FILED SUPREME COURT STATE OF WASHINGTON 6/20/2017 12:19 PM BY SUSAN L. CARLSON CLERK

| IN THE SUPREME COURT OF TI | HE STATE OF WASHINGTON |
|-----------------------------|--|
| STATE OF WASHINGTON, | |
| Respondent, |) NO. 94576-4 |
| vs. BRIAN THOMAS DECKER, |) ANSWER TO MOTION FOR) EXTENSION OF TIME TO) FILE PETITION FOR) REVIEW |
| Petitioner. |) |
| |))) |

1. IDENTITY OF MOVING PARTY

The State of Washington asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

The State respectfully requests that the petitioner's motion for an extension of time for filing a petition for discretionary review be denied.

3. FACTS RELEVANT TO MOTION

The Court of Appeals decision terminating review was filed on March 27, 2017. RAP 13.4 required the filing of a petition for review within 30 days after the decision terminating review because MOTION FOR EXTENSION OF TIME

Decker did not make a timely motion to publish or to reconsider the Court of Appeals decision.¹ Therefore, Decker's petition to this Court was due for filing on April 26, 2017. However, Decker did not file a petition until May 30, 2017.

However, this Court held the petition until June 16, 2017, to allow Decker to serve and file a motion for extension of time.

Decker filed such a motion on June 16, 2017.

4. GROUNDS FOR RELIEF AND ARGUMENT

RAP 18.8(b) permits appellate courts to extend a party's time to file an appeal "only in extraordinary circumstances and to prevent a gross miscarriage of justice." Further, this 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.

This Court rigorously applies the extraordinary circumstances and gross miscarriage of justice standards. Reichelt v. Raymark Indus., Inc., 52 Wn.App. 763, 765, 764 P.2d 653

¹ Decker's motions to the Court of Appeals for extension of time to file a motion to publish and a motion for reconsideration were denied as untimely.

MOTION FOR EXTENSION OF TIME

(1988). "Extraordinary circumstances" include instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control. <u>Id.</u> Appellants must provide a sufficient excuse for their failure to file a timely notice of appeal and demonstrate sound reasons to abandon the judicial preference for finality. <u>Schaefco, Inc. v. Columbia River Gorge Comm'n</u>, 121 Wn.2d 366, 367, 849 P.2d 1225 (1993). This standard has rarely been satisfied in reported caselaw. <u>Reichelt</u>, 52 Wn.App. at 765.

Decker has not offered any extraordinary circumstances to excuse his untimely filing here. Misadvice of counsel is not an extraordinary circumstance. See Shumway v. Payne, 136 Wn.2d 383, 396–97, 964 P.2d 349 (1998) (no extraordinary circumstances where pro se litigant erroneously informed by ad hoc counsel that she need not file a particular motion to pursue writ of habeas corpus). This Court should uphold its rigorous application of RAP 18.8(b) and deny Decker's motion to enlarge time, and deny his petition for review.

MOTION FOR EXTENSION OF TIME

DATED this 20th day of June, 2017.

DANIEL T. SATTERBERG Prosecuting Attorney

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Andrew L. Magee, the attorney for the petitioner, at , containing a copy of the ANSWER TO MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW in <u>State v. Brian Thomas Decker</u>, Cause No. 94576-4, in the Supreme Court, for 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.

Dated this **20** day of June, 2017.

Name:

Done in Seattle, Washington

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

June 20, 2017 - 12:19 PM

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: 94576-4

Appellate Court Case Title: State of Washington v. Brian T. Decker

Superior Court Case Number: 14-1-06964-9

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