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Washington State Supreme Court

JAN 28 2015

Ronald R. Carpenter  
Clerk *b/h*

**NO. 91104-5**

**SUPREME COURT OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON  
Respondent,

v.

MANUEL JUAREZ-GARCIA  
Appellant.

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**ANSWER TO MOTION TO FILE AMENDED PETITION FOR  
REVIEW**

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SKAGIT COUNTY PROSECUTING ATTORNEY  
RICHARD A. WEYRICH, PROSECUTOR

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**ORIGINAL**

The State through undersigned counsel responds to the appellant's motion to file amended petition for review as follows.

The State objects to the appellant's motion as being an untimely filed Petition for Review.

RAP 13.4(a) provides that a petition for review must be filed within 30 days of the decision of the Court of Appeals. RAP 18.8 allows this Court to enlarge this 30 days "only in extraordinary circumstances and to prevent a gross miscarriage of justice". The rule states that "[t]he 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." RAP 18.8(b).

This rigorous test has rarely been satisfied in reported case law since the effective date of the Rules of Appellate Procedure on July 1, 1976. RAP 10.4(h). In each of those cases, the moving party actually filed the notice of appeal within the 30-day period but some aspect of the filing was challenged. See *Weeks v. Chief of Wash. State Patrol*, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982), notice *timely* filed, but filed in wrong court; *State v. Ashbaugh*, 90 Wn.2d 432, 438, 583 P.2d 1206 (1978), notice *timely* filed but rejected by court for lack of filing fee; *Structurals Northwest, Ltd. v. Fifth & Park Place, Inc.*, 33 Wn. App. 710, 714, 658 P.2d 679 (1983), notice *timely* when filed within 30 days of entry of stipulated "amended" judgment. In each case, the defective filings were upheld due to "extraordinary circumstances", *i.e.*, circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's

control. In such a case, the lost opportunity to appeal would constitute a gross miscarriage of justice because of the appellant's reasonably diligent conduct. RAP 18.8(b).

*Reichelt v. Raymark Indus.*, 52 Wn. App. 763, 765-766, 764 P.2d 653 (1988).

In *Reichelt*, the Court held that lack of prejudice to the respondent is not the question. Rather the question is whether "extraordinary circumstances" beyond the appellant's control, despite reasonable diligence, caused the late filings. *Supra*. See also *Shumway v. Payne*, 136 Wn.2d 383, 964 P.2d 349 (1998) (where Ms. Shumway did not "claim reasonable diligence, confusion about the method of seeking review, excusable error in interpreting the rules, or circumstances beyond her control" , she did not show "extraordinary circumstances" justifying an extension of the period of time for seeking review).

Here, the appellant had raised the issue regarding entry of findings at the Court of Appeals and the Court of Appeals rendered a decision on that issue. The decision of the Court of Appeals was filed November 10, 2014. The appellant filed his petition for review December 11, 2014. The appellant did not raise the issue of entry of findings in his Petition for Review. The appellant filed his Motion to

File Amended Petition for Review on January 21, 2015. The appellant, through this motion, introduces an entirely new issue for review by this court. It is no different that if he had filed his Petition for Review on this issue forty days late. The appellant has not shown any extraordinary circumstances justifying his late filing for review on this issue. The appellant was fully aware of the issue, since he raised it below, and was fully aware of the Court of Appeals' decision on the issue.

This Court should deny the Motion to File Amended Petition for Review.

DATED this 27 day of **January, 2015**.

SKAGIT COUNTY PROSECUTING ATTORNEY

By: Rosemary H. Kaholokula  
ROSEMARY H. KAHOLOKULA, WSBA# 25026  
Chief Criminal Deputy Prosecuting Attorney  
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by;  United States Postal Service;  ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Lila J. Silverstein, addressed as Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 27<sup>th</sup> day of January, 2015.

Karen R. Wallace  
DECLARANT