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SUPREME COURT
STATE OF WASHINGTON
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Sup. Ct. No. 87751-3
COA No. 29721-7-III

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DANIEL A. FLAHERTY,

Petitioner.

ANSWER TO MOTION FOR DISCRETIONARY REVIEW

STEVEN J. TUCKER
Prosecuting Attorney
Spokane County

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I. IDENTITY OF RESPONDENT

Respondent, State of Washington, was the plaintiff in the trial court and the respondent in the Court of Appeals.

II. STATEMENT OF RELIEF SOUGHT

Respondent seeks denial of appellant's motion for discretionary review.

III. ISSUE PRESENTED

A. HAS THE PETITIONER SHOWN A VALID REASON WHY THIS COURT SHOULD ACCEPT REVIEW OF THE COURT OF APPEALS' DECISION?

IV. STATEMENT OF THE CASE

The facts of this case are set forth in *State v. Flaherty*, 166 Wn. App. 716, 271 P.3d 371 (2012).

V. ARGUMENT

A. THE PETITIONER HAS NOT SHOWN A VALID REASON WHY THIS COURT SHOULD ACCEPT REVIEW OF THIS CASE.

RAP 13.4(b) determines which issues may be reviewed by this Court. RAP 13.4(b). That rule provides that a petition for review will be accepted 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 a decision of another division 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).

Petitioner claims that the decision in this case are in conflict with other courts of Appeal but never explains which courts have ruled in conflict with the decision in this case. The petitioner never mentions a case of the Supreme Court that is in conflict with the decision of the Court of Appeals. The petitioner cites to *Margetan v. Superior Chair Craft Co.*, 92 Wn. App. 240, 963 P.2d 907 (1998). *Margetan* has nothing to do with this case as the *Margetan* case involved the non-payment of filing fees and the effect upon a filed document. The petitioner also cites to *Stevens v. City of Centralia*, 86 Wn. App. 145, 936 P.2d 1141 (1997). This case also has little connection to the case at bar as it involved a document filed with a clerk. That is not the case here, the Superior Court did not file the petitioner’s original motion. Neither of the cases cited by the petitioner support the idea that Division III’s decision was in conflict with another division.

The petitioner never mentions any significant question of law under the Constitution or the State of Washington. The petitioner never mentions

how this case involves an issue of substantial public interest. The defendant makes claims of meeting the criteria for review by this Court, but his briefing does not show how he meets the criteria of RAP 13.4(b).

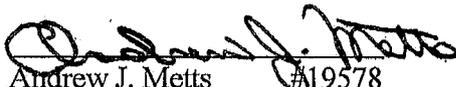
The petitioner's main argument on the "filing" point is misplaced as the clerk was not involved.

The petitioner has failed to meet the criteria of RAP 13.4(b) and this request for review should be summarily dismissed.

VI. CONCLUSION

For the reasons stated above, respondent requests that the Court deny petitioner's request for review.

Respectfully submitted this 3rd day of October, 2012.


Andrew J. Metts #19578
Deputy Prosecuting Attorney
Attorney for Respondent

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,)
)
 Respondent,) No 87751-3
 v.)
) CERTIFICATE OF MAILING
 DANIEL A. FLAHERTY,)
)
 Petitioner,)

CERTIFICATE

I certify under penalty of perjury under the laws of the State of Washington, that on October 5, 2012, I e-mailed a copy of the Answer to Motion for Discretionary Review, pursuant to the parties' agreement, addressed to:

Marie J. Trombley
marietrombley@comcast.net

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

10/5/2012
(Date)

Spokane, WA
(Place)

Kathleen P. Owens
(Signature)

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To: Owens, Kathleen
Subject: RE: Flaherty

Rec'd 10-5-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Owens, Kathleen [<mailto:KOWens@spokanecounty.org>]
Sent: Friday, October 05, 2012 3:45 PM
To: OFFICE RECEPTIONIST, CLERK
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I have attached the State's Answer to Motion for Discretionary Review re: Daniel A. Flaherty #87751-3.

Kathleen Owens, Legal Assistant
for Mark E. Lindsey
Sr. Deputy Prosecutor
for Spokane County