

FILED
Court of Appeals
Division II
State of Washington
6/17/2024 12:32 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
6/18/2024
BY ERIN L. LENNON
CLERK

Case #: 1031548

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

ARBIN UPRETI,

Appellant,

VS.

STATE OF WASHINGTON,

Respondent.

NO. 57496-9-II

MOTION TO ENLARGE THE TIME TO FILE A PETITION FOR REVIEW

I. Identity of Moving Party.

The appellant requests the relief designated in part II.

II. Statement of Relief Sought.

Appellant respectfully requests that this Court grant him an extension of time in which to file the petition for review.

III. Statement of Facts Relevant to Motion.

On May 7, 2024, a decision from the Court of Appeals was issued terminating review of this matter. The petition for review was due within 30 days, i.e., June 6, 2024. The petition for review was actually filed on June 7, 2024, one day later. Counsel for the Petitioner respectfully requests that the court enlarge the date by one day to allow this untimely petition to be filed. The \$200 filing fee has also been paid. The failure to grant the petition will deny Mr. Upreti the constitutional

1 right to have this court review the trial court's decision that denied his right to have a
2 jury he selected, decide his case. That is an issue of constitutional magnitude, and
3 this court should allow the petition to go forward so this court might review this case.

4 It was not Mr. Upreti's mistake that was made, rather it was counsel's
5 mistake. Although, counsel understands that the court likes finality to apply to all
6 cases, failure to grant an extension of time for Mr. Upreti in this case will work an
7 extraordinary injustice to him. As such, and in order to allow Mr. Upreti to petition
8 this court for review, counsel, on behalf of Mr. Upreti, urges this court to grant this
9 request.

10 IV. Grounds for Relief and Argument.

11 A. THIS COURT SHOULD GRANT APPELLANT A
12 MOTION TO ENLARGE THE TIME TO FILE A
13 PETITION FOR REVIEW

14 RAP 18.8 allows for the waiver of these rules and grants extensions of
15 time. RAP 18.8 provides in pertinent part:

16 (a) Generally. The appellate court may, on its own
17 initiative or on motion of a party, waive or alter the
18 provisions of any of these rules and enlarge or
19 shorten the time within which an act must be done in
20 a particular case in order to serve the ends of
21 justice, subject to restrictions in sections (b) and (c).

22 (b) Restrictions on Extensions of Time. The
23 appellate court will only in extraordinary
24 circumstances and to prevent a gross miscarriage of
25 justice extend the time within which a party must file
a notice of appeal, a notice for discretionary review,
a motion for discretionary review of a decision of the
Court of Appeals, a petition for review, or a motion
for reconsideration. The appellate court will
ordinarily hold that the desirability of finality of
decisions outweighs the privilege of a litigant to
obtain an extension of time under this section. The
motion to extend time is determined by the appellate
court to which the untimely notice, motion, or
petition is directed.

Appellant requests that this Court grant him an extension of time until
June 7, 2024 under RAP 18.8 which would allow the filing of the petition for review.

1 In order to prevent a gross miscarriage of justice, this Court should
2 grant Mr. Upreti an extension of time of one day within which to file Mr. Upreti's
3 petition for review.

4 V. Conclusion.

5 Based on the arguments, records and files contained herein, appellant
6 respectfully requests that this Court grant him an extension of time in which to file
7 the petition for review.

8 VI. Certification

9 I certify that this document contains 731 words.

10 DATED this 17th day of June, 2024.

11 HESTER LAW GROUP, INC. P.S.
12 Attorneys for appellant

13
14 By:  _____

15 Brett A. Purtzer
16 WSB # 17283
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CERTIFICATE OF SERVICE

Lisa Griffin, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day below set forth, I delivered true and correct copies of the motion for extension of time to file appellant's petition for review to which this certificate is attached, by United States Mail or by ABC-Legal Messengers, Inc., to the following:

Olivia Zhou
Deputy Prosecuting Attorney
2000 Lakeridge Dr. SW, Bldg. #2
Olympia, WA 98502

Arbin Upreti
33255 Kona St. NE
Lacey, WA 98516

Signed at Tacoma, Washington this 17th day of June, 2024.



Lisa Griffin

HESTER LAW GROUP

June 17, 2024 - 12:32 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 57496-9
Appellate Court Case Title: State of Washington, Respondent v. Arbin Upreti, Appellant
Superior Court Case Number: 20-1-00494-8

The following documents have been uploaded:

- 574969_Affidavit_Declaration_20240617122815D2872260_5780.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was Affidavit of Brett Purtzer.pdf
- 574969_Motion_20240617122815D2872260_5227.pdf
This File Contains:
Motion 1 - Extend Time to File
The Original File Name was Motion to Enlarge Time to File.pdf

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- teri.bryant@lewiscountywa.gov

Comments:

Sender Name: Lisa Griffin - Email: lisag@hesterlawgroup.com

Filing on Behalf of: Brett Andrews Purtzer - Email: brett@hesterlawgroup.com (Alternate Email: brett@hesterlawgroup.com)

Address:
1008 South Yakima Avenue
Suite 302
Tacoma, WA, 98405
Phone: (253) 272-2157 EXT 253

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IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

ARBIN UPRETI,)	
)	
Appellant,)	
)	NO. 57496-9-II
vs.)	
)	AFFIDAVIT OF
STATE OF WASHINGTON,)	BRETT A. PURTZER
)	
Respondent.)	
)	

I, Brett A. Purtzer, state as follows:

I am over the age of eighteen and competent to be a witness herein.

On May 7, 2024, a decision from the Court of Appeals was issued terminating review of this matter. The petition for review was due within 30 days, i.e., June 6, 2024. The petition for review was actually filed on June 7, 2024, one day late. Counsel for Petitioner respectfully requests that the court enlarge the date by one day to allow this untimely petition to be filed. The \$200 filing fee has also been paid. The failure to grant the petition will deny Mr. Upreti his right for this court to review whether Mr. Upreti's constitutional right to have a jury he picked decide his case was violated. This is an issue of constitutional magnitude, and this court should allow the petition to go forward so this court might review this case.

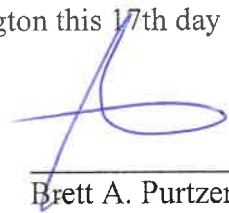
It was not Mr. Upreti's mistake that was made, rather it was counsel's mistake. Although, counsel understands that the court likes finality to apply to all cases,

1 it was not the litigant, but rather the litigant's counsel, who failed to timely file the
2 petition for review. Mr. Upreti should not be penalized for a mistake made by his
3 counsel. As such, in order to prevent extraordinary injustice to Mr. Upreti, counsel, on
4 behalf of Mr. Upreti, respectively urges this court to grant this request.

5 I certify under penalty of perjury under the laws of the State of
6 Washington that the foregoing is true and correct to the best of my knowledge and
7 information.

8 I certify that this document contains 415 words.

9 Signed at Tacoma, Washington this 17th day of June 2024.

10 
11 _____
12 Brett A. Purtzer
13 WSBA #17283
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CERTIFICATE OF SERVICE

Lisa Griffin, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day below set forth, I delivered true and correct copies of Affidavit of Brett A. Purtzer to which this certificate is attached, by United States Mail or by ABC-Legal Messengers, Inc., to the following:

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Deputy Prosecuting Attorney
2000 Lakeridge Dr. SW, Bldg. #2
Olympia, WA 98502

Arbin Upreti
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Signed at Tacoma, Washington this 17th day of June, 2024.



Lisa Griffin

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Comments:

Sender Name: Lisa Griffin - Email: lisag@hesterlawgroup.com

Filing on Behalf of: Brett Andrews Purtzer - Email: brett@hesterlawgroup.com (Alternate Email: brett@hesterlawgroup.com)

Address:
1008 South Yakima Avenue
Suite 302
Tacoma, WA, 98405
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