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THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR ██████████ COUNTY

STATE OF WASHINGTON, )  
 )  
 Plaintiff/Respondent, )  
 )  
 v. )  
 ██████████, )  
 )  
 Defendant/Appellant. )  
 \_\_\_\_\_ )

Case No.: ██████████  
(CoA No. ██████████)

NOTE FOR MOTION DOCKET  
(Clerk's Action Required)

NATURE OF PROCEEDINGS: Motion and Proposed Order for Release Pending Appeal Due  
to Vulnerability to COVID-19

TO: Plaintiff/Respondent the State of Washington,  
AND TO THE CLERK OF THE ABOVE ENTITLED COURT:

**PLEASE TAKE NOTICE** that the above matter will be brought on for hearing on the  
17th day of April, 2020, at 11:00 a.m., by telephone conference, and the Clerk is requested to  
note this cause on the motion docket for that date.

DATED: April 9, 2020

Christopher Petroni  
Attorney for ██████████

NOTE FOR MOTION DOCKET

WASHINGTON APPELLATE PROJECT  
701 MELBOURNE TOWER  
1511 THIRD AVENUE  
SEATTLE, WASHINGTON 98101  
(206) 587-2711

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THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR ██████████ COUNTY

STATE OF WASHINGTON,  
  
Plaintiff/Respondent,  
  
v.  
██████████,  
  
Defendant/Appellant.

)  
) Case No.: ██████████  
) (CoA No. ██████████ )  
)  
) MOTION AND PROPOSED ORDER FOR  
) RELEASE PENDING APPEAL DUE TO  
) VULNERABILITY TO COVID-19  
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**RELIEF REQUESTED**

██████████ moves this Court for an order authorizing his release from custody pending appeal on his own recognizance, or upon posting a bond in an amount to be determined by the Court.

**FACTS**

A. Background

Based on convictions of two counts of violating a protection order, ██████████ was sentenced on October 7, 2019, to 30 months' confinement. He is currently serving his sentence at the Washington State Penitentiary. ██████████ filed a timely notice of appeal on November 1, 2019.

1 Upon his arraignment in this case, [REDACTED] was released after posting bail in the  
2 amount of \$5,000. Sub #3. Unfortunately, [REDACTED] missed two pretrial hearings and  
3 was taken into custody. Sub #13, #25, #30. Shortly after trial, [REDACTED] was released  
4 after posting a bond, again in the amount of \$5,000. Sub. #55, #58. Apart from these two  
5 mishaps, [REDACTED] missed no scheduled court hearings while out of custody on bail. This  
6 includes the sentencing hearing, which [REDACTED] attended despite knowing he would be  
7 remanded to prison afterward.

8 [REDACTED] filed his opening brief in the Court of Appeals on March 6, 2020. The  
9 State's brief in response is due May 5, 2020, and assuming no delays, [REDACTED]'s reply  
10 will be due 30 days after that. RAP 10.2(c), (d). Moreover, Division Three of the Court of  
11 Appeals has cancelled all in-person oral arguments until further notice, making it likely that a  
12 backlog in resolving cases will occur. Based on an appeal's typical time frame, it is likely that  
13 this appeal will take at least six months from now to finally resolve. The uncertainties introduced  
14 by presently occurring delays due to the statewide emergency may further delay the appeal from  
15 being finally determined.

16 B. New information arising from the COVID-19 pandemic

17 The novel coronavirus, or COVID-19, is a real and present danger in Washington and  
18 constitutes a public health emergency. There is no available vaccine, and no one is immune.  
19 There is also no known cure for COVID-19. The only way to reduce risks to vulnerable people is  
20 to prevent them from becoming infected.

21 According to the Centers for Disease Control and Prevention ("CDC"), "[p]eople aged 65  
22 years and older" are at high risk for "severe illness from COVID-19." CDC, *People Who Are at*  
23 *Higher Risk for Severe Illness*, [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html)  
24 [precautions/people-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html). [REDACTED] was born on January 19, 1951. He is 69  
25 years old, and therefore at heightened risk according to the CDC.

1 C. [REDACTED]'s ability to live safely in the community while on bail pending appeal.

2 When released, [REDACTED] will have stable housing and gainful employment.

3 Before his current incarceration, the proprietor of [REDACTED] in [REDACTED]  
4 permitted [REDACTED] to run a scrap and salvage business at the premises, and provided [REDACTED]  
5 [REDACTED] a place to live. [REDACTED] may return to this arrangement upon his release  
6 from custody pending appeal.

### 7 ARGUMENT

8 Pursuant to RCW 10.73.040, a trial court “must” set bail following a judgment and  
9 sentence upon request by an eligible person. Under CrR 3.2(h), the court may release a person  
10 after a finding of guilt with appropriate conditions. Under RAP 7.2(f), the trial court retains  
11 authority to fix conditions of release during an appeal. The trial court may order a change in the  
12 circumstances of a person’s custody pending appeal on a showing of a “change in  
13 circumstances.” CrR 3.2(k)(1). Bail may be denied pending appeal only if the court finds by a  
14 preponderance of the evidence that (1) the defendant poses a flight risk or a danger to the  
15 community; (2) the delay will diminish the sentence’s deterrent effect; (3) the delay will  
16 unreasonably traumatize a victim; or (4) the defendant has not adequately undertaken to pay  
17 legal financial obligations. RCW 9.95.062(1).

18 On March 20, 2020, the Supreme Court of Washington ordered that any person  
19 “identified as part of a vulnerable or at-risk population” concerning COVID-19 by the CDC is  
20 “presumed” to have sustained a “material change in circumstances” under CrR 3.2(k)(1). Am.  
21 Order, *In re Statewide Response by Washington State Courts to the COVID-19 Public Health*  
22 *Emergency*, No. 25700-B-607, at ¶ 12.b (Wash. Mar. 20, 2020). As noted, [REDACTED] is 69  
23 years old, and therefore a member of an at-risk population according to the CDC. His  
24 vulnerability to COVID-19 is therefore a “material change in circumstances” according to the  
25 recent order of the Supreme Court, calling for his release from custody pending appeal.

1 Due to his age and his ties to the community, [REDACTED] poses neither a flight risk  
2 nor a danger to anyone. As [REDACTED] has only recently begun serving his sentence and  
3 the rest remains ahead, a delay will not diminish its deterrent effect. Because it was undisputed  
4 at trial that the protected party invited contact with [REDACTED], his presence in the  
5 community is unlikely to traumatize her. And this Court found [REDACTED] indigent at  
6 sentencing, imposing only the mandatory victim penalty assessment. The prerequisites for  
7 denying bail in RCW 9.95.062(1) therefore are not met.

8 The undersigned counsel conferred with counsel for the State, and was told that the State  
9 would not oppose [REDACTED]'s motion for release on bond pending appeal.

10 **CONCLUSION**

11 Pursuant to RCW 10.73.040, [REDACTED] moves this Court for an order permitting  
12 his release on his own recognizance, or upon posting a bond in an amount determined by the  
13 Court, and on such conditions as the Court believes appropriate pending appeal. In setting the  
14 amount of any bond, [REDACTED] respectfully requests that this Court bear in mind his  
15 indigency.

16 DATED this 9th day of April, 2020.

17  
18 

19  
20 Christopher Petroni (WSBA #46966)  
21 Washington Appellate Project  
22 1511 Third Avenue, Suite 610  
23 Seattle, Washington 98101  
24 Telephone: (206) 787-2711  
25 Email: wapofficemail@washapp.org  
chris@washapp.org

Attorney for [REDACTED]

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THE SUPERIOR COURT FOR THE STATE  
OF WASHINGTON FOR ██████████ COUNTY

STATE OF WASHINGTON,	)	
	)	Case No.: 19-1-00019-7 (19)
Plaintiff/Respondent,	)	(CoA No. 37186-7-III)
	)	
v.	)	[PROPOSED] ORDER FOR RELEASE
	)	PENDING APPEAL DUE TO
██████████,	)	VULNERABILITY TO COVID-19
	)	
Defendant/Appellant.	)	
_____	)	

THIS MATTER having come on regularly before the above entitled Court, upon application of the defendant for an order approving his release pursuant to RCW 10.73.040 on bail pending appeal, therefore,

IT IS HEREBY ORDERED that the above-named defendant/appellant **may/may not** be released from custody upon his own recognizance, or alternatively, satisfactory posting of bail in the amount of \$ \_\_\_\_\_, and

IT IS FURTHER ORDERED the defendant comply with the following terms and conditions of his release

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by previous order of this Court, and the same is hereby confirmed.

DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
County Superior Court Judge

Presented by:



\_\_\_\_\_  
Christopher Petroni, WSBA #46966

Attorney for \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Christopher Petroni, certify that I caused the above-captioned Motion and Proposed Order for Release Pending Appeal Due to Vulnerability to COVID-19 to be served by U.S. mail, postage prepaid, upon the following party:

[Redacted]



Christopher Petroni  
Attorney for [Redacted]

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