

35035-5-III  
COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

STATE OF WASHINGTON,	)	SPOKANE COUNTY NO.
Plaintiff,	)	15 1 02422 2
Respondent,	)	COURT OF APPEALS NO.
v.	)	35035-5-III
ROY HOWARD MURRY,	)	SUPREME COURT NO.
Defendant,	)	98724-6
Appellant,	)	MOTION TO FILE
	)	SUPPLEMENTAL PETITION
	)	FOR DISCRETIONARY
	)	REVIEW

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1. Identity of Moving Party

ROY HOWARD MURRY asks for the relief designated in Part 2.

2. Statement of Relief Sought

Mr. Murry seeks leave to file a Supplemental Petition for Discretionary Review (PDR) under RAP 13.4(a) and RAP 10.1(h). Other Rules for Appellate Procedure relevant to this Motion are: RAP 13.4(b) (1), (2) & (3); RAP 10.1 (b); RAP 1.1 and RAP 1.2(a). The intended Supplemental PDR would be confined to issues raised by Mr. Murry in his pro se Statement of Additional Grounds (SAG). He contends these were improperly reviewed by the Court of Appeals.

### 3. Facts Relevant to Motion

The transcripts and Clerk's Papers total 7,510 pages.

Mr. Murry's original brief to the Court of Appeals contained sixty-three (63) pages.

Mr. Murry's Statement of Additional Grounds (SAG) contained thirty-six (36) typed pages.

The Court of Appeals found Mr. Murry's SAG potentially meritorious enough to warrant a Supplemental Response Brief by the State to address the issues raised. This response was fifty (50) pages.

Mr. Murry filed a Motion to the Court of Appeals requesting to be allowed to file a reply brief to the State Supplemental Response Brief to the SAG, under RAP 10.1(b) and RAP 10.1(h). This motion was denied well prior to the State's Supplemental Response Brief being filed with the Court.

The Court of Appeals decision is thirty-two (32) pages. It includes rulings issued on issues raised in Mr. Murry's SAG.

Mr. Murry's now accepted Petition for Discretionary Review is overlength at twenty-eight (28) pages by necessity. This was only possible because Mr. Murry's counsel eliminated other potential issues from the PDR per RAP 13.4(f).

#### 4. Grounds for Relief and Argument

RAP 10.1(h) authorizes other briefs on the merits at the Court's discretion.

RAP 10.1(b) provides that "(3) a reply brief of appellant or petitioner" may be filed "in any review."

RAP 1.2(a) states, in part:

These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases will not be determined on the basis of compliance or non-compliance with these rules...

RAP 10.10(a) does not require a response or reply brief to an SAG. SAGs are routinely found to not merit further briefing. However, after reviewing Mr. Murry's SAG, the Court of Appeals ordered a Supplemental Response Brief from the State only and subsequently denied appellant's Motion to File a Reply Brief to the State's Supplemental Response Brief. The decision to refuse a reply was issued well prior to the submission of the State response. This effectively put the State on notice that they could make any claim of fact or law without fear of reply/rebuttal, by appellant or his counsel, based on the record or case law. This was a departure from how Division III handled a similar situation in State v. Whitlock, 195 Wn. App. 745, 381 P. 3d 1250, 188 Wn. 2d 511, 396 P. 3d 310 (2017). There, when the Court of Appeals found SAG raised issues (presence/public trial rights) to be potentially meritorious, further briefing was ordered from both appellant's counsel and the State. 195 Wn. App. at 749; 188 Wn. 2d at 518, see esp. footnote 3.

Similarly, Division II ordered both counsel to file supplemental briefing regarding appellant's pro se SAG claims of Ineffective Assistance of Counsel in State v. Grier, 150 Wn. App. 619, 622-23, 632-33, 171 Wn. 2d 17, 29 (2009/2011),

Conversely, in Mr. Murry's case, the Court of Appeals prejudiced him by requesting only the State's Response Brief to his SAG, without reply and by excluding Mr. Murry's counsel from providing assistance in the review.

Please note that unlike in State v. Romero, 95 Wn. App. 323, 975 P. 2d. 564, review denied, 138 Wn. 2d 1020, 989 P. 2d 1139 (1999), appellant has not and is not seeking to file parallel or repetitive briefing on the same issues as his counsel as "co-counsel." The issues raised in counsel's briefing and appellant's SAG are independent of each other.

Mr. Murry has no intention of abandoning any of the potentially meritorious issues raised in his SAG. Although it remains unclear exactly which issues the Court of Appeals found potentially meritorious enough to warrant further briefing. Had the Court handled these SAG issues in a manner consistent with Whitlock and Grier, issues could have become part of normal briefing and the established direct appeal process. This would allow them to be reviewed under a standard more favorable to Mr. Murry than a Personal Restraint Petition (PRP). In re PRP of Hagler, 97 Wn. 2d 818, 650 P. 2d 1103 (1981). At present, a PRP appears to be the only avenue of relief for the Court of Appeals' departure from precedent and possible violation of RAP 10.1(b).

Mr. Murry contends:

(1) That the Court of Appeals handled his SAG in a manner inconsistent with precedent and RAP 10.1(b);

(2) That this prejudiced the nature and quantity of briefing to favor the State;

(3) That this led to an opinion which was contrary to, or involved an unreasonable application of, clearly established State and Federal law;

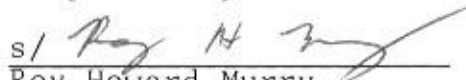
(4) That this led to an unreasonable determination of the facts in light of the evidence present in the record;

(5) That, if uncorrected, Mr. Murry will be actually and substantially prejudiced by being forced to address the error(s) and the resulting flawed Court of Appeals opinion in a PRP under a heightened standard of review.

Therefore, Mr. Murry asks that the Supreme Court of Washington liberally interpret the Rules for Appellate Procedure to facilitate a review of his case on the merits: (A) by allowing him to file a Supplemental Petition for Discretionary Review; (B) confined to only those issues raised in his SAG which were potentially improperly reviewed by the Court of Appeals, Div III.

DATED this 24th day of July, 2020.

Respectfully submitted:

  
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Defendant/Appellant

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# INMATE

July 24, 2020 - 3:37 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98724-6  
**Appellate Court Case Title:** State of Washington v. Roy H. Murry  
**Superior Court Case Number:** 15-1-02422-2

DOC filing of MURRY Inmate DOC Number 396387

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The Inmate The Inmate/Filer's Last Name is MURRY.

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