

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER OLSEN,

Petitioner.

NO. 97157-9

ANSWER TO MOTION
REQUESTING PERMISSION TO
FILE SUPPLEMENTAL BRIEF

I. IDENTITY OF RESPONDING PARTY

The Respondent, State of Washington, submits this response to the Petitioner's Pro Se Motion Requesting Permission to File a Supplemental Brief Pursuant to RAP 10.1(h).

II. STATEMENT OF RELIEF SOUGHT

The State requests that the Court deny Mr. Olsen's pro se motion to file a supplemental brief pursuant to RAP 10.1(h). Because Mr. Olsen is represented by counsel on his petition for review, he is not entitled to file pro se motions or supplemental briefing.

III. FACTS AND ARGUMENT

Mr. Olsen is represented by court appointed counsel. His counsel has filed a petition for review in this case raising issues that counsel believes merit review by this Court. *See* “Petition for Review / Discretionary Review” filed on May 3, 2019. Approximately two and a half months later, Mr. Olsen filed a motion requesting permission to file a supplemental brief “pursuant to RAP 10.1(h).”

Because Mr. Olsen has court appointed counsel representing him on his petition, there is no provision in the rules that allows him to file a pro se motion or supplemental briefing. Mr. Olsen asserts that RAP 10.1(h) gives the Court authority to accept his supplemental brief. In his conclusion, he also cites to “RAP 2.5, 13.7, and 16.10” as giving the Court authority to accept his supplemental brief. None of these provisions apply to the procedural posture of Mr. Olsen’s case. There is no provision that allows Mr. Olsen to file a pro se supplemental brief at this stage of the proceedings.

Mr. Olsen’s reliance on RAP 10.1(h) is misplaced. Although RAP 10.1(h) provides that the appellate court may authorize or direct the filing of briefs on the merits, the scope of that rule is intended to apply only to the briefs referred to in Title 10:

The rules in this title apply only to the briefs referred to in this rule, unless a particular rule indicates a different application is intended.

See RAP 10.1(a). Petitions for review are governed by Title 13 and briefs that may be filed regarding the petition for review and any answer or reply are governed by Title 13. *See* RAP 13.4(d) (discussing the filing of an answer and reply); *see also* RAP 13.1 – 13.7.

RAP 10.10(a) allows a defendant to file a pro se statement of additional grounds for relief in a criminal case on direct appeal. The purpose of this rule is to allow the defendant to “identify and discuss those matters related to the decision under review that the defendant believes have not been adequately addressed by the brief filed by the defendant’s counsel.” RAP 10.10(a). The statement of additional grounds for review must be filed within 30 days after the defendant is served with his counsel’s brief and the mailing of a notice from the clerk of the appellate court advising the defendant of the rule. RAP 10.10(d). Mr. Olsen previously filed an “extensive statement of additional grounds” in accordance with this rule, and the Court of Appeals addressed all of those “extensive” grounds in its unpublished opinion. *See State v. Olsen*, No. 48294-1-II, 2019 WL 1503801 (Wash. Ct. App. April 3, 2019).¹

Other than a statement of additional grounds for review under RAP 10.10, there is no other rule of appellate procedure that authorizes the filing

¹ The decision of the Court of Appeals is unpublished and has no precedential value under GR 14.1(a) and is cited only for the procedural history of the case.

of any other pleading or correspondence directly with the appellate court when the appellant is represented by counsel. *State v. Romero*, 95 Wn. App. 323, 326-27, 975 P.2d 564 (1999). In *Romero*, the Court held that appellants who are represented by appellate counsel are not entitled to file pleadings regarding their appeals. *Id.* at 325-26. Defendants may choose to waive the assistance of counsel and represent themselves at trial, but there is no right to “hybrid representation” whereby defendants may serve as co-counsel with their attorneys. *Id.* at 326. The right to self-representation in a criminal case is an “all-or-nothing process.” *Id.* An appellant may choose self-representation on appeal. *Id.* “However, just like in the trial court arena, there is no rule that provides the right to hybrid representation on appeal.” *Id.* at 326-27.

The Court rejected Romero’s argument that he “was forced to file pro se motions because he did not agree with the decisions being made by his appointed counsel,” noting that there is no right to representation by counsel of choice. *Id.* at 327. The Court explained that the only pleading Romero was permitted to file was a brief pursuant to RAP 10.1(d) and declined to expand the rule to allow for additional pleadings. *Id.*² The Court

² At the time of Romero’s case, RAP 10.1(d) authorized the filing of a “pro se supplemental brief” in a criminal case within 30 days after receiving the brief filed by his counsel and after giving notice of intent to file the brief. This rule is now codified in RAP 10.10. *See* RAP 10.1(d) (referencing RAP 10.10); RAP 10.10 (statement of additional grounds for review).

held, "There is no other rule of appellate procedure that authorizes the filing of any other pleading or correspondence directly with the appellate court when, as in this case, the appellant is represented by counsel." *Romero*, 95 Wn. App. at 327.

Thus, because Mr. Olsen is represented by appellate counsel, he is not entitled to file any pro se briefing other than a Statement of Additional Grounds for Review pursuant to RAP 10.10. This Court should deny his pro se request to file supplemental briefing in this matter.³

IV. CONCLUSION

The State respectfully requests that this Court deny Mr. Olsen's pro se request to file supplemental briefing to the petition for review filed by his appellate counsel and decline to consider the issues raised therein.

DATED: July 30, 2019.

MARY E. ROBNETT
Pierce County Prosecuting Attorney



Kristie Barham, WSB #32764
Deputy Prosecuting Attorney

³ Further, Mr. Olsen's supplemental briefing fails to identify any basis for review under any of the criteria listed in RAP 13.4(b).

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail and/or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

7-30-19 Sherrin Kar
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

July 30, 2019 - 1:53 PM

Transmittal Information

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ANSWER TO MOTION REQUESTING PERMISSION TO FILE SUPP BRIEF

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