

Supreme Court No. 92190-3  
COA No. 45601-0-II

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS, et al.,

Petitioner,

v.

STEVEN P. KOZOL,

Respondent.

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ANSWER TO PETITION FOR REVIEW

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Received  
Washington State Supreme Court

E SEP 21 2015  
OF  
Ronald R. Carpenter  
Clerk

STEVEN P. KOZOL  
Respondent, Pro Per  
DOC# 974691  
Stafford Creek Corr. Center  
191 Constantine Way  
Aberdeen, WA 98520  
Ph:(360)537-1800

[www.FreeSteveKozol.com](http://www.FreeSteveKozol.com)

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## I. IDENTITY OF RESPONDENT

The respondent is Steven P. Kozol who was the appellant at the court of appeals.

## II. STATEMENT OF THE CASE

### A. Factual History

In 2011, the Department refused to allow Respondent Steven Kozol to present evidence in his defense during a hearing on a serious prison infraction. The Department also refused to provide at least 24 hours prior to the hearing notice to Mr. Kozol of all evidence being used against him. Clerk's Papers (CP), 63-66.<sup>1</sup>

The Department then found Mr. Kozol guilty of the infraction, and Mr. Kozol filed a timely appeal, raising these issues. The Department filed a document affirming the guilty finding, and falsely stating that Mr. Kozol had not been prevented from presenting evidence, and that he was given notice of all evidence against him. CP 67-69.

### B. Procedural History

Mr. Kozol filed an action in Thurston County Superior Court seeking declaratory relief under the Uniform Declaratory Judgment Act (UDJA). The trial court dismissed the UDJA claims, upon

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<sup>1</sup> These facts also averred in the pleadings are taken as true under the CR 12(c) analysis in this case. CP 30-32.

which Mr. Kozol moved to amend statutory writ of certiorari and constitutional writ of certiorari claims. The trial court denied leave to amend. CP 148-49.

Mr. Kozol timely appealed. On June 9, 2015, the Chief Justice of the Division Two Court of Appeals authored its unanimous opinion (unpublished) holding that the trial court correctly dismissed Mr. Kozol's UDJA claims, but erred in denying leave to amend Mr. Kozol's statutory writ of certiorari claims, and ordered the case remanded for trial. See Unpublished Opinion, at 6-18.

The Department filed a motion for reconsideration, arguing that the prison serious infraction hearing was not a "quasi-judicial" proceeding and as such Mr. Kozol was not entitled to pursue a statutory writ of certiorari. See Respondent's Motion for Reconsideration. At the direction of the Court, Mr. Kozol filed an answer to the motion wherein he cited to cases from the United States Supreme Court, numerous federal circuit courts, the Washington Court of Appeals, and the Washington Supreme Court, all of which had found prison serious infraction hearings to be "quasi-judicial." See Answer to Respondent's RAP 12.4 Motion for Reconsideration, at 3-13. The Court of Appeals again agreed with Mr. Kozol, and denied the Department's motion on July 29, 2015.

The Department has now filed its petition for review, asking this Court to review the single issue of whether Mr. Kozol can pursue a statutory writ of certiorari when he should instead file a Personal Restraint Petition (PRP).

### III. ARGUMENT WHY REVIEW SHOULD BE DENIED

#### A. The Decision Below Will Not Create a Flood of Cases

The Department argues that this Court should accept review and reverse the Court of Appeals because, "[w]ithout such review, superior courts will face a potential flood of cases seeking a statutory writ of certiorari to review prison disciplinary decisions." Petition for Review, at 2. Such argument is improvident.

The June 9, 2015 decision in this case is an unpublished opinion. As such, the decision only is binding upon the parties. The Court of Appeals limited the ruling to Mr. Kozol by determining the opinion would be unpublished. See Unpublished Opinion, at 18. No inmate other than Mr. Kozol can cite to the opinion, as General Rule 14.1(a) precludes citation of an unpublished opinion of the Court of Appeals. GR 14.1(a). The mass-hysteria the Department bombastically asserts is legally untenable.

#### B. Mr. Kozol Does Not Have Alternate PRP Remedy Available

The Department argues that Mr. Kozol can properly pursue a PRP to challenge the infraction, and this available alternate

remedy precludes his ability to seek a statutory writ of review. Petition for Review, at 16-19. The Department is incorrect.

Under RAP 16.4(d), Mr. Kozol had one year to file a PRP from the time of the agency's final decision. The Department's final agency decision on the infraction occurred on April 21, 2011 when it denied Kozol's appeal to the prison Superintendent. CP 68-69. At the time Mr. Kozol filed this action on January 28, 2013 (CP 4-6), he was beyond the one year to file a PRP. Mr. Kozol cannot meet the requirements of RCW 10.73.100 to excuse the one-year time bar in RCW 10.73.090, as none of the six criteria are present in this case.<sup>2</sup> As a matter of law, Mr. Kozol cannot now pursue a PRP.

#### C. No Restraint Under RAP 16.4

In cases where an inmate was able to seek relief from a prison infraction hearing by filing a PRP, the inmate had been subjected to either a loss of "good time" which prolonged his term of confinement, or was subjected to administrative segregation. See In re Matter of Plunkett, 57 Wn.App. 230, 233, 788 P.2d 1090 (1990) (loss of good time); In re Grantham, 168 Wn.2d 204, 207, 227 P.3d 285 (2010) (same); In re Gronquist, 138 Wn.2d 388, 395, 978 P.2d 1083 (1999) (same); In re Higgins,

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<sup>2</sup> Mr. Kozol could possibly meet the requirement of RCW 10.73.100(2) as his proposed amended UDJA claims challenged the facial validity of WAC 137-28, CP 108-09. See also, Reply Brief of Appellant, at 25 n.5. However, the Court of Appeals ruled Mr. Kozol was not entitled to UDJA review, and the Department has not raised the issue here that Mr. Kozol has an available UDJA claim.

152 Wn.2d 155, 158, 95 P.3d 330 (2004) (same); In re Krier, 108 Wn.App. 31, 37, 29 P.3d 720 (2001) (same); In re Leland, 115 Wn.App. 517, 521, 61 P.3d 357 (2003) (same); In re Malik, 152 Wn.App. 213, 217, 215 P.3d 209 (2009) (same); Matter of Hunter, 43 Wn.App. 174, 176, 715 P.2d 1146 (1983) (same); Petition of Johnson, 109 Wn.2d 493, 494, 745 P.2d 864 (1987) (same); Matter of Reismiller, 101 Wn.2d 291, 292, 678 P.2d 323 (1984) (administrative segregation); In re McVay, 99 Wn.App. 502, 504, 993 P.2d 267 (1999) (same).

Here, Mr. Kozol was not sanctioned with either a loss of good time, nor administrative segregation. CP 68-69. Because there is no "restraint" under RAP 16.4 as a result of the infraction, a PRP is not available.

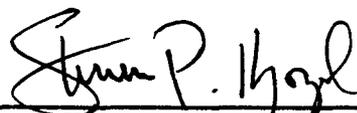
**D. Serious Infraction Hearing Was "Quasi-Judicial"**

The Department has argued that a statutory writ of certiorari is not available to Mr. Kozol because the prison infraction hearing was not "quasi-judicial" in nature. Petition for Review, at 8-16. To the contrary, Mr. Kozol cited below to numerous court decisions supporting the determination that his infraction hearing met the requisite criteria to be "quasi-judicial." See Answer to Respondent's RAP 12.4 Motion for Reconsideration, at 3-13.

#### IV. CONCLUSION

The petitioner has not made the necessary showing why this Court should accept review under RAP 13.4(b). Accordingly, respondent asks that the Court deny the petition for review.

RESPECTFULLY submitted this 17th day of September, 2015.



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STEVEN P. KOZOL, DOC# 974691  
Respondent, Pro Per  
Stafford Creek Corr. Center  
191 Constantine Way  
Aberdeen, WA 98520  
Ph:(360)537-1800

[www.FreeSteveKozol.com](http://www.FreeSteveKozol.com)

**DECLARATION OF SERVICE BY MAIL**  
**GR 3.1**

I, STEVEN P. KOZOL, declare and say:

That on the 17th day of September, 2015, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. Supr.Ct. No. 92190-3 :

Answer to Petition for Review ;  
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\_\_\_\_\_  
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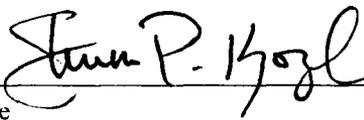
addressed to the following:

Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929  
\_\_\_\_\_  
\_\_\_\_\_

Brian J. Considine, AAG  
Attorney General's Office  
P.O. Box 40116  
Olympia, WA 98504  
\_\_\_\_\_

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

DATED THIS 17th day of September, 2015, in the City of Aberdeen, County of Grays Harbor, State of Washington.

  
Signature

STEVEN P. KOZOL  
Print Name

DOC 974691 UNIT H6-A86  
STAFFORD CREEK CORRECTIONS CENTER  
191 CONSTANTINE WAY  
ABERDEEN WA 98520