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NO. 81450-3

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SUPREME COURT OF THE STATE OF WASHINGTON

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**FILED**  
SEP 5 2008

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STATE OF WASHINGTON  
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STATE OF WASHINGTON,

Respondent,

v.

KURT RANDALL MADSEN,

Petitioner.

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**ANSWER IN RESPONSE TO SUPPLEMENTAL BRIEF IN  
SUPPORT OF 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The Court of Appeals decision at issue is State v. Madsen, an unpublished opinion located at 143 Wn. App. 1028, 2008 WL 625282 (filed March 10, 2008).

**C. RELEVANT FACTS AND PROCEDURAL HISTORY**

The Court of Appeals affirmed Madsen's three felony convictions of violating a no-contact order. Madsen filed a petition for review. After Madsen filed his petition, he requested that he be allowed to file a supplemental brief in support of his petition for review, addressing the case of Indiana v. Edwards, \_\_\_ U.S. \_\_\_, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008). The State now responds to Madsen's supplemental brief.

**D. ARGUMENT**

**THIS COURT SHOULD DENY MADSEN'S PETITION FOR REVIEW.**

Madsen's supplemental brief in support of his petition for review raises one issue: whether Washington's competency standard for proceeding pro se is the same as that for standing trial. This issue, however, has nothing to do with this case. In affirming the trial court's decision to continue a hearing in which Madsen requested to proceed pro se, the Court of Appeals did not address what the competency standard was for proceeding pro se. Rather, it simply affirmed the trial court's decision to continue the hearing because (1) Madsen's request to proceed pro se was equivocal and (2) the court and defense counsel felt competency could be at issue. Thus, Madsen's stated grounds for review do not apply, and this Court should deny his petition for review.<sup>1</sup>

According to the rules of appellate procedure:

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

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<sup>1</sup> As to the other issues raised in Madsen's initial petition for review, the State fully responded to them in response to Madsen's direct appeal, and those responses will not be fully repeated here.

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). None of Madsen's issues meet the criteria set forth in RAP 13.4(b).

In seeking review, Madsen claims that Division One held that "the trial court's inchoate 'concerns' about Mr. Madsen's competency constituted a sufficient basis for refusing to grant Mr. Madsen's motions for self-representation." Supp. Brief in Support of Petition for Review, at 1. This is incorrect. Division One never made this holding. On the contrary, Division One rejected Madsen's characterization that the trial court "denied" his requests to proceed pro se on January 24, 2006 and March 7, 2006. Madsen, 2008 WL 625282 at \*5. Instead, Division One concluded that the trial court merely *continued* the hearings and deferred its rulings pending appointment of new counsel and concerns over Madsen's competency. Id. Division One held that the trial court, in continuing the hearings, properly exercised its discretion. It reasoned that the trial court had the discretionary authority to manage its own affairs to achieve the orderly and expeditious disposition of cases. Id. (citing Woodhead v. Discount Waterbeds, 78 Wn. App. 125, 129, 896 P.2d 66 (1995)).

As additional support for its holding, Division One noted that on March 7th, Madsen's second attorney had just withdrawn and, as a result, the presiding court deferred ruling on Madsen's second request to proceed pro se until Madsen could consult with new counsel. Madsen, 2008 WL 625282, at \*6. Division One explained:

Given that Madsen's March 7 request to proceed pro se was interspersed with criticisms of his attorney and punctuated by angry outbursts and interruptions, that the court was unable to get a clear answer from Madsen regarding the basis of his request, and that the court had concerns about Madsen's competency, the decision to defer ruling pending the appointment of new counsel was well within the trial court's discretion.

Id.

Madsen's case did not present the issue of what competency standard applies in Washington for proceeding pro se. Thus, Division One did not address the issue. Accordingly, Madsen's citation to Indiana v. Edwards is irrelevant. \_\_\_ U.S. \_\_\_, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008). This Court should decline to review the Court of Appeals' decision.

E. **CONCLUSION**

The Court should deny Madsen's petition for review.

DATED this 5th day of September, 2008.

Respectfully submitted,

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<<Madsen, Kurt - Cert Serv Answer to Supp Brief re Pet for Rw.doc>> Dear Supreme Court Clerk,

Attached for filing is an answer to defendant's supplemental brief, and a certification of service. Please let me know if there are any difficulties with this filing.

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