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NO. 90773-1  
COA NO. 44911-1-II  
Cowlitz Co. Cause NO. 13-1-00125-7

**SUPREME COURT OF STATE OF  
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

**GENARO BRANDON VILLANUEVA,**

Appellant/Petitioner.

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**RESPONSE TO PETITION FOR REVIEW**

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**RYAN JURVAKAINEN**  
Prosecuting Attorney  
**SEAN BRITTAIN/WSBA 36804**  
Deputy Prosecuting Attorney  
Representing Respondent

**HALL OF JUSTICE**  
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 **ORIGINAL**

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## **I. IDENTITY OF RESPONDENT**

The State of Washington, by and through the Cowlitz County Prosecuting Attorney's Office, respectfully requests this Court deny review of the August 19, 2014 unpublished opinion of the Court of Appeals in *State v. Villanueva*, COA No. 44911-1-II. This decision remanded the matter for resentencing.

## **II. ANSWER TO ISSUES PRESENTED FOR REVIEW**

1. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.
2. The decision of the Court of Appeals is not in conflict with a decision of another decision of the Court of Appeals.
3. The decision of the Court of Appeals does not involve a significant question of law under the Constitution of the State of Washington or of the United States.
4. The decision of the Court of Appeals does not involve an issue of substantial public interest that should be determined by the Supreme Court.

## **III. STATEMENT OF THE CASE**

The State agrees, for the most part, with the factual and procedural history as set forth by the petitioner. Where appropriate, the State's brief will point to the record to address specific facts in contention regarding the issues before the Court.

#### IV. ARGUMENT

RAP 13.4(b) states that a petition for review will only be accepted by the Supreme Court only if one of four conditions are met: (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. Neither in the petition for review nor in the decision from the Court of Appeals are there any issues that would fall under one of the four conditions as outlined by RAP 13.4(b).

The present matter was stayed pending this Court's decision in *State v. Jones*, 338 P.3d 278 (2014) and *State v. Cobos*, 338 P.3d 283 (2014). In those recent decisions, this Court held that the common law rule of "no second chance" was superseded by the legislature's decision to amend RCW 9.94A.530, which states: "[o]n remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented." RCW 9.94A.530(2).

[I]n those cases where relief is ordered in an appellate proceeding and the case is remanded, such as occurred here, under the statutory remand provisions both parties have the opportunity to present any evidence relevant to ensure the accuracy of the criminal history. Because ensuring the accuracy of the criminal history does not implicate due process, the legislature acted consistent with its plenary authority over sentencing in enacting the statutory remand provision.

*Jones*, 338 P.3d at 282-83.

Based upon this Court's conclusions in *Jones* and *Cobos*, the State respectfully requests that the petition for review be denied. Upon such decision, the matter will be remanded to Cowlitz County Superior Court for resentencing.


#### V. CONCLUSION

For the reasons stated above, Petitioner's petition for discretionary review should be denied.

Respectfully submitted this 14 day of January, 2015.

RYAN P. JURVAKAINEN  
Prosecuting Attorney

By:

  
SEAN M. BRITTAIN/WSBA #36804  
Deputy Prosecuting Attorney  
Representing Respondent

**CERTIFICATE OF SERVICE**

Michelle Sasser, certifies the Response to Petition for Review was served electronically via e-mail to the following:


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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on January 15<sup>th</sup>, 2015.

  
Michelle Sasser

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Attached, please find the Response to Petition for Review regarding Genaro Brandon Villanueva, 90773-1.

If you have any questions, please contact this office. Thank you. Michelle Sasser

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