

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,	)	No. 93840-7
Petitioner,	)	
	)	
v.	)	ANSWER TO STATE'S
	)	MOTION TO EXTEND
BRUCE HUMMEL,	)	TIME TO FILE
Respondent.	)	PETITION FOR REVIEW
	)	

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A. IDENTITY OF MOVING PARTY

The respondent, Bruce Hummel, moves this Court for the relief designated below.

B. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 18.8(b), 1.2(c), and 13.4(a), Mr. Hummel asks this Court to deny the State's request to extend the time to file a petition for review.

### C. GROUNDS FOR RELIEF AND ARGUMENT

1. The Court of Appeals reversed Mr. Hummel's conviction in an opinion filed on October 17, 2016.

2. Under RAP 13.4(a), "a petition for review must be filed within 30 days after the decision is filed." Consequently, the State's petition for review was due by November 16, 2016.

3. Under RAP 18.8(b), this Court will only extend the time to file a petition for review "in extraordinary circumstances and to prevent a gross miscarriage of justice." This rule will not be waived. RAP 1.2(c).

4. The State filed its petition for review on November 17, 2016. It did not file a motion for an extension of time. Instead, this Court noticed the deficiency. In a letter to the State, this Court advised the State its petition was untimely and it must file an extension request, which the State did. This Court invited Mr. Hummel to respond to the State's request.

5. The State's motion for an extension of time misleadingly cites RAP 18.8(a) as the controlling standard for granting a request to extend the time to file a petition for review. RAP 18.8(b), not RAP 18.8(a) sets

the mandatory criteria for extending the due date of a petition for review. The State's motion further cites RAP 10.2(c), which also does not apply to a petition for review. It asks for an extension in the interest of justice, but RAP 1.2(c) restricts an appellate court's authority to waive or alter deadlines in the interest of justice. Under RAP 1.2(c), the court must find the State meets the criteria for RAP 18.8(b).

6. The State's motion does not claim that extraordinary circumstances occurred and there will be a gross miscarriage of justice absent an extension of time, as required by the court rule. It does not address the heightened threshold and mandatory criteria of RAP 18.8(b).

7. Extraordinary circumstances under RAP 18.8(b) mean the party was reasonably diligent but the filing was delayed due to circumstances beyond the party's control. *State v. Fox*, 192 Wn.App. 512, 525, 371 P.3d 537 (2016). "Negligence, or lack of reasonable diligence, does not amount to extraordinary circumstances." *Id.*

No extraordinary circumstances are present here. The State received the Court of Appeals opinion in a timely fashion, consulted with others, and considered its options. It merely explains that it failed

to undertake the simple math required for a timely filing. Unlike public defender offices who struggle to comply with deadlines despite a near total absence of any support staff, the State does not complain of any systemic reason why it was unable to meet the deadline. Its motion does not satisfy the criteria of RAP 18.8(b).

8. Any effort by the prosecution to concoct extraordinary circumstances now should be rejected. The State's motion and its filing shows that it paid little heed to the court rules governing petitions for review. It filed its petition in the Supreme Court even though RAP 13.4(a) directs the filing should occur in the Court of Appeals. It did not sua sponte file a motion for an extension of time, but waited for this Court to notice its untimeliness. Its motion to extend asks the Court to apply a lenient and liberal standard of review inapplicable to petitions for review.

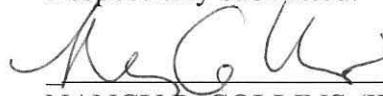
9. Mr. Hummel respectfully submits that the extension for time to file a petition for review does not meet the criteria for an extension under controlling court rules and should be denied.

D. CONCLUSION

Mr. Hummel respectfully requests this Court deny the State's request to extend the due date for its petition for review, and further deny the petition for review.

DATED this 15th day of December 2016.

Respectfully submitted:



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MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: December 15, 2016

# WASHINGTON APPELLATE PROJECT

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