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IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 96242-1
)	
vs.)	MOTION REQUESTING
)	SUPREME COURT TO
RICHARD G. NEIGHBARGER,)	CONSIDER PETITIONER'S PRO
)	SE PETITION FOR REVIEW
Petitioner.)	
)	

14 I. Identity of Moving Party.

15 The petitioner requests the relief designated in part II.

16 II. Statement of Relief Sought.

17 Petitioner respectfully requests that this Court accept petitioner's pro
18 se petition for review and consider the issues set forth therein as part of the Court's
19 consideration of this matter. The Deputy Clerk has thus far refused to accept his
20 filing. See Exhibit "A".

21 III. Statement of Facts Relevant to Motion.

22 Petitioner filed an appeal of this matter after he was convicted and
23 sentenced in Pierce County Superior Court. As part of the appeal, he was given
24 notice that he could file supplemental grounds for appeal after his attorney filed his
25 opening brief. Petitioner took the opportunity to do so and, in fact, filed those
supplemental grounds for appeal, which were then considered by the appellate court

1 when it denied his appeal. Petitioner desires to exhaust all of his issues on appeal,
2 including the issues he was given the opportunity to brief and which were decided by
3 the appellate court.

4 IV. Grounds for Relief and Argument.

5 RAP 17.1 allows a person to seek relief by motion. Interestingly, the same
6 rule allows a defendant who is represented by counsel to file a motion that is related
7 to a statement of additional grounds for review. The defendant in this case has filed
8 a Petition for Review of his additional grounds for relief, but the Clerk has refused to
9 accept the filing.

10 As the Court is aware, in addition to the above rule, RAP 10.10(a) allows a
11 defendant in a criminal case to file a pro se statement of additional grounds for
12 review to identify any matters related to the decision under review that the defendant
13 believes have not been adequately addressed by counsel's brief. The defendant
14 (petitioner) did so in this case. It is axiomatic that once he is given the opportunity to
15 identify additional grounds, grounds that were ruled upon by the appellate court, he
16 would then have the opportunity to have this Court review the rulings that were
17 made against him, via a petition for review. If the Court were to hold otherwise, then
18 petitioner would be prevented his opportunity to seek review of those decisions
19 made by the Court of Appeals that he is entitled to have reviewed by this Court
20 pursuant to RAP 13.3.

21 In denying the filing of his petition seeking review, the Supreme Court Deputy
22 Clerk relied upon *State v. Romero*, 95 Wn. App. 323, 326-27, 975 P.2d 564 (1999)
23 and *State v. DeWeese*, 117 Wn.2d 369, 379, 816 P.2d 1 (1991). Neither case is
24 applicable to a defendant's pro se right to appeal that is constitutionally protected
25 and allowed pursuant to the Rules On Appeal.

1 First, *Romero* addressed whether a represented defendant could file *pro se*
2 motions on appeal when represented by counsel on appeal. The court ruled that he
3 could not and refused to expand then RAP 10.1(d) to allow it to do so.

4 Secondly, *DeWeese*, involved whether a defendant had the right to counsel of
5 his choosing after choosing to represent himself at trial. Again this Court ruled that
6 he did not.


7 The situation here is much different. The Rules On Appeal clearly give the
8 defendant the right to appeal issues that his attorney failed to address. It goes along
9 with these rights that he should be able to then seek review of these matters once
10 the appellate court rules against him pursuant to RAP 13.3. Further, 17.1 allows the
11 defendant to file any motion related to a statement of additional grounds for review.
12 This is what he attempted to do.

13 V. Conclusion.

14 Based on the arguments, records and files contained herein, petitioner
15 respectfully requests that this Court consider the petitioner's *pro se* petition for
16 review in this matter pursuant to RAP 10.10(a) and 13.3.

17 DATED this 18th day of September, 2018.

18 HESTER LAW GROUP, INC. P.S.
19 Attorneys for Petitioner

20
21 By: 
22 WAYNE C. FRICKE
23 WSB #16550

CERTIFICATE OF SERVICE

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Kathy Herbstler , hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day below set forth, I delivered true and correct copies of the motion to which this certificate is attached, by United States Mail or by ABC-Legal Messengers, Inc., to the following:

Counsel for Respondent

Kathleen Proctor
Deputy Prosecuting Attorney
930 Tacoma Avenue South, #946
Tacoma, WA 98402

- U.S. Mail
- Hand Delivery
- ABC-Legal Messengers
- Email

Defendant

Richard G. Neighbarger
DOC #395813
Coyote Ridge Corrections Center
P. O. Box 769
Connell, WA 99326

- U.S. Mail
- Hand Delivery
- ABC-Legal Messengers
- Email

Signed at Tacoma, Washington this 18th day of September, 2018.

Kathy Herbstler

SUSAN L. CARLSON
SUPREME COURT CLERK

ERIN L. LENNON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON



TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

September 12, 2018

LETTER SENT BY E-MAIL ONLY

Wayne Clark Fricke
Attorney at Law
1008 Yakima Avenue, Suite 302
Tacoma, WA 98405-4850

Hon. Derek Byrne, Clerk
Division II, Court of Appeals
950 Broadway, Suite 300
MS-TB-06
Tacoma, WA 98402

Michelle Hyer
Robin Khou Sand
Pierce County Prosecutor
930 Tacoma Avenue S., Room 946
Tacoma, WA 98402-2102

Re: Supreme Court No. 96242-1 - State of Washington v. Richard G. Neighbarger
Court of Appeals No. 50033-7-II

Clerk and Counsel:

On August 29, 2018, this Court received and filed the "PETITION FOR REVIEW." On August 30, 2018, this Court received and filed an untitled document which appears to be the Petitioner's pro se petition for review. The Court of Appeals has forwarded the related Court of Appeals file in the referenced matter. The \$200 filing fee (check #52742) has also been received. The matter has been assigned the Supreme Court cause number indicated above.

With regard to the document that appears to be the Petitioner's pro se petition for review, the document cannot be accepted for filing because the Petitioner is currently represented by counsel and accepting this filing would result in the type of hybrid representation that has been disallowed. *See State v. Romero*, 95 Wn. App. 323, 326-27, 975 P.2d 564 (1999) (a criminal defendant represented by counsel on appeal has no right to engage in "hybrid representation" by submitting his own filings in the appellate proceedings; a represented criminal appellant may only file on his own behalf a statement of additional grounds for review). *Cf. State v. DeWeese*, 117 Wn.2d 369, 379, 816 P.2d 1 (1991) (there is no constitutional right to appear both by counsel and pro se). If counsel would like for the Court to consider the Petitioner's pro se petition for review in addition to counsel's petition for review, they may make a motion.

Counsel's petition for review will be set for consideration without oral argument by a Department of the Court; see RAP 13.4(i). If the members of the Department do not



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unanimously agree on the manner of the disposition, consideration of the petition will be continued for determination by the En Banc Court.

The parties are directed to review the provisions set forth in RAP 13.4(d) regarding the filing of any answer to a petition for review and any reply to an answer.

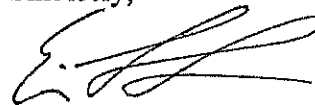
Usually there is approximately three to four months between receipt of the petition for review in this Court and consideration of the petition. This amount of time is built into the process to allow an answer to the petition and for the Court's normal screening process. At this time it is not known on what date the matter will be determined by the Court. The parties will be advised when the Court makes a decision on the petition.

Any amicus curiae memorandum in support of or in opposition to a pending petition for review should be served and received by this Court and counsel of record for the parties and other amicus curiae by not later than 60 days from the date the petition for review was filed; see RAP 13.4(h).

Counsel are referred to the provisions of General Rule 31(e) regarding the requirement to omit certain personal identifiers from all documents filed in this court. This rule provides that parties "shall not include, and if present shall redact" social security numbers, financial account numbers and driver's license numbers. As indicated in the rule, the responsibility for redacting the personal identifiers rests solely with counsel and the parties. The Clerk's Office does not review documents for compliance with the rule. Because briefs and other documents in cases that are not sealed may be made available to the public on the court's internet website, or viewed in our office, it is imperative that such personal identifiers not be included in filed documents.

Counsel are advised that future correspondence from this Court regarding this matter will most likely only be sent by an e-mail attachment, not by regular mail. For attorneys, this office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory this Court in writing.

Sincerely,



Erin L. Lennon
Supreme Court Deputy Clerk

ELL:sk

HESTER LAW GROUP, INC., P.S.

September 18, 2018 - 9:06 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96242-1
Appellate Court Case Title: State of Washington v. Richard G. Neighbarger
Superior Court Case Number: 15-1-03789-9

The following documents have been uploaded:

- 962421_Motion_20180918090314SC008747_1227.pdf
This File Contains:
Motion 1 - Other
The Original File Name was neighbarger motion.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@co.pierce.wa.us
- leeann@hesterlawgroup.com
- rsand@co.pierce.wa.us

Comments:

Motion requesting Supreme Court to consider petitioner's pro se petition for review

Sender Name: Lance Hester - Email: kathy@hesterlawgroup.com

Filing on Behalf of: Wayne Clark Fricke - Email: wayne@hesterlawgroup.com (Alternate Email: wayne@hesterlawgroup.com)

Address:
1008 South Yakima Avenue
Suite 302
Tacoma, WA, 98405
Phone: (253) 272-2157 EXT 224

Note: The Filing Id is 20180918090314SC008747