

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
11/26/2024 4:13 PM  
BY ERIN L. LENNON  
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No. 103615-9

IN THE SUPREME COURT  
IN AND FOR THE STATE OF WASHINGTON

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STATE OF WASHINGTON,  
Respondent,

v.

JOSEPH ALLEN CAMPBELL,  
Petitioner.

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PETITIONER'S MOTION FOR EXTENSION OF TIME TO  
FILE MOTION FOR DISCRETIONARY REVIEW  
[Treated as motion for extension of time to file petition for review](#)

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Sean M. Downs, WSBA #39856  
Attorney for Petitioner

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A. IDENTITY OF MOVANT

Petitioner, Joseph Allen Campbell, by and through counsel asks this court for an extension of time to November 18, 2024 in order to file the motion for discretionary review.

B. FACTS RELEVANT TO MOTION & DECLARATION OF COUNSEL

I, Sean M. Downs, declare under penalty of perjury pursuant to the laws of the State of Washington that I am the counsel of record for the above-named petitioner, am over the age of 18, and am competent to testify in a court of law. I submit the following facts on information and belief for purposes of this motion only:

The court of appeals issued its order denying review on October 16, 2024. Mr. Campbell informed me that he wished to seek review in the Supreme Court and I agreed to file a motion for discretionary review. I then calendared the due date for a motion for discretionary review as November 18, 2024 because November 16, 2024 fell on a Saturday, a non-court day. I

mistakenly did not take into account the 31 days of October and believed that the 30th day in which to file the motion for discretionary review was November 16, 2024 (a Saturday), which would make it due on Monday, November 18, 2024. I then filed the motion for discretionary review on November 18, 2024, believing it was timely.

The petitioner is therefore asking for an extension of time of one business day to November 18, 2024 to file the motion for discretionary review.

Dated this 26 November 2024. Signed in Vancouver,  
Washington.



Sean M. Downs, WSBA #39856  
Grecco Downs, PLLC  
Attorney for Appellant

### C. ARGUMENT

1. An extension of time of one business day is reasonable given the circumstances. The lost opportunity to seek discretionary review would be a gross miscarriage of justice.

The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a motion for discretionary review. RAP 18.8(c). “Extraordinary circumstances” include instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party’s control. *Hoirup v. Empire Airways, Inc.*, 69 Wn. App. 479, 482, 848 P.2d 1337 (1993); *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988). The standard set forth in the rule is rarely satisfied. *Scannell v. State*, 128 Wn.2d 829, 833–34, 912 P.2d 489 (1996) (citing to *Reichelt*); *see also Schaeferco, Inc. v. Columbia River Gorge Comm’n*, 121 Wn.2d 366, 849 P.2d

1225 (1993); *Shumway v. Payne*, 136 Wn. 2d 383, 395, 964 P.2d 349, 354–55 (1998).

Washington Const. art. 1, § 22 (amendment 10) grants not a mere privilege but a “right to appeal in all cases”. *State v. Schoel*, 54 Wn.2d 388, 341 P.2d 481 (1959). The presence of the right to appeal in our state constitution convinces us it is to be accorded the highest respect by this court. *State v. Sweet*, 90 Wn.2d 282, 286, 581 P.2d 579 (1978). The Washington Constitution expressly guarantees a defendant the right to appeal a criminal conviction. *Id.* at 565, 166 P.3d 1149 (citing WASH CONST. art. I, § 22). A defendant waives this right only when the State proves the defendant did so voluntarily, knowingly, and intelligently. *City of Seattle v. Klein*, 161 Wn.2d 554, 561, 166 P.3d 1149 (2007); *State v. Hoa Van Tran*, 149 Wn. App. 144, 147, 202 P.3d 969 (2009).

Here, there was an excusable error in mis-calendaring the due date of the motion for discretionary review by one business day. Appellate counsel was reasonably diligent in submitting

the motion for discretionary review on what was believed to be the correct filing deadline. Mr. Campbell has not waived his right to seek discretionary review and has requested that review be sought. Although the authorities regarding the presumption against waiver of appeal is analogous, it appears applicable to seeking discretionary review in the Supreme Court as discretionary review is still a part of the appellate process. Given the above, the petitioner respectfully requests that this court grant an extension of time of one business day.

D. CONCLUSION

Given the foregoing, Mr. Campbell respectfully requests that this court grant an extension of time to file the motion for discretionary review, as described above.

DATED this November 26, 2024.

This document contains 902 words.

Respectfully submitted,

s/ Sean M. Downs  
Sean M. Downs, WSBA #39856  
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I, Sean M. Downs, a person over 18 years of age, declare under penalty of perjury under the laws of the State of Washington that on November 26, 2024 I electronically filed the above MOTION FOR EXTENSION OF TIME with the clerk of the court using the electronic filing system, which will send a copy to the following electronic participant: Lauren Boyd <lauren.boyd@clark.wa.gov>, attorney for Respondent.

s/ Sean M. Downs  
Sean M. Downs, WSBA #39856  
Attorney for Petitioner  
GRECCO DOWNS, PLLC  
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# **GRECCO DOWNS, PLLC**

**November 26, 2024 - 4:13 PM**

## **Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 103,615-9  
**Appellate Court Case Title:** State of Washington v. Joseph Allen Campbell  
**Superior Court Case Number:** 03-1-00985-7

### **The following documents have been uploaded:**

- 1036159\_Motion\_20241126160911SC201774\_4907.pdf  
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