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SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
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Supreme Court No. 1017031
Court of Appeals No. 38382-2-III

THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION III

STATE OF WASHINGTON
Plaintiff/Respondent

v.

STEVEN ALLEN BUCK
Defendant/Appellant

ANSWER TO PETITION FOR REVIEW

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I. STATEMENT OF THE CASE

Mr. Steven Allen Buck (hereinafter “Mr. Buck”) was sentenced by the Stevens County Superior Court in Cause Number 20-1-00228-33, on July 27, 2021. Clerk’s Papers at page 246; Report of Proceedings at page 364. In 20-1-00228-33, the jury returned a special verdict that Mr. Buck was convicted on at least two prior occasions of the felony offense of Failure to Register as a Sex Offender. CP 60 & 220. Count 2 of 20-1-00228-33 was Failure to Register as a Sex Offender (3rd or Subsequent Offense), a sex offense. CP 237.

On April 25, 2016, Mr. Buck was sentenced in Spokane County Superior Court Cause Number 15-1-01287-9. Count 1 of 15-1-01287-9 was for Failure to Register as Sex/Kidnap Offender, a sex offense. CP 167.

At sentencing in 20-1-00228-33, the Stevens County Superior Court specifically imposed consecutive community custody. RP at page 382, lines 11-12. The sentence in Stevens County Superior Court Cause Number 20-1-00228-33 resulted in

36 months of community custody. CP 240. The sentence in Mr. Buck's Spokane County Superior Court Cause Number 15-1-01287-9 resulted in 36 months of community custody. CP 173.

The Stevens County Superior Court ordered that the 36 months of community custody in 20-1-00228-33 run consecutively with the 36 months of community custody in 15-1-01287-9, resulting in an aggregate of 72 months of community custody. Specifically, the Judgment and Sentence in 20-1-00228-33 stated, "[t]he community custody terms of this sentence shall run consecutively with the community custody term in the following cause number(s) (see RCW 9.94A.589(2)(a): 15-1-01287-9 or any current term of community custody." CP 240. The term of confinement in 20-1-00228-33 was not ordered to run consecutive to any other terms of confinement. CP 240. Neither the Stevens County Superior Court Cause nor the Spokane County Superior Court Cause contained an exceptional sentence. CP 239 & 171.

On appeal in Washington Court of Appeals No. 38382-2-

III, the State conceded that the consecutive terms of community custody appeared to violate RCW 9.94A.589(5). In a published opinion, the Court of Appeals rejected the State's stipulation, holding that the consecutive term of community custody imposed on Mr. Buck did not violate RCW 9.94A.589(5). State v. Buck, 522 P.3d 1010, 1012 (Div. III, 2023).

The Court of Appeals issued its opinion on January 10, 2023. Mr. Buck's Petition to this Court followed.

II. ISSUE

1. Should this Court, under WA RAP 13.4(b), accept review of the Court of Appeals' Decision when the Decision does not warrant review under any of the four categories in WA RAP 13.4(b), particularly WA RAP 13.4(b)(4)?

III. ARGUMENT

1. **This Court Should Deny Review Because Mr. Buck's Case Does Not Present an Issue of Substantial Public Interest.**

The issue for this Court to decide is not whether the Court of Appeals wrongly decided the case. The issue is whether or

not Mr. Buck's case presents a reviewable issue under WA RAP 13.4(b).

WA RAP 13.4(b) contains the following four subsections, that set the qualifications for acceptance of review by this Court:

- (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 published 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.

WA RAP 13.4(b). If a petitioner's case does not fit within one of the four above-listed categories, this Court will not accept review. WA RAP 13.4(b).

Mr. Buck argues that the substantial public interest prong permits review. Petition for Review at 5; WA RAP 13.4(b)(4). There is no substantial public interest at stake in Mr. Buck's case.

In order to qualify for review, the issue presented by Mr. Buck's case must be of public interest and it must be substantial. First, the issue presented in Mr. Buck's case is not a substantial

one. Second, the issue presented in Mr. Buck's case is not a public interest.

This Court has not definitively established a test for what does or does not qualify as a substantial public interest. Though the term 'substantial public interest' has been used in the doctrine of mootness, the applicable test can be borrowed and applied here.

“To determine whether a case presents an issue of continuing and substantial public interest, we consider three factors: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question.” State v. Beaver, 184 Wash.2d 321, 330, 358 P.3d 385, 390 (2015) (internal quotation marks omitted). “As a fourth factor, the court may also consider the level of adversity between the parties.” Id. at 331. “The continuing and substantial public interest exception has been used in cases dealing with constitutional interpretation, the

validity of statutes or regulations, and matters that are sufficiently important to the appellate court.” Id. “This exception is not used in cases that are limited to their specific facts.” Id.

The private nature of Mr. Buck’s dilemma may be substantial to him, but the nature of his dilemma, to the public, is far less. Mr. Buck presents as a multiple-time sex offender, limiting his situation to a very small segment of individuals. Next, unless or until Mr. Buck’s issue presents itself again, the desirability of an authoritative decision is minimal, at best. There appears to be no general outcry of support before the Court of Appeals or this Court, for definitive guidance to public officials. Finally, Mr. Buck’s issue is not likely to reoccur. The fact that the Sentencing Reform Act (hereinafter “SRA”) was amended approximately fifteen years ago and Mr. Buck presents a question of first impression, indicates that there is a low probability of recurrence.

Mr. Buck argues throughout his Petition that the Court of Appeals’ Decision is contrary to the positions of both Parties in

this Case, the expressed intent of the Washington Legislature, and the applicable legal commentary. Mr. Buck is not incorrect in that aspect. However, this Court has routinely held that a substantial public interest must be something more than the applicability to one or more sex offenders facing consecutive terms of community custody from separate convictions in two different counties. For example, this Court has denied review of patently erroneous decisions in Western Rivers Conservancy v. Stevens County, 198 Wash.2d 1023 (2021), which involved taxation of timber land, Stevens County v. Stevens County Sheriff's Department, et. al., 1991 Wash.2d 1008 (2022), which involved the deprivation of fundamental rights under amendments to the Involuntary Treatment Act, and in Stevens County ex rel. Rasmussen v. Dashiell, et. al., 200 Wash.2d 1002 (2022), which involved appropriation of public funds.

Surely, if this Court has denied review in broadly applicable timber taxation issues in the Evergreen State, deprivation of fundamental rights to thousands of

Washingtonians, and the alleged misallocation of our public funds, then Mr. Buck and the few other sex offenders impacted by the Court of Appeals' Decision do not qualify as presenting an issue of substantial public interest.

This Court is primarily a court of policy and secondarily an error-correcting court. Though the Court of Appeals may have decided wrongly in Mr. Buck's case, the issue he presented to the Court of Appeals—and the one he presents to this Court—is not of substantial public interest.

IV. CONCLUSION

This Court should deny review of Mr. Buck's Petition because the issue he presents is not of substantial public interest under WA RAP 13.4(b).

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by WA RAP 18.17.

RESPECTFULLY SUBMITTED 27th day of February,
2023.



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Transmittal Information

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