

SUPREME COURT OF THE STATE OF WASHINGTON

LORENZO GINO SANDOVAL,

Petitioner,

v.

CHERYL SULLIVAN et al,

Respondents.

RESPONDENTS'
CONSOLIDATED
ANSWER TO MOTION
FOR EXTENSION OF
TIME AND ANSWER
TO PROPOSED
PETITION FOR
REVIEW

Respondents, by and through their attorneys of record, ROBERT W. FERGUSON, Attorney General, and CASSIE B. vanROOJEN, Assistant Attorney General respectfully submit the following Consolidated Answer to Motion for Extension of Time and Answer to Proposed Petition for Review.

I. RESPONSE

Division II of the Court of Appeals affirmed the trial court's dismissal of Sandoval's complaint on October 24, 2017. On November 28, 2017 this Court received Petitioner's "Plaintiff-Appellant's Notice to the Court and to Defendant's Counsel, his filing for petition for review." *See* November 29, 2017 Notation letter. This filing included the filing fee but did not include a petition for review. Instead, Sandoval's filings "indicate[] that the Petitioner *intends* to file a petition for review." *Id.* (Emphasis in original). This Court's notation letter notified the parties that

under RAP 13.4 any petition for review needed to be filed by November 27, 2017, and that any future petition would be untimely. *Id.* The Court provided Sandoval an opportunity to seek an extension to file the petition for review, but in recognizing the stringent “extraordinary circumstances” standard in RAP 18.8, notified Sandoval that “a motion for extension of time is normally not granted....” *Id.* The Court also directed Sandoval to support any motion with an affidavit establishing good cause for the delay in filing the petition for review. *Id.*

Sandoval subsequently filed a motion for extension of time and a proposed petition for review. In support of his motion Sandoval submitted a declaration explaining that he placed the “Notice for Petition for Review” in the mail on November 15, 2017 and reasons that an alleged mail delay warrants a grace period. The declaration makes no mention of Sandoval placing any petition for review in the mail nor does it explain any reason for the delay in filing an actual petition for review. Respondents’ response to the motion for extension follows.

A. Sandoval Has Failed To Carry the Heavy Burden Entitling Him to an Extension of the Deadline For Filing the Petition For Review

RAP 18.8(b) governs disposition of untimely appeals:

(b) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a

party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate 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.

RAP 18.8(b). Appellate courts “apply this test rigorously.” *State v. Moon*, 130 Wn. App. 256, 260, 122 P.3d 192 (2005). “In contrast to the liberal application we generally give the Rules of Appellate Procedure (RAP), [this provision] expressly requires a narrow application.” *Beckman v. Dep’t of Social & Health Servs.*, 102 Wn. App. 687, 693, 11 P.3d 313 (2000). As a result, “there are very few instances in which Washington appellate courts have found that this test was satisfied.” *Id.* (citing *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988)). The burden is on Sandoval to provide “sufficient excuse for his failure to file a timely notice of appeal” and to demonstrate “sound reasons to abandon the [judicial] preference for finality.” *Id.* (quoting *Schaefco, Inc. v. Columbia River Gorge Comm’n*, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993)). Sandoval has failed to meet this burden here.

Sandoval asks this court to grant him an extension of time to file his petition for review because he mailed a “notice for petition for review” within the 30-day time frame. Sandoval appears to erroneously believe that the deadline to file a petition for review required him to file only a

notice of intent to appeal, not the petition itself. *See* Declaration (explaining that this appeal should be deemed timely because he placed the filing fee and notice of intent to appeal in the mail). Such negligence, or the lack of reasonable diligence, does not amount to extraordinary circumstances under RAP 18.8(b). *See Beckman*, 102 Wn. App. at 695. Beyond this apparent failure to consult the RAPs, Sandoval has provided no explanation related to the tardiness of his petition for review. Sandoval has already enjoyed several levels of review in this case. The desirability of finality regarding the decisions below outweighs the “privilege” of an extension. RAP 18.8(b). Because Sandoval has failed to carry his burden under RAP 18.8(b), this Court should deny his motion.

B. Sandoval’s Proposed Petition For Review Raises No New Issues and Fails to Address the RAP 13.4 Criteria

Even if this Court were to grant Sandoval’s motion for extension, his Petition fails on the merits. Sandoval’s petition appears to raise the same or very similar issues as his appeal below. The briefing and decision in the Court of Appeals adequately addressed those issues and further response is unnecessary here. Beyond this, Sandoval has failed to address the RAP 13.4 criteria or identify any entitlement to review by this Court. In light of this, Respondents will not provide further response to

Sandoval's proposed petition for review unless directed to do so by this Court.

II. CONCLUSION

Because Sandoval has failed to demonstrate exceptional circumstances excusing his time-barred Petition, and because his Petition is otherwise deficient, this Court should deny Sandoval's petition for review.

RESPECTFULLY SUBMITTED this 16th day of January, 2018.

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CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the RESPONDENTS' CONSOLIDATED ANSWER TO MOTION FOR EXTENSION OF TIME AND ANSWER TO PROPOSED PETITION FOR REVIEW with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following participant:

LORENZO GINO SANDOVAL
22858 108TH AVENUE SE
KENT WA 98031

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

EXECUTED this 16th day of January, 2018, at Olympia, WA.

s/ Amy Jones
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CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

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