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SUPREME COURT  
STATE OF WASHINGTON  
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SUPREME COURT NO. 99067-1  
COURT OF APPEALS NO. 79225-3-1

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JEREMIAH JAMES PETLIG,

Petitioner.

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**ANSWER TO PETITION FOR REVIEW**

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**A. IDENTITY OF RESPONDENT**

Respondent, the State of Washington, asks this Court to deny the petition for review.

**B. COURT OF APPEALS OPINION**

The Court of Appeals decision at issue is State v. Petlig, No. 79225-3-I, filed August 24, 2020 (unpublished).

**C. STATEMENT OF THE CASE**

Petitioner Petlig was convicted of second-degree assault, domestic violence. The relevant facts are set forth in the briefing before the Court of Appeals.

**D. ARGUMENT: THIS COURT SHOULD DENY REVIEW**

The Court should deny Petlig's petition for review. The Court of Appeals fully responded to the issues originally raised by Petlig below, and the State's positions on these issues have not changed from its briefing and oral argument below. The issues raised by Petlig in his petition do not qualify for review under RAP 13.4. The State submits this brief answer to point out an additional reason to deny Petlig's petition: he attempts to raise a new constitutional issue that was not argued or presented to the Court of Appeals despite his opportunity to do so. Because Petlig did not

argue below the issue he now asserts, the Court of Appeals had no occasion to consider it. Review should be denied.

1. STANDARD FOR REVIEW.

A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

However, “[a]n issue not raised or briefed in the Court of Appeals will not be considered by this court.” State v. Halstien, 122 Wn.2d 109, 130, 857 P.2d 270 (1993); see also Fisher v. Allstate Ins. Co., 136 Wn.2d 240, 252, 961 P.2d 350 (1998) (“This court does not generally consider issues raised for the first time in a petition for review.”).

2. THIS COURT SHOULD DENY REVIEW BECAUSE PETLIG RAISES AN ISSUE NOT CONSIDERED BELOW.

Petlig’s petition for review includes a claim that the trial court’s admission of jail phone calls between Petlig and his victim

was improper because the calls revealed to the jury that Petlig was in custody. See Petition For Review (PFR) at 10-14. His petition for review asks this Court to review this claim as an “issue of constitutional importance” under RAP 13.4(b). PFR at 14.

However, at the Court of Appeals, Petlig framed this claim of error as an abuse of discretion under the evidence rules, not a constitutional issue. See Appellant’s Opening Brief at 20-30. The Court of Appeals held that Petlig had partly waived the argument by not raising some of it at the trial court, and that the rest of his argument was unpersuasive in light of published authority on point and the totality of the record in Petlig’s case. See Petlig, No. 79225-3-I, slip op. at 7-10.

Now, in his petition for review, Petlig frames this issue as a constitutional error, raising this Court’s recent opinion in State v. Jackson, \_\_\_ Wn.2d \_\_\_, 467 P.3d 97 (July 16, 2020) (trial court violated defendant’s right to fair trial when it required defendant to be shackled at pretrial proceedings without individualized inquiry into its need). Petlig’s argument appears to be that Jackson means that any time a jury learns a defendant has been in custody, in whatever fashion, it violates the Sixth and Fourteenth amendments and article I, section 22 of the state constitution. Petlig also raises

Jackson in asking this Court to grant review of one of his claims of prosecutorial misconduct. See PFR at 15.

Petlig does not explain why he did not raise Jackson before the Court of Appeals. Jackson was decided July 16, 2020. The court of appeals heard oral argument in Petlig's case on July 20, 2020. Petlig did not raise Jackson at oral argument. Petlig did not submit a statement of additional authority to direct the Court of Appeals to Jackson or move to file a supplemental brief to raise this new issue. The Court of Appeals issued its opinion in this case on August 24, 2020, more than a month after Jackson was issued and oral argument was heard in this case.

Petlig had ample opportunity to move for the Court of Appeals to accept a supplemental brief to raise this issue, or at least to file a statement of additional authority to call the Court of Appeals' attention to Jackson.<sup>1</sup> But Petlig did not do so. This Court should deny Petlig's petition and reject his attempt to raise a new constitutional issue for the first time in his petition for review.

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<sup>1</sup> The State does not agree that Jackson is applicable to Petlig's case. Jackson held "that the trial court abused its discretion and committed constitutional error when it required Jackson to be shackled under a blanket jail policy at his pretrial proceedings without an individualized inquiry into its need" and that the State had not proved harmless error. 467 P.3d at 104-05. It did not address any of the issues presented in Petlig's case.

**E. CONCLUSION**

The Court should deny Petlig's petition.

DATED this 25<sup>th</sup> day of September, 2020.

Respectfully submitted,

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**KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT**

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