

FILED
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STATE OF WASHINGTON
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SUPREME COURT NO. 94883-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

HAI MINH NGUYEN,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mary E. Roberts, Judge

REPLY IN SUPPORT OF PETITION FOR REVIEW

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A. IDENTITY OF REPLYING PARTY

Hai Minh Nguyen, the petitioner here and the appellant below, replies to the State's answer to the petition for review, filed December 8, 2017.

B. ADDITIONAL ISSUES PRESENTED

1. Does it make more logical and legal sense to review the issue of whether a prohibition on sexually explicit and erotic materials is crime-related in a case where there was no evidence or information presented at trial or sentencing whatsoever that directly related the possession, viewing, use, or access of such materials to the crimes?

2. Alternatively, in the event the court wishes to review the crime-relatedness issue in another case, would it better serve the ends of justice to consolidate and consider Nguyen's case alongside this other case or stay consideration of Nguyen's petition for review until this other case is decided?

C. ARGUMENT IN REPLY

1. THIS CASE IS BETTER SUITED FOR REVIEW THAN NORRIS BECAUSE, UNLIKE NORRIS, THERE IS NO EVIDENCE WHATSOEVER THAT SEXUALLY EXPLICIT OR EROTIC MATERIALS PLAYED ANY ROLE IN THE CRIMES

The State agrees this court should review the issue of what it means for a community custody condition to be crime-related. Answer to Petition for Review (Answer) at 2. However, the State suggests the issue would be

better reviewed in State v. Norris, ____ Wn. App. ____, 404 P.3d 83 (2017).
Answer at 6-8.

The State is incorrect. Unlike Norris, in this case there was not even a hint of evidence that sexually explicit or erotic materials played any role in the crimes. Cf. Norris, 404 P.3d at 89 (upholding prohibition on sexually explicit and erotic materials because Norris and 13-year-old exchanged sex-related text messages and photos). This case would therefore be the better case for testing the State's representation that it is not "advocating for an 'automatic' approach wherein prohibitions on sexually explicit materials are *always* related to *all* sex offenses *per se*." Answer at 7 n.3. By positing that "it would be difficult to imagine a situation where a prohibition on such materials was not reasonably related to a felony sex offense," Answer at 7 n.3, the State indeed appears eager to embrace the very approach it claims to reject. Because the logical and legal limits of crime-relatedness would be best served by reviewing this case in which absolutely no evidence or information adduced at trial or on appeal supports a ban on possessing, viewing, using, and accessing all sexually explicit and erotic materials, Nguyen asks that review of his petition be granted.

2. ALTERNATIVELY, IF INCLINED TO GRANT REVIEW IN NORRIS, THIS COURT SHOULD EITHER CONSOLIDATE THIS CASE WITH NORRIS (AND POTENTIALLY WITH OTHER CASES INVOLVING THE SAME ISSUE) TO HAVE THE BENEFIT OF MULTIPLE FACTUAL SCENARIOS OR STAY THIS CASE PENDING NORRIS

If inclined to grant review in Norris, this court should not deny Nguyen's petition as the State requests. If the "multiple facets" of different factual scenarios "would allow for more thorough consideration of the issue," Answer at 7, then how better to consider these multiple facets than by granting review in this case, in Norris, and in any other case that presents a similar crime-relatedness issue? Granting review of cases that present these issues and then consolidating them would allow for a more thorough consideration of the crime-relatedness issue than would the grant of review in only one case. If this court is inclined to grant review in Norris rather than in this case, Nguyen asks that this case be consolidated with and considered alongside Norris pursuant to RAP 3.3(b).

As another alternative, if this court is more inclined to grant review in Norris, Nguyen requests that consideration of his petition for review be stayed pending the outcome of Norris. RAP 7.3, RAP 8.3, and RAP 18.8 provide broad authority and authorize a stay to secure the fair and orderly review of cases. The parties agree that the crime-relatedness issue necessitates this court's review. It would therefore be fairer and more equitable to stay

consideration of Nguyen's petition for review until this court has the opportunity to provide needed guidance on RCW 9.94A.030(10)'s definition of crime-related prohibitions. Thus, if inclined to grant review in Norris but not in this case, Nguyen respectfully requests that this court stay consideration of this petition until Norris is decided.

D. CONCLUSION

For the reasons stated here and in his petition for review, Nguyen asks that his petition for review be granted. Nguyen alternatively asks for a stay until this court decides the issue presented here.

DATED this 15th day of December, 2017.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Kevin A. March", written over a horizontal line.

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