

## High court to decide whether to hear trial access issue

By [Terry McConn](#)

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WALLA WALLA — The state Supreme Court is scheduled to decide next month whether to review an appeals court ruling that grants a new trial for a gang member serving life for murdering a rival and shooting at other people in a 2011 confrontation in a Walla Walla alley.

The Benito Gomez case has been set for the high court's Sept. 2 motion calendar.

Walla Walla County Prosecuting Attorney Jim Nagle explained that five members of the court will meet that day to decide whether to grant a petition by his office requesting review of the lower, Spokane-based appeals court opinion filed in March.

The three-judge panel determined Gomez was not provided a public trial when a Walla Walla County Superior Court jury convicted him in June 2012.

Ultimately Nagle wants that decision reversed.

If the Supreme Court panel accepts review, a date and time for oral arguments will be scheduled.

If the panel declines, the appeals court ruling granting Gomez a new trial will stand. He will then be returned to Walla Walla County Superior Court for appointment of a new attorney and the setting of a new trial to begin within 60 days.

Gomez was found guilty of second-degree murder for gunning down 20-year-old gang rival Julio Cesar Martinez on May 17, 2011, in the alley in the 300 block of Myrtle Street.

Gomez also was convicted of six counts of first-degree assault of others in and adjacent to the alley. No one but Martinez was hit by the gunfire.

Gomez, now 21, was sentenced to nearly 115 years in prison and is serving time at the Washington State Penitentiary.

But the appeals court ruled Gomez was not provided a public trial because then-Superior Court Judge Donald W. Schacht denied spectators entry into the courtroom after sessions began.

Schacht — who has since retired — said at the time his decision was partly to address security concerns because the murder and assaults allegedly revolved around gang activity. Also, he said latecomers would be distracting to trial participants.

In support, Nagle's office contends only latecomers might not have been seated, the alleged closure was trivial, was for valid security purposes and does not warrant a new trial.

An answer filed by Gomez's Spokane appellate attorneys Jill Reuter and Janet Gemberling maintains review shouldn't be granted because the appeals court decision doesn't conflict with any

previous appellate ruling, pose a significant constitutional issue or warrant review as a matter of public interest.

But the Washington Association of Prosecuting Attorneys disagrees. The group has filed a brief in support of the court accepting review, saying the issue is one of “substantial public interest” in that confusion has developed and clarification is necessary.

“This trial judge (Schacht) was likely not alone in believing that for security reasons and to minimize disruptions in front of the jury, he had the authority to restrict the moment at which spectators entered,” according to the brief.

It later continues: “If trial courts are not provided guidance, well-intended restrictions like those in this case will trigger costly and unnecessary retrials.”

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