

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 100718-3
)	
vs.)	ANSWER TO
)	STATEMENT OF
LEONEL GONZALEZ,)	GROUND FOR DIRECT
)	REVIEW
Appellant.)	
)	
)	

1. IDENTITY OF MOVING PARTY

Appellant Gonzalez has moved to for direct discretionary review. The State of Washington, respondent, files this answer to the statement of grounds for direct review. The State has contemporaneously filed answer to the motion for discretionary review.

2. STATEMENT OF RELIEF SOUGHT

The State of Washington opposes direct review.

3. FACTS RELEVANT TO MOTION

In December 2021, about six months after his release from prison, while still on release pending bail in the Pierce County case, and having never complied with the terms of his community custody, Leonel Gonzalez walked up to Ruvim Stukov, a 20-year-old man eating food in his car in a parking lot. Stukov was a complete stranger to the defendant.

Gonzalez shot Stukov from close range in the chest and the top of the head, killing him. Gonzalez dragged Stukov's body from the car, got in the car, then drove away, leaving Stukov to die on asphalt. The shooting was captured on a video surveillance camera. Motion for Discretionary Review, App. at 8-9.

(hereinafter, "App. at ____"). Investigation led to the arrest of the defendant, who possessed property belonging to the victim

upon arrest.

Gonzalez was charged on January 21, 2022, with felony murder in the first degree predicated on robbery. App. 4. The State asked the court to deny bail because Gonzalez was charged with an offense that carried the possibility of a life term and because he posed a danger to the community. App. 8-9. That request was granted upon the filing of charges. Gonzalez asked the court to revisit the issue at arraignment. App. at 22-22 (hearing), 30-37 (brief). After considering argument of the parties, the court ruled that because a life sentence was possible, bail *could* be denied. App. at 27-28. The court also ruled that Gonzalez's pattern of offenses and failure to comply with community custody showed that he presented a danger to the community, so bail *should* be denied. App. at 28.

Gonzalez never alleged or provided evidence showing that the trial judge was racially biased in making this decision.

4. DIRECT REVIEW IS NOT WARRANTED.

Gonzalez argues that direct review is appropriate because race matters in bail determinations. This generalized assertion does not meet the criteria for direct review.

The Washington Supreme Court is a court of last resort, not a court of error. Thus, a party seeking direct review by this Court must explain why this Court rather than the intermediate court of appeals should take the case. RAP 4.2 sets forth the relevant criteria.

(a) Type of Cases Reviewed Directly. A party may seek review in the Supreme Court of a decision of a superior court which is subject to review as provided in Title 2 only in the following types of cases:

(1) Authorized by Statute. A case in which a statute authorizes direct review in the Supreme Court.

(2) Law Unconstitutional. A case in which the trial court has held invalid a statute, ordinance, tax, impost, assessment, or toll, upon the ground that it is repugnant to the United States Constitution, the Washington State Constitution, a statute of the United States, or a treaty.

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(3) Conflicting Decisions. A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.

(4) Public Issues. A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

(5) Action against State Officer. An action against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus. (6) Death Penalty. A case in which the death penalty has been decreed.

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These criteria make plain by their nature that ordinary claims of error should not be brought to the supreme court.

Gonzalez's statement of grounds for direct review is nearly identical to his motion for discretionary review. At page 16 of the statement of grounds, however, he finally cites a single prong of RAP 4.2 as his reason for bringing this case directly to the supreme court. He says that this case presents a

fundamental and urgent issue of broad public import which requires prompt and ultimate determination. Statement of Grounds, at 16-17. He argues that race is generally a factor in the denial of bail and, thus, review by this Court is appropriate. This argument must be rejected.

Article 1, Section 20 of the Washington Constitution, provides:

All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great. Bail may be denied for offenses *punishable by the possibility of life in prison* upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons, subject to such limitations as shall be determined by the legislature.

Gonzalez argues that bail can be refused under this provision only where a person is charged with aggravated murder or as a persistent offender. He argues that such a sentence is not possible as to a person charged with murder in the first degree

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because that offense does not carry the possibility of a life sentence. As argued in the State's answer to the motion for discretionary review, this argument was properly rejected under existing law.

For purposes of evaluating whether to grant direct review, this criterion to deny bail under Article 1, Section 20, which is the only criterion challenged by Gonzalez, focuses on the nature of the crime charged and its potential punishment. This criterion is wholly objective; it is a matter of law. By establishing a wholly objective criterion for denial of bail, the constitutional provision removes discretion from this aspect of bail decisions. If the judge does not have discretion, then implicit racial bias cannot affect the judge's decision. If this objective criterion were to be reinterpreted, as Gonzalez seems to urge, then even more bail decisions would become discretionary and, under Gonzalez's logic, the decisions would

risk becoming more race-based. And Gonzalez has not even alleged that the decision of this particular judge was race-based. Gonzalez's sole argument for direct review is, thus, illogical and should be rejected.

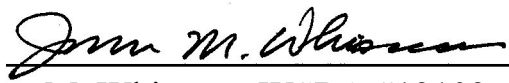
Moreover, Gonzalez has chosen to proceed by way of direct and discretionary review when a specific statute guarantees him a speedy appellate review of the bail decision in his particular case. RCW 10.21.040, enacted at the same time Article 1, Section 20 was amended, provides: "The detainee is entitled to expedited review of the detention order by the court of appeals under the writ provided in RCW 7.36.160." This provision guarantees Gonzalez an expedited review of the particular decision in his case. Since the issue of race is not truly a basis to grant review here, and since Gonzalez is guaranteed expedited review, there is simply no reason for this Court to take direct review.

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This document contains 1,242 words, excluding the parts
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