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SUPREME COURT
STATE OF WASHINGTON
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No. 92828-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 47315-1-II)

STATE OF WASHINGTON,

Respondent,

vs.

RAFAEL GUTIERREZ MEZA,

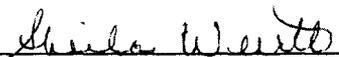
Appellant.

RESPONSE TO PETITION FOR REVIEW

On review from the Court of Appeals, Division Two,
And the Superior Court of Lewis County

JONATHAN MEYER
Lewis County Prosecuting Attorney

By:


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ORIGINAL

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I. IDENTITY OF RESPONDENT

The State of Washington, Respondent, asks that review be denied.

II. STATEMENT OF CASE

A. STATEMENT OF SUBSTANTIVE FACTS

The State sufficiently set out the substantive facts in its response brief in the Court of Appeals. The State's arguments in regards to this petition are procedural and therefore, further discussion of the facts, beyond what is found in its briefing below and the Court of Appeals opinion are unnecessary at this time.

B. PROCEDURAL FACTS

On March 16, 2015 Meza filed a Notice for Discretionary Review requesting interlocutory review of the trial court's order denying his motion to vacate an ex parte order freezing funds in Meza's credit union accounts.

Finding: (1) that the trial court committed probable error in issuing an order seizing Meza's bank account and the funds therein and in later denying his motion to vacate that order, and (2) that Meza demonstrated that the freeze order substantially limited his freedom to act, the Court of Appeals accepted discretionary review. Ruling Granting Review and Accelerating Review at 7. The Court of

Appeals specifically declined to address Meza's contention that the criminal forfeiture statute, RCW 10.105.010, is the exclusive means by which the proceeds of a bank account can be seized by the State. Ruling Granting Review and Accelerating Review at 6.

On December 15, 2015, in a published opinion, case no. 47315-1-II, the Court of Appeals granted Meza the relief he requested. Finding the trial court's order freezing the account was not a search warrant or the functional equivalent of a search warrant, the appellate court ruled the order did not satisfy the warrant requirement for the seizure of the funds. The court reversed the trial court's ruling and vacated the trial court's order freezing the account.

Even though the Court of Appeals granted the exact relief Meza requested, Meza filed a petition for review to this Court because he envisions issues that might or might not be raised based upon actions that the State might or might not take.

III. ARGUMENT

A. MEZA PREVAILED IN THE COURT OF APPEALS AND CANNOT PETITION FOR REVIEW.

The Court should not accept review in this case. Meza prevailed at the Court of Appeals. RAP 3.1 states, "Only an aggrieved party may seek review by the appellate court." A party who merely objects to the reasoning used by the court to grant relief

is not an aggrieved party. *Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 685, 743 P.2d 793 (1987), *In re Estate of Lyman*, 7 Wn. App. 945, 953-54, 503 P.2d 1127 (1972), *aff'd* 82 Wn.2d 693, 512 P.2d 1093 (1973). Meza cannot be an aggrieved party when the court granted the exact relief requested in his petition.

Meza's argument appears to be that the Court of Appeals did not reach every issue he wanted them to consider, therefore, because it could potentially come up in the future it is somehow ripe for this court to consider for review. That does not make him the aggrieved party. If the State were to petition, as the aggrieved party, Meza could cross-petition on those issues, but that has not occurred. Meza prevailed and this Court should not accept review.

B. MEZA ARGUES THE WRONG STANDARD OF REVIEW, AND HAS MADE NO SHOWING TO THIS COURT THAT ANY OF THE CONSIDERATIONS GOVERNING ACCEPTANCE OF REVIEW FOUND IN RAP 13.5 WARRANT REVIEW IN THIS CASE.

Meza has failed to establish a basis for review. Meza argues to this Court that, pursuant to RAP 13.4(b)(3) and (4), review is appropriate because this case presents two significant questions which are issues of substantial public interest. Petition for Review 7. Meza then spends the next seven pages explaining how his case warrants review under the rules governing Discretionary Review of

Decision Terminating Review (RAP 13.4). None of it applies to this case. Meza's case is an interlocutory appeal, governed by Discretionary Review of Interlocutory Decision (RAP 13.5).

Meza failed to analyze his case under the proper Rule of Appellate Procedure, the one for Discretionary Review of Interlocutory Decision, RAP 13.5. The set of considerations governing acceptance of review under RAP 13.5(b) are markedly different than those set forth in RAP 13.4(b).

RAP 13.5 states:

(b) Considerations governing acceptance of review.
Discretionary review of an interlocutory decision of the Court of Appeals will be accepted by the Supreme Court only:

- (1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or
- (2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or
- (3) If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

RAP 13.5.

Meza has not explained to this Court how his case warrants review under RAP 13.5, and it clearly does not. The Court of Appeals decision has not committed an obvious error. It gave Meza the

precise relief he requested. Furthermore, vacating the trial court's order does not render the future proceedings useless. RAP 13.5(b)(1).

The Court of Appeals decision does not limit the status quo or substantially limit Meza's freedom to act. It actually does quite the opposite by releasing the account from the freeze order. RAP 13.5(b)(2).

Finally, the Court of Appeals has not so far departed from the accepted and usual course of judicial proceedings in this case, nor has it sanctioned the trial court in such a manner that warrants review by this Court. RAP 13.5(b)(3).

The Court of Appeals decision was an appropriate exercise of its discretion. It did exactly what Meza requested in his Motion for Discretionary Review, overturning the trial court's decision denying his Motion to Vacate Order Freezing and Holding Funds. Nothing about the decision meets the requirements set forth in the RAPs for this Court to accept review of an interlocutory appeal.

IV. CONCLUSION

Discretionary review should be denied.

RESPECTFULLY submitted this 28th day of March, 2016.

JONATHAN MEYER
Lewis County Prosecuting Attorney

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Attorney for Plaintiff

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Subject: State v. Meza, Supreme Ct. No. 92828-2

Attached for filing in the above referenced case is the State's Response to Petition for Review.

Thanks,

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