

NO. 94346-0

SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

MICHAEL MURRAY,

Petitioner/Appellant.

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MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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Nancy L. Talner, WSBA #11196  
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*Attorneys for Amicus Curiae*

**I. RELIEF REQUESTED**

*Amicus Curiae* respectfully requests that this Court grant leave to file an amicus curiae brief pursuant to RAP 10.6.

**II. IDENTITY AND INTEREST OF AMICUS**

The American Civil Liberties Union of Washington (“ACLU”), is a statewide, nonprofit, nonpartisan organization with over 75,000 members and supporters. It is dedicated to the preservation and defense of constitutional rights and civil liberties, and has particular interest and expertise in criminal justice and sentencing matters. With leave of this Court, the ACLU has previously participated as amicus in numerous other recent cases before this Court involving sentencing issues. *See, e.g., State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017); *State v. Ramos*, 187 Wn.2d 420, 387 P.3d 650 (2017); *State v. O’Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015).

**III. FAMILIARITY WITH ISSUES**

Counsel for *Amicus* have reviewed all of the prior appellate briefing in this matter, including the recently filed supplemental briefs of petitioner and the state. Counsel are familiar with the scope of the arguments presented in the parties’ briefing and will not unduly repeat arguments already made therein.

#### **IV. ISSUES TO BE ADDRESSED BY AMICUS BRIEF**

The amicus curiae brief filed with this Motion addresses:

1. Whether the aggravating factors of Washington's Sentencing Reform Act, RCW 9.94A ("SRA"), are subject to review for vagueness?
2. Whether there are substantial and compelling reasons as a matter of law justifying an exceptional sentence above the range, in light of the strong mitigating factor that Mr. Murray's capacity to conform his conduct to the law was significantly impaired?
3. Whether the exceptional sentence imposed on Mr. Murray violated the SRA's expressed purposes?

#### **V. NEED FOR ADDITIONAL ARGUMENT**

The issues presented in this case are of substantial constitutional significance and impact the public's interest in ensuring that the thousands of felony sentencings occurring each year comply with constitutional and statutory requirements. The ACLU's experience and familiarity with the matters at issue enable it to provide additional authorities that will be of use to this Court. The amicus brief provides additional legal analysis that supplements, without undue duplication, the arguments being made by the parties. The additional authorities and argument in the brief will aid the

Court in reaching a fully informed decision. Accepting the amicus brief will assist this Court in deciding this matter.

**VI. CONCLUSION**

For the reasons set forth herein and pursuant to RAP 10.6, *Amicus* respectfully requests that the Court grant it leave to file the accompanying amicus brief.

Respectfully submitted this 29th day of September, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2017, I caused to be served the foregoing *Motion of the American Civil Liberties Union of Washington for Leave to File Amicus Curiae Brief* to the parties below, in the manner noted:

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Respectfully submitted this 29th day of September, 2017.

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**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 94346-0  
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