

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,	)	No. 103510-1
	)	
Respondent.	)	RESPONDENT'S
	)	ANSWER TO
v.	)	APPELLANT'S
	)	MOTION REGARDING
JOEL ZWALD,	)	TIMELY FILED
	)	PETITION FOR
Appellant.	)	REVIEW

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**A. IDENTITY OF MOVING PARTY**

Respondent, State of Washington, by and through  
Kimberly A. Thulin, Appellate Deputy Prosecutor for Whatcom  
County, moves this Court for the relief designated below.

**B. STATEMENT OF RELIEF SOUGHT**

Pursuant to RAP 18.8(c), 1.2(c), and 13.4(a), the State asks  
this Court to deny the Petitioner's 'motion regarding timely filed  
petition for review'.

**C. GROUND FOR RELIEF AND ARGUMENT**

1. On January 4, 2024, the Court of Appeals consolidated the Department of Corrections Post Sentence Petition Cause No. 85332-5-1 with Zwald's direct appeal under Cause No. 84950-6-

I. The consolidation occurred after all briefing in the Post Sentence Petition was complete. The parties subsequently filed all remaining briefing in the appeal after January 4, 2024 in the Court of Appeals under 84950-6-I, including the Appellant's Reply and Motion for Reconsideration.

2. The Court of Appeals affirmed Mr. Zwald's convictions in a Published Opinion filed under 84950-6-I, on August 26, 2024. An Order Denying the Appellant's Motion for Reconsideration was filed on August 28, 2024.

3. Under RAP 13.4(a), "a petition for review must be filed within 30 days after the decision is filed." Consequently, the Appellant's petition for review was due by September 27, 2024.

4. Under RAP 18.8(c), this Court will only extend the time to file a petition for review "in extraordinary circumstances

and to prevent a gross miscarriage of justice." This rule will not be waived. RAP 1.2(c).

5. The Petitioner filed its petition for review under an incorrect cause number in the Court of Appeals on September 27, 2024. That filing was rejected and the Petitioner was notified of its rejected petition. After noting the deficiency, this Court advised the Petitioner in a letter, that the petition in this case was untimely and that the Petitioner may seek an extension of time in which to file the petition for review. The Petitioner then filed a 'motion regarding timely filed petition for review.' Petitioner did not file a motion for an extension of time to file its petition for review. This Court invited the State to respond to the Petitioner's motion.

6. The Petitioner's motion does not claim that extraordinary circumstances occurred and there will be a gross miscarriage of justice absent an extension of time, as required by the court rule. It does not address the heightened threshold and mandatory criteria of RAP 18.8(c). Instead, Petitioner simply

argues her petition was timely filed even though it was filed a day late.

7. Extraordinary circumstances under RAP 18.8(c), formerly RAP 18.8(b), requires the party demonstrate they acted with reasonable diligence but the filing was delayed due to circumstances beyond the party's control. State v. Fox, 192 Wn. App. 512, 525, 371 P.3d 537 (2016). "Negligence, or lack of reasonable diligence, does not amount to extraordinary circumstances." Id. No extraordinary circumstances are present here. Counsel merely explains that it failed to timely file its petition for review under the correct Court of Appeals cause number. Without more, counsel does not demonstrate extraordinary circumstances beyond the party's control prevented counsel from timely filing this petition under the correct cause number by the required date. Mere negligence in reviewing the pleading and confirming the pleading is appropriately filed under the correct cause number does not meet this burden. Consequently, the petition for review was untimely filed in this case.

8. The State respectfully submits that the ‘motion regarding timely filed petition for review’ does not meet the criteria for an extension under controlling court rules and should be denied.

**D. CONCLUSION**

The State respectfully requests this Court deny the Petitioner’s ‘motion regarding timely filed petition for review’, and further deny the petition for review.

This document contains 607 words, excluding parts of the document exempted from the word count by RAP 18.17.

DATED this 1<sup>st</sup> day of November, 2024

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'K. Thulin', with a long horizontal flourish extending to the right.

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# WHATCOM COUNTY PROSECUTOR'S OFFICE APPELLATE DIVISION

November 01, 2024 - 2:57 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 103,510-1  
**Appellate Court Case Title:** State of Washington v. Joel Duane Zwald  
**Superior Court Case Number:** 19-1-01394-2

### The following documents have been uploaded:

- 1035101\_Answer\_Reply\_20241101145149SC286213\_6377.pdf  
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### Comments:

Answer to Petition for Review & Response to Motion to Consolidate

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