

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
Respondent,)	No. 96779-2
)	
v.)	ANSWER TO STATE'S
)	MOTION TO EXTEND
DAVID LEVICE PHILLIPS,)	TIME TO FILE
Petitioner.)	ANSWER TO PETITION
)	FOR REVIEW

A. IDENTITY OF MOVING PARTY

Petitioner David Phillips seeks the relief designated below.

B. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 13.4(d) and RAP 18.8(a), Mr. Phillips asks this Court to deny the State's request to extend the time to file an Answer to Mr. Phillips' petition for review.

C. GROUND FOR RELIEF AND ARGUMENT

1. Under RAP 13.4(d), a party may file an answer to a petition for review. However, "[a]ny answer should be filed within 30 days after the service on the party of the petition." RAP 13.4(d).

2. Mr. Phillips' petition for review was filed and served electronically on January 15, 2019.

3. The Respondent on March 13, 2019, a date approaching two months after Mr. Phillips’ filing of his petition for review, filed its motion (the motion subject herein) seeking an extension of time to file the answer.

4. Under RAP 18.8 (“Waiver of Rules and Extension and Reduction of Time”), an appellate court may, on motion of a party, enlarge the time within which an act must be done in a particular case “in order to serve the ends of justice[.]” RAP 18.8(a).

5. Respondent’s motion does not explain why granting the motion to extend would serve the ends of justice. Respondent states only that general life obligations, internal office editing procedures designed to ensure *timely* filing, and counsel’s preparation for oral argument on February 21, resulted in counsel forgetting about the need to file the brief on February 15, and for almost a month thereafter. Motion, at p. 2.

6. Counsel for Mr. Phillips notes that on February 15, 2019, he timely filed the Answer to the State’s Petition for Review in State v. Harold Marquette, No. 96778-4, despite also being engaged in extensive preparations for oral argument on February 22, before

Division One of the Court of Appeals, in State v. Shomari Jackson, COA No. 76974-0-I, a significant case involving an illegal search, multiple complex evidentiary issues, and issues regarding the right to present a defense, in which the Court of Appeals granted counsel's motion for additional time for oral argument.

7. Counsel for Mr. Phillips understands the case load pressures placed on publicly employed attorneys on both sides of criminal cases, and has no desire to tempt fate by arguing that such circumstances as those listed by the Respondent may not be considered by a court, if offered as one of the bases for an argument as to RAP 18.8(a), where the movant includes such facts as part of a larger effort to argue that the "interests of justice" standard is satisfied in the particular case. Here, Respondent, while candidly, if only impliedly, admitting the omission, has made no effort to include any argument that might satisfy the Rule's standard, and has therefore conceded that the circumstances necessary to meet RAP 18.8(a) are entirely absent.

8. Further, the "interests of justice" standard is manifestly not satisfied in the present case wherein the Respondent states that the King County Prosecuting Attorney's Office did not ensure prioritization of

the timely filing of an answer, where Mr. Phillips seeks review of a decision of the Court of Appeals that rejected his argument that the seating of an openly and avowedly, if conflicted, racially prejudiced juror violated his Sixth Amendment right to a fair and unbiased jury, under this Court's decision in State v. Irby, 187 Wn. App. 183, 193, 347, P.3d 1103 (2015), and other authorities. See Petition for Review, at pp. 3-11.

9. Mr. Phillips submits that the Respondent's motion for extension for time does not meet the criteria of RAP 18.8(a).

D. CONCLUSION

Mr. Phillips respectfully requests that this Court deny the State's Motion for Extension of Time to File Answer to Petition for Review.

DATED this 14th day of March, 2019.

Respectfully submitted,

s/OLIVER R. DAVIS
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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. 96779-2**, 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 Jennifer Joseph, DPA
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King County Prosecutor's Office – Appellate Unit
- appellant
- Attorney for other party



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Date: March 14, 2019

WASHINGTON APPELLATE PROJECT

March 14, 2019 - 4:27 PM

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