unpublished
26 opinion.
27
28
29
30

1 Mr. Decker asked for additional time to file his motions *before* the then
2 current deadline to file his Petition with this Court of April 26, 2017. As the April
3 26, 2017 deadline approached, and without his motion(s) (*supra*) responded to, and
4 out of concern for that deadline approaching while his motions were pending, Mr.
5 Decker's attorney telephonically inquired¹ of the Court of Appeals the predicament
6 that would occur if their motions were denied whereby denial(s) would perhaps
7 come *after* the April 26, 2017 deadline. From that conversation, Mr. Magee
8 understood that if the motions were denied, that the 30-days in which the Opinion
9 would become final and from which a Petition for Review would be timely filed
10 would be measured from the date the/an order denying their motion(s) occurred
11 (here, April 28, 2017, ((Exhibit A, attached) which when measured from 30-days
12 thereafter, would by Mr. Magee's count, make May 30, 2017 the *new* due date to
13 file a Petition for Review.)
14
15
16
17
18
19
20

21 Mr. Decker did receive a denial of his Motion for Extension of Time to File
22 a Motion to Publish dated April 28, 2017 (Exhibit A). Therein, it states, "Within
23 30 days after the order is filed, the opinion of the Court of Appeals will become
24
25
26
27
28

29 ¹ Mr. Magee intends in no way-shape-form to suggest that any burden is born by The Court of Appeals for what is
30 described in the communication referenced herein.

1 final unless, in accordance with RAP 13.4, counsel files a petition for review in this
2 court.” (Exhibit A)
3

4 III
5 ARGUMENT

6 It is respectfully submitted and requested that this Motion for Extension of
7 Time be granted because:
8

9 1. Mr. Decker, by and through his attorney, made good-faith inquiries to
10 establish the timeliness of filing a Petition for Review with this Court in the context
11 of having timely and properly filed motion(s) (as described, *supra*, and in this
12 Court’s June 2, 2017 letter) with the Court of Appeals, and;
13
14

15 2. That in doing so, it was reasonable for Mr. Decker’s attorney to conclude
16 that the Court of Appeals Order and communique to Mr. Decker/Counsel dated
17 April 28, 2017 would provide for April 28, 2017 to be the date from which the 30-
18 days from which the opinion of the Court of Appeals would become final and that
19 within which a petition for review with this Court could be timely and properly
20 filed pursuant to RAP 13.4, and;
21
22

23 3. That to deny Mr. Decker an opportunity to seek review would deny him
24 an opportunity to pursue justice and review for reasons contained in his petition, to
25 include matters that it is respectfully submitted, qualify for review and the basis
26
27
28
29
30

1 therefore, to include matters of state-wide public policy and are of constitutional
2 magnitude, and that which is just and fair, *et al.*, and;
3

4 4. That if any punitive measure are taken, that it be taken against Mr.
5 Decker's attorney, and not Mr. Decker's good-faith pursuit of justice and access to
6 the courts.
7

8
9 IV
10 CONCLUSION

11 Mr. Decker recognizes the reasoning contained in this Court's June 2, 2017
12 and does not wish to suggest that the Court's reasoning is *wrong*. Rather, Mr.
13 Decker would respectfully suggest that taken together, counsel's (i) inquiries, and,
14 (ii) reading of the Court of Appeals' Order Denying Motion for Extension of Time
15 to File a Motion to Publish and attached communique dated April 28, 2017 that a
16 good-faith understanding therefrom, the 30-days from which it would be timely and
17 proper to file a Petition for Review with this Court would conclude on May 30,
18 2017 could be reasoned, and was acted upon accordingly.
19
20
21
22

23 It is respectfully submitted, furthermore, that it would be in the interests of
24 justice, fairness, and access to the Courts to allow and grant this Motion for
25 Extension of Time so that Mr. Decker's petition for review filed with this Court be
26
27
28
29
30

1 received and considered and that any penalty arising out of this filing be exacted
2 against counsel for Mr. Decker.
3
4
5
6

7 Dated this 16th day of June, 2017
8

9 Presented by: *Ecce Signum: Andrew L. Magee*
10 Andrew L. Magee, WSBA #31281
11 44th Floor, 1001 Fourth Avenue Plaza
12 Seattle, Washington 98154
13 (206) 389-1675
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

CERTIFICATE OF ELECTRONIC SERVICE

I, Andrew L. Magee, attorney of record for Defendant/Appellant/Petitioner, Brian T. Decker, and pursuant to the laws and penalties of perjury in the State of Washington do hereby certify that this document was electronically served/delivered to Ian Ith, Esq., attorney for Plaintiff/Respondent/Counter-Appellant, King County/State of Washington on June 16, 2017 at the following Address:

Ian David Ith, Esq.
King County Prosecutors Office
516 Third Avenue
Seattle, Washington 98104-2385
ian.ith@kingcounty.gov

Prosecuting Atty King County
King Co Pros/App Unit Supervisor
516 Third Avenue
Seattle, Washington 98104
paoappellateunitmail@kingcounty.gov

Ecce Signum: /s/ Andrew L. Magee

Andrew L. Magee, WSBA #31281
44th Floor, 1001 Fourth Avenue Plaza
Seattle, Washington 98154
(206) 389-1675

*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

April 28, 2017

Prosecuting Atty King County
King Co Pros/App Unit Supervisor
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104
paoappellateunitmail@kingcounty.gov

Ian David Ith
King County Prosecuting Attorney's Offi
516 3rd Ave
Seattle, WA 98104-2385
ian.ith@kingcounty.gov

Andrew Luke Magee
Attorney at Law
44th Fl
1001 4th Ave Plaza
Seattle, WA 98154-1119
amagee@mageelegal.com

CASE #: 73949-2-1
State of Washington, Respondent/Cr-Appellant v. Brian T. Decker, Appellant/Cr-Respondent

Counsel:

Enclosed please find a copy of the Order Denying Motion for Extension of Time to File a Motion to Publish entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

jh

Enclosure

c: The Hon. Samuel Chung

EXHIBIT Ap. 1 of 2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 BRIAN THOMAS DECKER,)
)
 Appellant.)
 _____)

NO. 73949-2-1

ORDER DENYING MOTION
FOR EXTENSION OF TIME

The appellant, Brian T. Decker, having filed a motion for extension of time to file a motion to publish opinion and the hearing panel having determined that the motion should be denied, now, therefore, it is hereby

ORDERED that the appellant's motion for extension of time to file a motion to publish opinion is hereby denied.

DATED this 28th day of April, 2017.

FOR THE COURT:


Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2017 APR 28 PM 3:31

EXHIBIT Apr. 2017