

FILED
SUPREME COURT
STATE OF WASHINGTON
8/30/2019 2:37 PM
BY SUSAN L. CARLSON

CLERK IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
Petitioner,) NO. 97605-8
) COA NO. 76672-4-I
vs.)
) MOTION FOR STAY OF
NICHOLAS ANDERSON,) PETITION FOR REVIEW
) PENDING RESOLUTION
Respondent,) OF STATE V. WU, NO.
) 96747-4-I
)
)
_____)

1. IDENTITY OF MOVING PARTY

The State of Washington, asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

The State requests a stay of this court's consideration of the petition for review in this case pending issuance of the opinion in State v. Wu, No. 96747-4-I (argued June 13, 2019).

3. FACTS RELEVANT TO MOTION

Nicholas Anderson was convicted of four counts of vehicular homicide, one counts of vehicular assault, and one count of reckless driving. Anderson had two prior relevant convictions: a 1998 DUI and a 2005 reckless driving. Under RCW 9.94A.553, "an additional two years is added to the standard sentence range for

vehicular homicide committed while under the influence of intoxicating liquor or any drug . . . for each prior offense as defined in RCW 46.61.5055.” RCW 46.61.5055 defines a “prior offense” as, among other crimes, “a conviction for violation of RCW . . . 46.61.500 [reckless driving] . . . that was originally filed as a violation of RCW 46.61.500 [DUI].”

As a result of his prior convictions, the sentencing court imposed a 24 month sentence enhancement on each of his vehicular homicide convictions for his “prior offenses” of DUI and reckless driving.

Anderson appealed arguing that the State was required to prove to a jury, not the court, that his prior convictions qualified as prior offenses, and that the State additionally had to prove that the prior convictions involved drugs and alcohol.

The Court of Appeals agreed with Anderson. In its petition for review, the State of Washington is asking this Court to accept review of the decision below because it is in conflict with other appellate court decisions and also because clarification is required of this Court’s holding in City of Walla v. Greene, 154 Wn.2d 722, 116 P.3d 1008 (2005).

A decision is currently pending before this Court in State v.

Wu, No. 96747-4-I (argued June 13, 2019). The decision in Wu might resolve some, but not all, of the issues the State is seeking review on in Anderson.

4. GROUND FOR RELIEF AND ARGUMENT

The State respectfully requests that this Court stay its consideration of the State's petition for review in Anderson pending issuance of its decision in State v. Wu, No. 96747-4-I because the decision in Wu may resolve some of the issues in the State's petition for review in Anderson and will likely also clarify the scope of review as to any remaining issues.

DATED this 30th day of August, 2019.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

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KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

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Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: State of Washington, Respondent v. Nicholas Windsor Anderson, Appellant (766724)

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