

SUPREME COURT NO. 95083-1
COURT OF APPEALS NO. 75441-6-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

EDGAR DENNIS, III,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

Respondent, the State of Washington, concurs that review is warranted.

B. COURT OF APPEALS OPINION

The Court of Appeals decision at issue is State v. Dennis, No. 75441-6-I, filed October 2, 2017.

C. STATEMENT OF THE CASE

The relevant facts are set forth in the briefing before the Court of Appeals.

D. ARGUMENT

REVIEW SHOULD BE GRANTED, BUT LIMITED TO THE STATUTORY INTERPRETATION QUESTION PRESENTED BELOW.

The State's briefing at the Court of Appeals adequately responds to the issues raised by Dennis. The State is in agreement that this Court should accept review of this case to address the limited issue of the statutory construction of

RCW 9.41.040(4) because there is a conflict in the Court of Appeals. The State submits this Answer in order to address new issues that Dennis raises for the first time in his petition. Dennis appears to have added two new arguments in his petition. First, he argues that RCW 9.41.040(4) is arbitrarily applied to Dennis and thus unconstitutional. Petition for Review dated October 3, 2017 at pg. 18. Second, he argues that the construction of the statute that was argued by the State and followed by the Court of Appeals violates equal protection. Id. at pg. 20.

This Court should accept review only to resolve the issue of statutory construction of RCW 9.41.040(4) and not on the constitutional issues raised for the first time in the petition. Dennis did not raise nor develop these issues at the Court of Appeals and therefore it is too late to raise them for the first time in this Petition.

The Supreme Court does not generally consider issues raised for the first time in a petition for review. State v. Halstien, 122 Wn.2d 109, 130, 857 P.2d 270 (1993). An issue not raised or briefed in the Court of Appeals should not be considered by this Court. Id.

E. CONCLUSION

The Court should grant the Petition for Review limited to the statutory construction issues raised at the Court of Appeals.

DATED this 19 day of October, 2017.

Respectfully submitted,

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KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

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