

No. 82440-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Appellant

v.

DAROLD RAY STENSON, Responent

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHIGTON FOR Clallam COUNTY

The Honorable Kenneth Williams, Judge

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SECOND SUPPLEMENT TO RESPONSE IN OPPOSITION TO  
STATE'S MOTION FOR ACCELERATED REVIEW

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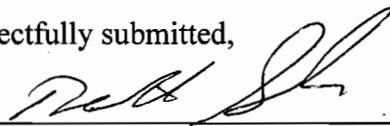
Attorneys for Petitioner, Darold R. J. Stenson

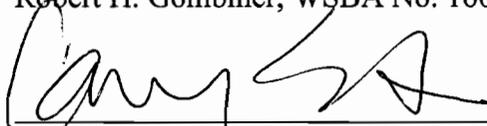
Respondent Darold Stenson hereby submits the following additional authorities in support of his opposition to the state's motion for accelerated review:

1. Legislative history of Laws of 1990, Chapter 263, enacting RCW 10.95.160(2). This legislative summary shows that the legislature intended the language of RCW 10.95.160(2), which governs the setting of executions following the issuance of stays, means what it says and what the state has previously argued it says. Specifically, the summary states: "If an execution is stayed by any court of competent jurisdiction, the new execution date is automatically reset for 30 judicial days of an order terminating the stay of execution." Exhibit 1.
2. Order Denying Motion To Vacate Stay Of Execution and Vacating Emergency Scheduling Order, *Stenson v. Vail*, 08-39574 (9th Cir. November 26, 2008). Exhibit 2.

DATED this 26th day of November, 2008.

Respectfully submitted,

  
\_\_\_\_\_  
Robert H. Gombiner, WSBA No. 16059

  
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Corey Endo, WSBA No. 34270  
Attorneys for Appellant, Darold J. Stenson

# Exhibit 1

**HB 2714**

C 263 L 90

By Representatives Padden, Appelwick, Fuhrman, Bowman, Kremen, Wolfe, Moyer, Horn, Tate and Miller

*Concerning execution dates.*

House Committee on Judiciary  
Senate Committee on Law & Justice

**Background:** The Washington Supreme Court performs a sentence review and hears appeals of criminal cases in which a death sentence has been imposed. If the court affirms the death sentence, the case is remanded to the trial court for issuance of a death warrant by the clerk of the court. The death warrant is directed to the superintendent of the state penitentiary and specifies the execution date. The specified execution date must be 30 to 90 days from the date the trial court receives the remand from the Washington Supreme Court.

If the appointed execution date passes without the execution taking place, the trial court that issued the death warrant is directed to issue another death warrant. The new death warrant is issued pursuant to the procedure followed in issuing the original death warrant.

Statutory ambiguity exists regarding the event that triggers issuance of a new death warrant when an execution has been stayed. The statute provides that a new execution date must be set 30 to 90 days from the date the trial court receives a "remand from the Supreme Court of Washington." An order terminating/vacating the stay of execution, rather than a remand from the Washington Supreme Court, may indicate that a new death warrant should be issued.

**Summary:** If an execution is stayed by any court of competent jurisdiction, the new execution date is automatically reset for 30 judicial days following entry of an order terminating the stay of execution.

**Votes on Final Passage:**

|        |    |    |
|--------|----|----|
| House  | 83 | 14 |
| Senate | 39 | 7  |

**Effective:** June 7, 1990

**HB 2716**

C 217 L 90

By Representatives Crane and S. Wilson

*Making a person who overloads a truck a codefendant.*

House Committee on Transportation  
Senate Committee on Transportation

**Background:** Under current law, the driver of a truck that exceeds the maximum gross weight allowed by law or that does not have the required overweight/oversize permits is subject to a traffic infraction.

The basic penalty for the first offense is \$50, the second offense is \$75, and the third or subsequent offense is \$100. In addition, the court may assess a fine of 3 cents per excess pound. The basic penalty is not suspendable. However, the court may suspend the additional penalty up to 500 excess pounds per axle, not to exceed a total of 2,000 excess pounds. The court may suspend the truck registration for 30 days for a second offense within 12 months and must suspend for a third or subsequent violation within 12 months.

A driver is not always responsible for the loading of the truck and may not realize the vehicle is overweight. There is no provision in law assessing a penalty against anyone other than the driver for exceeding the maximum gross weight regulations.

**Summary:** It is a traffic infraction for a person to knowingly load a vehicle in excess of its legal or permitted gross weight.

**Votes on Final Passage:**

|        |    |                     |
|--------|----|---------------------|
| House  | 96 | 2                   |
| Senate | 32 | 11 (Senate amended) |
| House  | 91 | 3 (House concurred) |

**Effective:** June 7, 1990

**SHB 2726**

C 254 L 90

By Committee on Capital Facilities & Financing (originally sponsored by Representatives Schoon, Cantwell, Brumsickle, Moyer, Raiter, H. Myers, Hargrove, Smith, Nealey, Peery and Cooper)

*Raising the debt funding limitation for certain port districts.*

House Committee on Trade & Economic Development  
House Committee on Capital Facilities & Financing

## Exhibit 2

Case: 08-35974 11/26/2008 Page: 1 of 1 DktEntry: 6720505

**FILED**

UNITED STATES COURT OF APPEALS

NOV 26 2008

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

DAROLD J. STENSON,

Plaintiff - Appellee,

v.

ELDON VAIL, Secretary of Washington  
Department of Corrections (in his official  
capacity), et al.,

Defendant - Appellant.

No. 08-35974

D.C. No. 2:08-cv-05079-LRS  
Eastern District of Washington,  
Spokane

ORDER

Before: SCHROEDER, KLEINFELD, and BEA, Circuit Judges

The State of Washington's motion to vacate the district court's stay of execution is denied as moot in light of the existing stay entered by the state court.

The denial is without prejudice to renewal of the motion under changed circumstances. The Clerk's November 25, 2008 scheduling order is vacated.