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A copy of this document delivered electronically. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.  
DATED March 3, 2023  
Port Angeles, WA *Marie J. Trombley*  
Original e-filed at the Supreme Court

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, )  
 ) No. 1016409  
 Respondent, )  
 ) STATE'S REPLY TO PETITIONER'S  
 v. ) ANSWER TO MOTION TO  
 ) SUPPLEMENT THE RECORD ON  
 LARISA DIETZ, ) APPEAL  
 )  
 )  
 Petitioner. )

**I. IDENTITY OF MOVING PARTY**

The respondent, STATE OF WASHINGTON, asks this Court for the relief designated in Part II of this motion.

**II. STATEMENT OF RELIEF SOUGHT**

The State requests permission to supplement the record with the Clallam County Superior Court's written findings justifying an exceptional sentence filed on Sept. 2, 2022, to aid this Court's review of an issue



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presented by the Petitioner. The State also moves the Court to deny the Petitioner’s request to raise additional issues not addressed on appeal.

**III. FACTS RELEVANT TO MOTION**

Dietz filed a petition for review claiming that the trial court did not file Findings of Fact and Conclusions of Law justifying an exceptional sentence (FF and CL) as required by RCW 9.94.535. This claim was not addressed on appeal.

The trial court’s oral findings justifying an exceptional sentence were available for review on appeal. *See* RP 1320–21 (attached). Additionally, Dietz was aware as of May 21, 2023, prior to filing the Opening Brief of Appellant on May 23, 2023, that the FF and CL had not yet been filed. *See* Declaration attached to Motion to Supplement Record filed Jan. 27, 2023. Despite this knowledge, Dietz did not assign error to the exceptional sentence or the missing FF and CL in the Opening Brief. The Trial court signed and filed the FF and CL on Sept. 2, 2022.

**IV. GROUNDS FOR RELIEF AND ARGUMENT**

“If the record is not sufficiently complete to permit a decision on the



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merits of the issues presented for review, the appellate court may, . . . on the motion of a party (1) direct the transmittal of additional clerk's papers and exhibits . . . .” RAP 9.10.

Here, prior to filing the Opening Brief of Appellant, Dietz had access to the trial court’s oral findings justifying the exceptional sentence and was aware the FF and CL had not been filed. Dietz did not assign error to the court’s findings or to the failure file written FF and CL. Nevertheless, Dietz raises the issue in the petition for review.

The issue is not appropriate for review. *See Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 252, 961 P.2d 350 (1998) (citing *State v. Halstien*, 122 Wn.2d 109, 130, 857 P.2d 270 (1993)) (“This [C]ourt does not generally consider issues raised for the first time in a petition for review.”).

Additionally, Dietz claims that the trial court entered the FF and CL without permission from the Court of Appeals pursuant to RAP 7.2.

“The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, . . . .” RAP 7.2(e)(1).



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“Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight *or omission* may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).” CrR 7.8(a) (emphasis added).

Permission to address the missing FF and CL is only required “[i]f the trial court determination will change a decision then being reviewed by the appellate court.” RAP 7.2(e)(2). Here, the missing FF and CL was not an issue raised on appeal. Therefore, the trial court did not need permission to enter the FF and CL because their entry would not impact a decision of the Court of Appeals.

The trial court already filed the FF and CL on Sept. 2, 2022. Therefore, supplementing the record to include the FF and CL would assist this Court in deciding whether review of this issue should be granted.

Therefore, the State moves the Court to permit the State to supplement the record as requested above and to deny Dietz’ request to raise additional



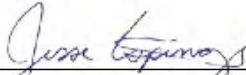
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issues.

This document contains 653 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED March 3, 2023.

MARK B. NICHOLS,  
PROSECUTING ATTORNEY

  
\_\_\_\_\_  
JESSE ESPINOZA  
WSBA No. 40240  
Deputy Prosecuting Attorney



**CLALLAM COUNTY DEPUTY PROSECUTING ATTORN**

**March 03, 2023 - 5:00 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 101,640-9  
**Appellate Court Case Title:** State of Washington v. Larisa Jean Dietz  
**Superior Court Case Number:** 19-1-00438-9

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1 here that elaborates on that a little bit and puts a little  
2 connection between that history and the incidents in the jail

3 that were described in the sentencing memorandum. The  
4 context is helpful and hearing from you matters and I  
5 appreciate that you had to courage to stand and address the  
6 Court at what no doubt is a difficult time for you.

7 But the Court does have a job to do and a hard one  
8 at that. And it's essential that the Court take sentencing  
9 considerations very seriously. Particularly, when they  
10 relate to the kind of violent crime that we have here. And  
11 we have sort of three -- three aspects to this in terms of  
12 the amount of confinement that the Court is looking at.

13 There's the standard range of 108 to 183 months.  
14 Court has the discretion to consider a variety of  
15 circumstances and deciding where within that range the  
16 sentence ought to fall. We have the 24 month mandatory  
17 deadly weapon enhancement after a jury verdict finding that  
18 there was in fact a deadly weapon that was used. And then  
19 the Court has the occasion to consider the aggravating  
20 circumstance that the jury found Mr. McGowan being a  
21 vulnerable adult and can impose a sentence up to the maximum  
22 penalty of life in prison.

23 And in view of the totality of the circumstances  
24 here we have a horrific attack. And we have a history of  
25 assaultive behavior and we have a relatively low offender

1 score of too, but we do have other assaultive type crimes  
2 that wash out or don't count that I believe the Court may  
3 consider. And I'm looking at those in relation to the  
4 sentencing range and I believe that within that range of 108  
5 to 183 months a sentence of 160 month is appropriate. It  
6 doesn't put you on the outside end of that range, but it puts  
7 you past the middle of the range and I believe that that's  
8 appropriate given the circumstances that Court became aware  
9 of during trial and based upon argument that the Court's  
10 heard today.

11 In addition, there's a 24 month deadly weapon  
12 enhancement and then in looking at the aggravating  
13 circumstance of Mr. McGowan being a vulnerable adult. He was  
14 either wheelchair bound or reliant upon a walker to assist  
15 him in his mobility and that made him vulnerable to the type  
16 of attack that we learned about at trial and Court's not  
17 gonna ignore the jury's finding and verdict of the  
18 aggravating circumstance. And I do believe that it is  
19 appropriate to add time not to the extent that the State has  
20 requested. By my math the State was looking for an  
21 additional 33 months on the aggravating circumstance, but I  
22 believe that I taken in combination with the deadly weapon  
23 enhancement in considering what the Court consider with  
24 respect to the standard range and looking at issues of  
25 proportionality and the other issues that the Court is



1 obligated to consider. That and additional 24 months for the  
2 aggravating circumstance of Mr. McGowan being a vulnerable  
3 adult is appropriate.

4 So, what that means for you Ms. Dietz is a sentence  
5 of 208 months if I've done my math correctly. That does fall  
6 short of what the State has requested of 240 months, but I  
7 believe that that is --

8 MS. UNGER: So, --

9 MS. WOOLMAN: I'm trying to do the math.

10 MS. UNGER: -- so, Your Honor, you're adding --

11 MS. WOOLMAN: You said --

12 MS. UNGER: -- you're doing 160 months plus 24  
13 months for the deadly weapon and then 24 months for the  
14 vulnerable adult?

15 THE COURT: Yes.

16 MS. WOOLMAN: Okay. Thank you. Okay.

17 THE COURT: Okay. So, yeah, sorry if I wasn't  
18 clear as I was --

19 MS. WOOLMAN: Okay.

20 THE COURT: Working my way through my thoughts,  
21 but it should add up to 208 months. With respect to legal  
22 financial obligations, the testimony established that Ms.  
23 Dietz is indigent for purposes of legal financial  
24 obligations. And so, under those circumstances then the only  
25 fee would be the crime victim assessment fee of \$500.00 and

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