

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
4/16/2019 11:04 AM  
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THE SUPREME COURT  
OF THE STATE OF WASHINGTON

Supreme Court Case No. 970718

Court of Appeals Division III Case No. 359662

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STATE OF WASHINGTON,  
Plaintiff/Appellant,

v.

STEVENS COUNTY DISTRICT COURT JUDGE,  
Defendant/Respondent.

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**RESPONSE TO RESPONDENT'S PETITION FOR  
DISCRETIONARY REVIEW**

Will Ferguson, WSBA 40978  
Deputy Prosecuting Attorney  
Office of the Stevens County Prosecutor  
215 S. Oak, Room #114  
Colville, WA 99114  
Phone: (509) 684-7500  
Fax: (509) 684-7589  
[wferguson@stevenscountywa.gov](mailto:wferguson@stevenscountywa.gov)  
[trasmussen@stevenscountywa.gov](mailto:trasmussen@stevenscountywa.gov)

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## I. STATEMENT OF THE CASE

Petitioner to the Court of Appeals was the State of Washington (hereinafter the “State”). Respondent to the Court of Appeals was the Stevens County District Court Judge, a judge in a court of limited jurisdiction, by and through Judge Gina Tveit (hereinafter “District Court” or “District Court Judge”). Petitioner to this Court is the District Court Judge. Respondent to this Court is the State of Washington.

On January 29, 2018, the Stevens County Superior Court (hereinafter “Superior Court”) ordered that all in-custody first appearances for Superior Court and District Court criminal cases would be heard by the Superior Court in a Superior Courtroom at noon, on Monday through Friday. CP 002, 008.

In-custody first appearances in this combined format were set to commence in the Superior Courtroom on February 5, 2018. CP 002. The procedure ordered by the Superior Court was that, from Monday through Friday, Superior Court Judges or Commissioners would hear all in-custody first appearances for all crimes, including misdemeanors and gross misdemeanors. CP 002. The Judges and Commissioners reviewed the allegations for probable cause and determined release conditions for each defendant. CP 002.

The “Rule 3.2 Hearing Order Conditions of Release” (hereinafter “3.2 Hearing Order”) used by the Superior Court was the same order used by the District Court. CP 002. The intended result was that the 3.2 Hearing Order would be signed by a Superior Court Judge or Commissioner and filed in the District Court Clerk’s Office. CP 002. The misdemeanor or gross misdemeanor criminal case was then supposed to proceed in the same manner as all other misdemeanor or gross misdemeanor criminal cases filed in District Court. CP 002.

On February 2, 2018, the Stevens County District Court Judge, Gina Tveit, ordered the District Court, clerked by Nadine Borders, to refuse to file all orders “...in a District Court case unless it has been signed by a District Court Judge or District Court Judge pro tem.” CP 002, 010.

The State filed its Verified Petition for Writ of Mandamus against the Stevens County District Court Judge on February 8, 2018, in Stevens County Case No. 18-2-00062-7. CP 001. The Honorable John F. Strohmaier, Lincoln County Superior Court Judge, was appointed *nunc pro tunc* to preside over the writ proceedings. CP 070.

On February 8, 2018, Judge Strohmaier granted an Alternative Writ of Mandamus, commanding the District Court Judge to, among other things, order the Clerk of District Court to accept for filing district court documents signed by a Stevens County Superior Court Judge or Commissioner. CP

062-063.

The District Court Judge refused to do as the Alternative Writ commanded. CP 072-121. The District Court Judge refused to file any 3.2 Hearing Orders signed by a Superior Court Judge or Commissioner. CP 072-119.

Hearing on the Petition for Writ of Mandamus was held on February 28, 2018, before Judge Strohmaier. RP 3. On March 7, 2018, Judge Strohmaier denied the peremptory writ of mandamus. CP 172-78. The State moved for reconsideration on March 16, 2018. CP 179-83. Judge Strohmaier summarily denied reconsideration on March 26, 2018. CP 184-85. The State appealed to the Court of Appeals, Division III.

The Court of Appeals rendered its decision on March 12, 2019, in a published opinion. See State of Washington v. Stevens County District Court Judge, 436 P.3d 430 (Div. III, 2019). The Court of Appeals reversed the Superior Court's decision. The District Court Judge sought review in this Court, by filing "Respondent's Petition for Review by the Supreme Court of Washington."

## II. ARGUMENT

### 1. THE SUPREME COURT SHOULD DENY THE DISTRICT COURT JUDGE'S PETITION FOR REVIEW

The District Court Judge's Petition for Review should be denied for failure to comply with WA RAP 13.4(b). The case presented by the District Court Judge is one of discretionary review, not mandatory review. See WA RAP 13.1(a).

Alleging error by the Court of Appeals, alone, is insufficient to obtain this Court's review of a decision. In order to obtain review, a litigant must allege and concisely argue one or more of the four grounds set forth in WA RAP 13.4(b). "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 a 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.

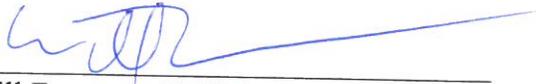
WA RAP 13.4(b)(1-4). A petition for review must contain "[a] direct and concise statement of the reason why review should be accepted under one or more of the tests established in [13.4](b), with argument." WA RAP 13.4(c)(7). Nowhere, in fifteen pages of writing, does the District Court

Judge address any of the four grounds set forth in WA RAP 13.4(b).

### III. CONCLUSION

For the reasons stated above, this Court should deny the Petition for discretionary review.

Dated this 16<sup>th</sup> day of April, 2019.



Will Ferguson, WSBA 40978  
Deputy Prosecuting Attorney  
Office of the Stevens County Prosecutor  
215 S. Oak, Room #114  
Colville, WA 99114  
Phone: (509) 684-7500  
Fax: (509) 684-7589

### CERTIFICATE OF SERVICE

I certify that on the 16<sup>th</sup> day of April, 2019, I caused a copy of this document to be mailed, postage prepaid, to:

Jerry Moberg  
Jerry Moberg & Associates  
P.O. Box 130  
Ephrata, WA 98823



Will Ferguson

# STEVENS COUNTY PROSECUTOR'S OFFICE

April 16, 2019 - 11:04 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97071-8  
**Appellate Court Case Title:** State of Washington v. Stevens County District Court Judge  
**Superior Court Case Number:** 18-2-00062-7

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215 S. Oak Rm 114

Colville, WA, 99114

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