

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
4/6/2020 8:00 AM  
BY SUSAN L. CARLSON  
CLERK

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	NO. 98073-0
Respondent,	)	
	)	ANSWER TO PETITIONER'S
vs.	)	MOTION TO FILE AMENDED
	)	SUPPLEMENTAL PETITION
JOHN ALLEN BOOTH, JR.,	)	FOR REVIEW
Petitioner.	)	
_____	)	

**1. IDENTITY OF RESPONDING PARTY**

Respondent, State of Washington, by and through Sara I. Beigh, Deputy Prosecuting Attorney for Lewis County, answers Petitioner's motion to file an amended, supplemental, petition for review.

**2. STATEMENT OF RELIEF SOUGHT**

Booth seeks permission to file an amended, supplemental, petition for review, submitted on March 25, 2020. The State respectfully requests this Court deny Booth's motion and reject the amended, supplemental, petition for review for consideration.

**3. FACTS**

On November 5, 2019, the Court of Appeals affirmed the trial court's denial of Booth's CrR 7.8(b) motion. The Court of Appeals denied Booth's motion for reconsideration on December 12, 2019. On January 10, 2020, Booth, represented by his appellate counsel,

filed his petition for review. Booth raised two grounds for review in his petition for review, 1) in essence, the trial court erred by denying CrR 7.8(b) motion because Booth had made the required showing that the State had eavesdropped on his attorney-client communications, and 2) that the trial court improperly limited Booth's testimony. The State filed its response on February 10, 2020.

On March 4, 2020, Booth, acting pro se, filed an answer to the State's response to his petition for review.<sup>1</sup> The Clerk, on March 5<sup>th</sup>, issued a letter stating Booth's answer was rejected for filing. Appendix A. The March 5<sup>th</sup> letter notes that Booth is represented by counsel, as such accepting the pleadings would result in the type of hybrid representation that has been disallowed. *State v. Romero*, 95 Wn. App. 323, 326-27, 975 P.2d 564 (1999). The letter also noted the Rules of Appellate Procedure do not allow for a reply to the State's response to a petition for review unless the State's response sought review of an issue, which it did not.

On March 25, 2020, Booth's appellate counsel filed an "Amended [Supplemental] Petition for Review," and a separate

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<sup>1</sup> The State would normally attach a copy of Booth's pro se response for the Court's convenience. Due to technical difficulties the State is unable to attach a copy of Booth's pro se reply. The electronic copy of the pdf received by the State would not combine with other pdfs and due to working remotely, a scanner was not available.

motion seeking permission to file the amended supplemental petition. The amended supplemental petition for review adds an additional issue Booth is asking this Court to review. This additional issue is the same issue Booth attempted to argue in the rejected reply filed pro se by Booth on March 4, 2020.

#### **4. ANSWER**

The time limit to submit a motion for discretionary review is 30 days after the decision the party seeking review is filed. RAP 13.4(a). Booth does not explain why all of the issues were not previously raised when he filed the petition for review or cite to a single RAP to support why he can amend his petition for review, adding an additional ground for review 75 days after his initial petition was filed, or 108 days after the Court of Appeals denied reconsideration. Booth simply argues the Court should accept the filing “in the interest of justice so that all issues [B]ooth considers meritorious may be considered by the Court.” Motion at 3. Booth’s call to this Court to consider all of his issues, in the interest of justice, appears to be a call to this Court to apply the principles of liberal interpretation of the rules as set forth in RAP 1.2(a). Booth’s request simply ignores the Rules of Appellate Procedure.

While the RAPs do call for a liberal interpretation it is not



requiring an extension of time to file a petition for review to prevent a gross miscarriage of justice, even if it is an amended “supplemental” petition. Booth did not even assert the amended petition was necessary to prevent a gross miscarriage of justice, rather arguing it was necessary to further the interest of justice. Motion at 3. Petitioner has now had 108 days from the Order Denying Motion for Reconsideration to formulate this amended petition for review. The State had already responded to his petition for review. This amended “supplemental” petition was only filed after Booth’s pro se reply to the State’s response was rejected. This amended “supplemental” petition is clearly an attempt to get around the rules which prohibit such replies.

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**5. CONCLUSION**

This Court should deny Booth's motion to file an amended supplemental petition for review. Booth's request does not fall within RAP 1.2(a) nor does it meet the requirements of RAP 18.8(b). There is not a gross miscarriage of justice which would justify the filing of an untimely petition for review. Further, this is simply Booth's attempt to find a way around the rules which do not provide for Booth to reply to the State's response.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of April, 2019.



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Sara I. Beigh, #35564  
Deputy Prosecuting Attorney  
Lewis County Prosecuting Attorney's Office  
Attorney for the Respondent

**APPENDIX A**  
**THE SUPREME COURT**

STATE OF WASHINGTON

SUSAN L. CARLSON  
SUPREME COURT CLERK

ERIN L. LENNON  
DEPUTY CLERK/  
CHIEF STAFF ATTORNEY



TEMPLE OF JUSTICE

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March 5, 2020

**LETTER SENT BY E-MAIL**

John Allen Booth Jr. (sent by U.S. mail only)  
#779999  
Monroe Correctional Complex, WSR  
P.O. Box 777  
Monroe WA 98272-0777

Sara I. Beigh  
Lewis County Prosecutor's Office  
345 W. Main Street, Floor 2  
Chehalis, WA 98532-4802

Peter B. Tiller  
The Tiller Law Firm  
P.O. Box 58  
Centralia, WA 98531-0058

Re: Supreme Court No. 98073-0 - State of Washington v. John Allen Booth Jr.  
Court of Appeals No. 49492-2-II (consolidated with 49499-0-II, 49519-8-II, 49512-1-II,  
49509-1-II and 49502-3-II)

Counsel and Mr. Booth:

On March 4, 2020, the Court received the "ANSWER TO STATE'S RESPONSE" from Mr. Booth. It appears to be intended to be the reply to the answer to the petition for review. **A copy is enclosed for counsel.**

In this case, Mr. Booth is represented by counsel and accepting this filing would result in the type of hybrid representation that has been disallowed. *See State v. Romero*, 95 Wn. App. 323, 326-27, 975 P.2d 564 (1999) (a criminal defendant represented by counsel on appeal has no right to engage in "hybrid representation" by submitting his own filings in the appellate proceedings; a represented criminal appellant may only file on his own behalf a statement of additional grounds for review). *Cf. State v. DeWeese*, 117 Wn.2d 369, 379, 816 P.2d 1 (1991) (there is no constitutional right to appear both by counsel and pro se).

Furthermore, the Rules of Appellate Procedure allow a reply to an answer to a petition for review to be filed *only* when the answer "seeks review of issues not raised in the petition for review." In this case, the answer did not seek review of any issues by this Court, so no reply would be permitted even if it were filed by counsel.

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March 5, 2020

**APPENDIX A**

For the reasons described above, the reply is rejected for filing.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Lennon', with a stylized flourish at the end.

Erin L. Lennon  
Supreme Court Deputy Clerk

ELL:tl

Enclosure for counsel



# LEWIS COUNTY PROSECUTORS OFFICE

April 04, 2020 - 2:23 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98073-0  
**Appellate Court Case Title:** State of Washington v. John Allen Booth Jr.  
**Superior Court Case Number:** 96-8-00501-1

### The following documents have been uploaded:

- 980730\_Answer\_Reply\_20200404142226SC699953\_2389.pdf  
This File Contains:  
Answer/Reply - Answer to Motion  
*The Original File Name was Answer to Mt to Amend Petition Booth with Appendix 98073.pdf*

### A copy of the uploaded files will be sent to:

- Kelder@tillerlaw.com
- ptiller@tillerlaw.com
- teri.bryant@lewiscountywa.gov

### Comments:

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Sender Name: Sara Beigh - Email: sara.beigh@lewiscountywa.gov  
Address:  
345 W MAIN ST FL 2  
CHEHALIS, WA, 98532-4802  
Phone: 360-740-1240

**Note: The Filing Id is 20200404142226SC699953**