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SERVIC	Jessica Wolfe Washington Appellate Project 1511 Third Ave, Suite 610 Seattle, WA 98101 Email: jessica@washapp.org
	A copy of this document was served via U.S. Mail or the recognized system of interoffice communications, or, if an email address appears above, electronically. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED January 6, 2025, Port Angeles, WA <i>Jessie Capinon</i> Original e-filed at the Supreme Court, Copy to counsel listed above.

IN THE SUPREME COURT OF WASHINGTON

THE STATE OF WASHINGTON,)
) No. 1036736
 Respondent,)
) STATE'S ANSWER TO
 v.) PETITIONER'S MOTION TO
) ACCEPT PETITION FOR REVIEW
 SIMONE NELSON,) AS TIMELY
)
 Appellants.)
)
)
)

I. IDENTITY OF MOVING PARTY

The Respondent, STATE OF WASHINGTON, asks this Court for the relief designated in Part II of this motion.

II. STATEMENT OF RELIEF SOUGHT

The State does not object to the Petitioner's motion for enlargement of time for filing the Petition for Review.



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III. FACTS RELEVANT TO MOTION

The State accepts the facts as set forth in the petitioner’s motion to extend time to file the petition for review filed Dec. 3, 2024.

IV. GROUNDS FOR RELIEF AND ARGUMENT

“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 petition for review[.]” RAP 18.8.

“Negligence, or the lack of ‘reasonable diligence,’ does not amount to ‘extraordinary circumstances.’” *Beckman ex rel. Beckman v. State, Dept. of Social and Health Services*, 102 Wn. App. 687, 695, 11 P.3d 313 (2000) (quoting *Shumway v. Payne*, 136 Wn.2d 383, 964 P.2d 349 (1998) (other citations omitted)).

On the other hand, “[e]xtraordinary circumstances” include instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control. *Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1998) (*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)).



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The *Shumway* Court, in denying a motion to extend time to file a petition for review, noted that *Shumway* did not claim reasonable diligence. *Id.* at 396.

The facts in this case tend to fall within reasonable diligence as the petition was actually filed under a different case number within the 30 days permitted under RAP 13.4. The mistake was corrected almost immediately and the correct filing was missed by one day.

The fact is that the petition was actually filed within 30 days albeit with the incorrect case name. This incorrect case name happens to be for a petition for review that was recently filed on the same or similar grounds in *State v. Danielson*, no. No. 57675-9-II on Nov. 15, 2024.

V. CONCLUSION

For the foregoing reasons, the State does not object to the petitioner's motion to extend time to file the petition for review.

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DATED January 6, 2025.



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January 06, 2025 - 4:31 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,673-6
Appellate Court Case Title: State of Washington v. Simone Renee Nelson
Superior Court Case Number: 95-1-00163-6

The following documents have been uploaded:

- 1036736_Answer_Reply_20250106162954SC723292_0282.pdf

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Answer/Reply - Answer to Motion

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