

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

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	NO. 96847-1
Respondent,)	
)	
vs.)	PETITIONER'S MOTION
)	TO STAY PETITION
BRIAN SMITH,)	FOR REVIEW PENDING
)	DECISION IN <i>STATE v.</i>
Petitioner.)	<i>IMOKAWA</i>
_____)	

I. IDENTITY OF MOVING PARTY

COMES NOW the above-named Petitioner, and upon all the files, records and proceedings heretofore had herein, moves this Court for the relief designated below.

II. STATEMENT OF RELIEF SOUGHT

Petitioner moves this Court to stay consideration of his Petition for Review pending this Court's decision in *State v. Imokawa*, Supreme Court No. 96217-1. Oral argument is set for May 16, 2019.

III. GROUND FOR RELIEF SOUGHT

As grounds for and in support of this motion appellant shows unto the Court as follows:

1
2
3 1. This petition arises from a vehicular homicide
4 conviction. In the Petition for Review, petitioner raised the
5 issue that the Court of Appeals opinion in this case conflicted
6 with the Court of Appeals opinion in *Imokawa*, 4 Wn. App. 2d 545,
7 422 P.3d 502 (2018). This Court granted review in *Imokawa* on
8 the issue of whether due process requires jury instructions to
9 plainly tell the jury that the State bears the burden of proving
10 the absence of a superceding cause in a vehicular homicide trial
11 because it negates the essential element of proximate cause.

12 2. The State here filed a "Contingent Cross Petition for
13 Review" -- which this Court decided to treat as an Answer to the
14 Petition. The State also raised the issue of the effect of the
15 *Imokawa* opinion on this case. Contingent Cross Petition for
16 Review (filed 3/25/2019) at 6-7.

17 3. The parties thus agree that the *Imokawa* opinion
18 presents a significant issue vis-a-vis the Court of Appeals
19 opinion in this case. Since this Court is hearing *Imokawa*, it
20 will issue a definitive opinion on that issue. It thus makes
21 sense for this Court to wait and consider the full Petition in
22 this case after it has decided that case.


23 IV. CONCLUSION

24 For the reasons stated above, Petitioner respectfully asks
25
26

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

that the Court stay consideration of his Petition for Review until this Court has decided *State v. Imokawa*.

DATED this 9th day of April, 2019.


LENELL NUSSBAUM, WSBA No. 11140
Attorney for Mr. Smith

LAW OFFICE OF LENELL NUSSBAUM PLLC

April 09, 2019 - 11:32 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96847-1
Appellate Court Case Title: State of Washington v. Brian J. Smith
Superior Court Case Number: 14-1-01457-3

The following documents have been uploaded:

- 968471_Motion_20190409112845SC490105_5505.pdf
This File Contains:
Motion 1 - Stay
The Original File Name was Motion to Stay Petition.pdf

A copy of the uploaded files will be sent to:

- Appellate_Division@co.whatcom.wa.us
- hthomas@co.whatcom.wa.us

Comments:

Sender Name: Lenell Nussbaum - Email: lenell@nussbaumdefense.com

Address:

2125 WESTERN AVE STE 330

SEATTLE, WA, 98121-3573

Phone: 206-728-0996

Note: The Filing Id is 20190409112845SC490105