

**Supreme Court No. 94329-0**  
COA No. 33810-0-III

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Plaintiff/Respondent

v.

CHARLES FLETCHER,

Defendant/Petitioner.

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**ANSWER TO DEFENDANT'S PETITION FOR REVIEW**

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## **I. IDENTITY OF PARTY**

Respondent, State of Washington, was the plaintiff in the trial court and the respondent in the Court of Appeals.

## **II. STATEMENT OF RELIEF SOUGHT**

Defendant has filed a Petition for Review. Respondent seeks denial of Defendant's Petition for Review of the opinion issued by the Court of Appeals on March 16, 2017.

## **III. ISSUE PRESENTED**

Should the Supreme Court accept review under RAP 13.4(b)(4)?

## **IV. STATEMENT OF THE CASE**

On March 28, 2013, the Honorable Superior Court Judge Salvatore F. Cozza accepted Mr. Fletcher's plea of not guilty by reason of insanity to five felony charges, including three counts of second degree assault. He was given credit for 585 days spent in custody and sent to Eastern State Hospital ("ESH"). The maximum detention time is ten years. *State v. Fletcher*, No. 33810-0-III, 2017 WL 1024642 at \*1 (Wash. Ct. App. Mar. 16, 2017).

On September 1, 2015, Mr. Fletcher wrote Judge Cozza requesting a conditional release and requesting counsel. CP 11-13. Judge Cozza responded and directed Mr. Fletcher to apply to the Department of Social and Health Services' ("DSHS") Secretary for any conditional release and

sent Mr. Fletcher a letter stating such. CP 6. Judge Cozza informed Mr. Fletcher that any appointment of counsel for Mr. Fletcher would follow DSHS's action on the request. Judge Cozza also sent Mr. Fletcher a copy of RCW 10.77.150. CP 6-14.

Instead of following Judge Cozza's letter, Mr. Fletcher filed an appeal. CP 15-16.

The matter proceeded to determination by a panel without oral argument on March 16, 2017, with the Court of Appeals on a 2-1 vote affirming Judge Cozza's decision. Mr. Fletcher's Petition for Review followed on March 28, 2017.

## **V. ARGUMENT AGAINST ACCEPTANCE OF REVIEW**

Initially, it should be pointed out that RAP 13.4(b) lists the applicable "route(s)" for review by our Supreme Court as follows:

### **RULE 13.4. DISCRETIONARY REVIEW OF DECISION TERMINATING REVIEW**

...

**(b) Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with the decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Of the four criteria listed in RAP 13.4(b), Mr. Fletcher claims only one, an issue of substantial public interest. He submits newspaper articles and an editorial for support.<sup>1</sup>

To the extent the articles discuss the authors' perceptions and opinions of mental health issues in the state, it is very difficult to see how they support Mr. Fletcher's interpretation of RCW Chapter 10.77 as opposed to Division III's decision. It appears to this writer such position on the part of Mr. Fletcher, is a huge "stretch" and this specific issue is not a matter of substantial public interest.

Interestingly enough, none of the "more traditional" routes to review set forth and contained in RAP 13.4(b) are even alleged by Mr. Fletcher, let alone supported.

Further, to the extent the dissenting Judge accepts some of Mr. Fletcher's argument, he does not cite RCW 10.77.200 in any respect, the statute Mr. Fletcher appears to believe is solely applicable to his case despite such not being found by the trial court or all three Appellate Judges who examined the issue. Judge Fearing, who dissented, specifically notes

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<sup>1</sup> No copies were attached to the Petition, and it is not clear as all articles could be located by this writer on the internet.

and states “I would not allow permanent appointment of counsel for the criminally insane while in commitment.” *Fletcher*, 2017 WL 1024642, at \*9 (Fearing, C.J. dissenting). What Mr. Fletcher requests nearly does that.

Mr. Fletcher, essentially attempts to “bootstrap newspaper articles” into a basis for discretionary review of the Court of Appeals decision under RAP 13.4(b)(4).<sup>2</sup>

Thus, Respondent respectfully suggests the issues in this case are not appropriate for further review.

Further, Respondent contends that the opinion of Division III is largely procedural in nature and does not deprive counsel to Mr. Fletcher or like individuals when the process as set forth by Division III’s majority is followed. The procedure, as noted by Division III’s majority, is consistent with RCW Chapter 10.77 statutes and accomplishes the purposes of those statutes. There is certainly no urgent need to review such issues raised by Mr. Fletcher in that Division III’s interpretation of relevant statutes provides appropriate and sufficient process for RCW Chapter 10.77 proceedings.

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<sup>2</sup> An example of a mental health case which has resulted in discretionary review is *Det. of D.W. v. Dep't of Soc. & Health Servs.*, 181 Wn.2d 201, 332 P.3d 423 (2014), which involved the untimely placement of *civil commitment* detainees. No such issue is involved in the case at bar, nor any such urgency.

As mentioned, there is no problem with procedural due process. There is no need to construe further RCW 10.77.140, RCW 10.77.150, or RCW 10.77.200 differently than the Division III majority has done.

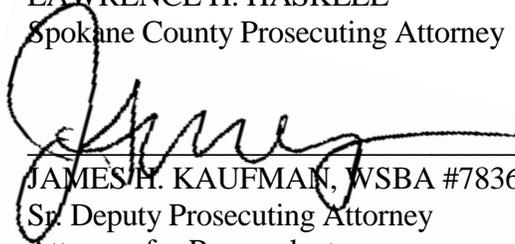
## VI. CONCLUSION

Division III's decision does not in any way deprive Mr. Fletcher of any right in its interpretation of RCW Chapter 10.77. There is no need to review the statutory framework as set forth by Division III nor any need for review by this Court.

Respondent respectfully submits no further review is needed and the Petition for Review should be denied.

Dated this 27<sup>th</sup> day of April, 2017

LAWRENCE H. HASKELL  
Spokane County Prosecuting Attorney



JAMES H. KAUFMAN, WSBA #7836  
Sr. Deputy Prosecuting Attorney  
Attorney for Respondent

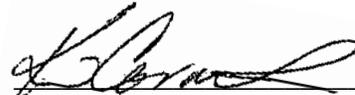
**PROOF OF SERVICE**

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 27<sup>th</sup> day of April, 2017, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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(Attorneys for Appellant/Petitioner)		

Dated this 27<sup>th</sup> day of April, 2017, in Spokane, Washington.

  
Kim Cornelius

# SPOKANE COUNTY PROSECUTOR

April 27, 2017 - 9:17 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 94329-0  
**Appellate Court Case Title:** State of Washington v. Charles David Fletcher  
**Superior Court Case Number:** 11-1-02625-7

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