

CLERK IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 95655-3
)	
v.)	ANSWER TO MOTION
)	TO DISMISS
GLEN HOWARD PINKHAM,)	
)	
Petitioner.)	

I. IDENTITY OF ANSWERING PARTY

Petitioner Glen H. Pinkham asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Mr. Pinkham asks the Court to deny the Respondent's motion to dismiss for untimely filing of the Petition for Review.

III. FACTS RELEVANT TO MOTION

Mr. Pinkham sought discretionary review of two issues decided by the Yakima County Superior Court following his conviction in a Yakima County District Court: (1) whether knowledge is an essential element of unlawful possession of a

loaded firearm, and (2) whether enforcement of the firearm statute infringed his hunting rights under the Yakima Treaty of 1855. The Court of Appeals commissioner denied review of the treaty issue but granted review as to the essential elements issue. Mr. Pinkham moved to modify the commissioner's ruling; his motion was denied. The parties briefed the essential elements issue, which was decided by the court on February 6, 2018. Mr. Pinkham promptly filed his petition for review of the treaty rights decision. The respondent argues that the 30-day time limit for filing a Motion for Discretionary Review was triggered by the entry of the order denying Mr. Pinkham's motion for reconsideration of the commissioner's ruling, which denied review of one of the two issues presented for review and that the present petition, for review of the trial court's denial of review of the treaty rights issue, is untimely.

IV. GROUNDS FOR RELIEF AND ARGUMENT

“Judicial policy generally disfavors interlocutory appeals.” Hartley v. State, 103 Wn.2d 768, 773, 698 p2d 77 (1985) (citing Maybury v. Seattle, 53 Wn.2d 716, 336 P.2d 878 (1959)). The Court has long favored the policy of requiring appeals to be taken from final judgment. Post v. City of Spokane, 35 Wash. 114, 115-16, 76 P. 510 (1904), Reif v. La Follette, 19 Wn.2d 366, 369, 142 P.2d 1015 (1943); see Teufel Construction Co. v American Arbitration Association, 3 Wn. App. 24, 472 P.2d 572 (1970).

The rule . . . forbidding fragmentary appeals is a wise and salutary one, not only from the standpoint of protecting the appellate courts from an unnecessary burden, but also from the standpoint of a proper administration of justice. . . . [A]n appellate court can handle a case much more understandingly after final disposition, than by piecemeal decisions in interlocutory orders.

Maybury, 53 Wn.2d at 721 (quoting Chadbourn Gotham Inc. v. Vogue Mfg. Inc., 259 F.2d 909, 910 (4th Cir., 1958)).

Respondent's argument is premised on interpreting RAP 13.5(a) as requiring a party to promptly seek review of an interlocutory decision or forego review entirely. In cases which present multiple issues which are resolved in multiple succeeding decisions, this construction of the rule is contrary to the policy disapproving fragmentary appeals.

The rules permit a party to seek review of a decision of the Court of Appeals within 30 days following any decision terminating review. RAP 13.3(a)(1), RAP 13.4. When two issues are presented in the Court of Appeals and the court decides the two issues on different dates, a petition for review of the first decision may be filed within 30 days after the second decision is decided, because the second decision is the "decision terminating review." See State v. Solberg, 122 Wn.2d 688, 861 P.2d 460 (1993). The appeal in Solberg presented two issues: the lawfulness of the arrest and the validity of an

exceptional sentence. The Court of Appeals denied reconsideration after deciding the arrest issue but called for further briefing on the sentencing issue. 122 Wn.2d at 696. Thirty days after the sentencing issue had been decided and the Court of Appeals had entered an order terminating review, the State filed its petition for review. Id. Respondent claimed that the petitioner was required to seek review of the arrest issue within 30 days after the motion for reconsideration had been denied. This court firmly rejected the respondent's argument, holding that both issues were properly before the court because the petition for review was filed within 30 days after the decision terminating review:

Petitions for review are filed from "decision[s] terminating review." RAP 13.3(b); RAP 13.4(a). The July 15 order only denied reconsideration of one issue; . . . it was not an order terminating review. The order which terminated review in the Court of Appeals was filed on August 27 and therefore the petition for review,

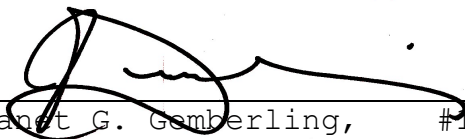
filed within 30 days of that date, was
timely. RAP 13.4(a)

122 Wn.2d at 696.

The rules should not be construed to favor
"piecemeal decisions in interlocutory orders."
53 Wn.2d at 721. Mr. Pinkham has filed a
petition for review within 30 days of the entry
of the decision terminating review. The petition
was timely.

Respectfully submitted on Friday, May 11,
2018.

Janet Gemberling, P.S.



Janet G. Gemberling, #13489
Attorney for Petitioner

CERTIFICATION

I certify under penalty of perjury under the laws of the State of Washington that the facts set out in part III above are true, and that on this day I served a copy of this document by email on the attorney(s) for the respondent, receipt confirmed, pursuant to the parties' agreement:

Dave Trefry
David.Trefry@co.yakima.wa.us

Heather Thorn
heather.thorn@co.yakima.wa.us.

Signed at Spokane, Washington on May 11,
2018.



Janet G. Gemberling
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JANET GEMBERLING PS

May 11, 2018 - 1:37 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95655-3
Appellate Court Case Title: State of Washington v. Glen Howard Pinkham
Superior Court Case Number: 15-1-01171-1

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- 956553_Answer_Reply_20180511133621SC367743_2462.pdf
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