

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Jan 12, 2015, 10:26 am
BY RONALD R. CARPENTER
CLERK

SUPREME COURT NO. 91163-1
COURT OF APPEALS NO. ~~70666-7-1~~

E CDF
RECEIVED BY E-MAIL

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KIEL DENT,

Petitioner.

ANSWER TO PETITION FOR REVIEW

DANIEL T. SATTERBERG
King County Prosecuting Attorney

IAN D. ITH
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

 ORIGINAL

TABLE OF CONTENTS

	Page
A. <u>IDENTITY OF RESPONDENT</u>	1
B. <u>COURT OF APPEALS OPINION</u>	1
C. <u>STATEMENT OF THE CASE</u>	1
D. <u>ARGUMENT</u>	1
THE COURT SHOULD DENY THE PETITION FOR REVIEW	1
E. <u>CONCLUSION</u>	3

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

Fisher v. Allstate Ins. Co., 136 Wn.2d 240,
961 P.2d 350 (1998)..... 2

State v. Dent, No. 70666-7-I,
filed November 24, 2014 (unpublished)..... 1

State v. Halstien, 122 Wn.2d 109,
857 P.2d 270 (1993)..... 2

Rules and Regulations

Washington State:

RAP 13.4..... 1

A. IDENTITY OF RESPONDENT

Respondent, the State of Washington, asks this Court to deny the petition for review.

B. COURT OF APPEALS OPINION

The Court of Appeals decision at issue is State v. Dent, No. 70666-7-I, filed November 24, 2014 (unpublished).

C. STATEMENT OF THE CASE

The relevant facts are set forth in the briefing before the Court of Appeals.

D. ARGUMENT

THE COURT SHOULD DENY THE PETITION FOR REVIEW.

The Court should deny Dent's petition for review. The Court of Appeals fully responded to the issues originally raised by Dent in his Brief of Appellant and Reply Brief of Appellant, and those responses will not be fully repeated here, except to note that the Court of Appeals opinion directly addressed the issue of the officer's taking of Dent's ID card. The issues raised by Dent in his petition do not qualify for review under RAP 13.4.

The State submits this answer to point out an additional reason to deny Dent's petition: he attempts to raise a new constitutional issue and argument that was not argued or presented to the Trial Court or the Court of Appeals. In addition to his other arguments regarding the issue of whether he was in custody to the degree associated with formal arrest (raised by Dent in his briefing to the Court of Appeals and fully addressed in that court's opinion), Dent is now asserting, for the first time, that the "totality of circumstances analysis must account for the realities of modern day policing and race relations." Petition for Review at 13. Specifically, he appears to be asking – though he also says that he is not "firmly requesting" – for this Court to create a new rule and hold that a different standard be applied because Dent is African American. Petition for Review at 16. Dent does not acknowledge or explain why he did not raise this issue before the Court of Appeals.

"An issue not raised or briefed in the Court of Appeals will not be considered by this court." State v. Halstien, 122 Wn.2d 109, 130, 857 P.2d 270 (1993); see also Fisher v. Allstate Ins. Co., 136 Wn.2d 240, 252, 961 P.2d 350 (1998) ("This court does not generally consider issues raised for the first time in a petition for

review.”). Had Dent wanted to raise this issue, he could have included it in his Brief of Appellant or his Reply Brief of Appellant. He did not. It should be noted that his new argument and issue is supported entirely by secondary sources rather than binding case law, and all of the law review, newspaper and magazine articles he cites were published before he filed his Reply Brief of Appellant with the Court of Appeals. This Court should deny Dent’s petition and reject his attempt to raise a new constitutional issue for the first time in his petition for review.

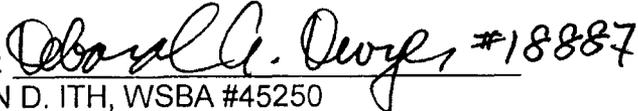
E. CONCLUSION

The Court should deny Dent’s petition.

DATED this 12th day of January, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By:  #18887
for IAN D. ITH, WSBA #45250
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorney for the petitioner, **Kevin March**, containing a copy of the **Answer to Petition for Review**, in **STATE V. KIEL DENT**, Cause No. **91163-1-I**, in the Supreme Court of the State of Washington.

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



Name
Done in Seattle, Washington

01-12-15
Date

OFFICE RECEPTIONIST, CLERK

To: Ly, Bora
Cc: Dwyer, Deborah; Ith, Ian; 'MarchK@nwattorney.net'; 'mayovskyp@NWattorney.net'
Subject: RE: Kiel Dent/91163-1

Received 1-12-2015

Supreme Court Clerk's Office

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: Ly, Bora [mailto:Bora.Ly@kingcounty.gov]
Sent: Monday, January 12, 2015 10:25 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Dwyer, Deborah; Ith, Ian; 'MarchK@nwattorney.net'; 'mayovskyp@NWattorney.net'
Subject: Kiel Dent/91163-1

Dear Supreme Court Clerk:

Attached for filing in the above-referenced case is the Answer to Petition for Review.

Please let me know if you should have difficulties opening the attachment.

Thank you,

Bora Ly
Paralegal
Criminal Division, Appellate Unit
King County Prosecutor's Office
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104
Phone: 206-296-9489
Fax: 206-205-0924
E-Mail: bora.ly@kingcounty.gov

For

Ian Ith
Deputy Prosecuting Attorney
Attorney for Respondent

