

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
4/16/2024 2:14 PM  
BY ERIN L. LENNON  
CLERK

No. 102770-2

SUPREME COURT FOR THE STATE OF WASHINGTON

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C DAVIS, pro se, Appellant,

v.

CITY OF ABERDEEN, Respondent

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RESPONDENT'S RESPONSE TO APPELLANT'S MOTION  
FOR EXTENSION OF TIME TO FILE APPELLANT'S  
PETITION FOR REVIEW

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## **I. INTRODUCTION**

C. Davis, Appellant, missed the deadline to file a Petition for Review of the Court of Appeals Division II Order. He has submitted a Motion requesting an extension, but this Motion fails to identify an extraordinary circumstance warranting an extension. Therefore, this Court should deny the motion and dismiss Mr. Davis's petition due to its untimeliness.

## **II. STATEMENT OF THE CASE**

Mr. Davis filed a “Notice of Appeal” of the Building Code Commissions’ decision in Superior Court on October 20, 2021 – 29 days after the Commission’s rejection of his appeal. *Id.* On December 27, 2022, the Respondent filed a motion to dismiss the Appellant’s appeal as untimely. *See*, CP, at 37-41. On January 9, 2023, the Superior Court dismissed Mr. Davis’s appeal as untimely under the Land Use Petition Act. *See*, CP, at 42-43.

Mr. Davis sought review of the Superior Court decision by the Court of Appeals Division II. On January 3, 2024, the Court of Appeals affirmed the Superior Court’s decision dismissing the

appeal as untimely. On February 2, 2024, Mr. Davis filed his Motion for an Extension of Time with the Court of Appeals Division II, indicating that he was unable to meet the filing deadline due to alleged COVID symptoms. The same day, Supreme Court Deputy Clerk, Sarah Pendleton, issued a public letter to the Parties indicating that the Motion had been forwarded to the Supreme Court, and that no ruling was being made at that time. The Court advised Mr. Davis that the Court would decide his Motion to Extend only if he filed his Petition by March 1, 2024.

On March 1, 2024, Mr. Davis filed his Petition with this Court. However, the Petition was overlength and failed to contain a signature. Mr. Davis submitted an amended Petition on March 7, 2024 – this brief was again overlength. On March 15, 2024, Mr. Davis submitted a conforming brief. That same day, Mr. Davis filed a second Motion for Extension of Time, indicating that he was unable to meet the filing deadline due to his inability to understand the Court Rules.

Based on the following, the Respondent requests that Mr. Davis's Motion be denied, and his Petition dismissed.

### **III. SUMMARY OF ARGUMENT**

The Rules of Appellate procedure are clear that a party seeking discretionary review of this Court must do so within the timeframe prescribed by RAP 5.2(b). Mr. Davis failed to submit his Petition for Review by this deadline. Requests for an extension of time to seek discretionary review are disfavored and are granted in only the most extraordinary circumstances. Mr. Davis has not identified an adequate basis warranting an extension of time and his Motion should be denied.

### **IV. ARGUMENT**

#### **A. MR. DAVIS FAILED TO TIMELY FILE HIS PETITION FOR REVIEW AND HAS NOT IDENTIFIED AN ADEQUATE BASIS FOR AN EXTENSION.**

There is one method for seeking review of the Washington Supreme Court, and that is "permission of the Supreme Court,

called ‘discretionary review.’” RAP 13.1(a). A Petition for Review must be filed with the court within the longer of:

- (1) 30 days after the act of the trial court that the party filing the notice wants reviewed, or
- (2) 30 days after entry of an order deciding a timely motion for reconsideration of that act under CR 59.

RAP 5.2(b)(1)-(2). “The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file. . . a petition for review. . .” RAP 18.8(b). “The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section.” *Id.*; *Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1998); *State, Dep't of Soc. & Health Servs. v. Fox*, 192 Wn. App. 512, 520, 371 P.3d 537, 541 (2016), *as amended on denial of reconsideration* (Mar. 24, 2016).

This Court has found such extraordinary circumstances exist where dismissal of an untimely petition would conflict with a criminal defendant’s constitutional right to appeal a criminal



conviction. *Fox*, 192 Wn. App. 512, at 520. However, “it is well established that the rights listed in article I, section 22 of the Washington State Constitution, including the right to appeal, apply only to criminal prosecutions.” *Id.* at 521 (citing *State ex rel. Gray v. Webster*, 122 Wash. 526, 530, 211 P. 274 (1922)). This constitutional right of an appeal does not apply to civil cases, even where Constitutional Due Process violations are alleged. *Id.* at 520. To be sure, “[l]ong-standing United States Supreme Court precedent establishes there is no federal due process right to appeal, even in criminal cases.” *Id.* (citing *McKane v. Durston*, 153 U.S. 684, 688, 14 S.Ct. 913, 38 L.Ed. 867 (1894)).

Additionally, “Courts hold pro se litigants to the same standards as attorneys.” *Winter v. Dep't of Soc. & Health Servs. on behalf of Winter*, 12 Wn. App. 2d 815, 844, 460 P.3d 667, 682 (2020)(citing *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993)). Washington Courts have only departed from this standard where the Pro Se litigant is mentally disabled.

*Matter of Marriage of Gharst*, 25 Wn. App. 2d 752, 759, 525 P.3d 250, 254 (2023)(citing *Carver v. State*, 147 Wn. App. 567, 575, 197 P.3d 678 (2008)).

Mr. Davis's request for an extension based on alleged COVID-19 complications and difficulty understanding court rules lacks sufficient evidence. He hasn't provided proof of contracting COVID-19 or how it hindered him from meeting the deadline. Additionally, there's no claim of mental disability. In fact, Mr. Davis's ability to navigate relevant legal authorities demonstrates competence. Therefore, the attorney standard should apply.

Furthermore, Mr. Davis's claims of constitutional violations are irrelevant. There's no constitutional right to appeal civil cases, even for due process concerns. Consequently, there are no exceptional circumstances justifying an extension.

## V. CONCLUSION

Based on the foregoing, the Respondent requests that this Court deny Mr. Davis's Motion and dismiss his Petition for Review as untimely.

I certify that this brief contains 1.003 words as determined by computer word count in conformity with RAP 18.17.

DATED this 16<sup>th</sup> day of April 2024.

LAW, LYMAN, DANIEL,  
KAMERRER & BOGDANOVICH, P.S.

/s/ Matthew T. Sonneby

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify, under penalty of perjury, under the laws of the United States of America, that on the 16<sup>th</sup> day of April 2024, I caused a true and correct copy of this pleading to be served, by the Washington State Supreme Court e-filing system as well as by U.S. Mail, first class, postage prepaid, upon the following person(s):

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/s/ Lisa Gates  
Lisa Gates, Legal Assistant

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**April 16, 2024 - 2:14 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,770-2  
**Appellate Court Case Title:** C Davis v. City of Aberdeen  
**Superior Court Case Number:** 21-2-00556-2

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