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THE SUPERIOR COURT FOR THE STATE
OF WASHINGTON FOR PIERCE COUNTY

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

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

MOTION AND ORDER FOR RELEASE
AND TO STAY SENTENCE PENDING
RESOLUTION OF APPEAL

MOTION.

Timothy ██████████ moves this court for an order staying his sentence and releasing him from custody pending the resolution of his appeal.

This motion is based upon the record and file herein, including the following:

1. Following a jury trial, Mr. ██████████ was convicted of one count of first degree theft and two counts of second degree theft. Based on aggravating factors, the court imposed an exceptional sentence upward on count one for a total sentence length of ten years. App. A (judgment and sentence).
2. Mr. ██████████ is exercising his state constitutional right to appeal under article I, section 22 of the Washington Constitution. Appellate counsel is awaiting copies of the transcripts.

Based on a partial review of the filings in the trial court, appellate counsel believes there

1 will be issues of merit to raise in the appeal. Without the benefit of the transcripts, there
2 appears to be potential issues concerning the sufficiency of the evidence and the
3 admission of prior bad acts evidence under ER 404(b).

- 4 3. An appeal bond has not been set in this case.
- 5 4. Washington State is in the throes of a pandemic from COVID-19, also known as the
6 coronavirus. As the Washington Supreme Court recognized in its order addressing the
7 pandemic on March 20, 2020, we are in a state of emergency and measures are necessary
8 to mitigate crisis. IN THE MATTER OF THE STATEWIDE RESPONSE BY
9 WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH
10 EMERGENCY. Available at
11 [http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supr](http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf)
12 [eme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf](http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf).
- 13 5. COVID-19 can cause serious illness and death. Older adults or persons with underlying
14 medical conditions are at a greater risk.
- 15 6. Mr. ██████ who was born on September 24, 1966, is 53 years old. As recounted by his
16 trial counsel in the defense sentencing brief, Mr. ██████ “physical health is likely to
17 rapidly decline as he approaches age 60.” App. B (defense sentencing brief), p. 12. Thus,
18 the danger of COVID-19 to his health is significant. And even people who are younger
19 or in good health are at risk of serious illness or death from COVID-19.
- 20 7. Mr. ██████ is currently housed at the Monroe Correctional Complex-WA State
21 Reformatory.
- 22 8. Several staff members and inmates at the Monroe Correctional Complex have tested
23 positive for COVID-19. <https://www.doc.wa.gov/news/2020/04072020p.htm>;
24 <https://www.doc.wa.gov/news/covid-19.htm>. On April 8, 2020, due to the conditions
25 and the news about the positive tests, over 100 inmates at the minimum security unit at

1 Monroe engaged in a demonstration that caused a disturbance.

2 <https://www.doc.wa.gov/news/2020/04082020p.htm>;

3 [https://www.king5.com/article/news/crime/coronavirus-disturbance-at-monroe-](https://www.king5.com/article/news/crime/coronavirus-disturbance-at-monroe-corrections-complex/281-d41aff45-3a6c-409e-aca6-fc35160d7b62)
4 [corrections-complex/281-d41aff45-3a6c-409e-aca6-fc35160d7b62](https://www.king5.com/article/news/crime/coronavirus-disturbance-at-monroe-corrections-complex/281-d41aff45-3a6c-409e-aca6-fc35160d7b62)

5 9. To mitigate the risk of illness or death due to COVID-19, Mr. ██████ is asking this Court
6 to stay his sentence pending resolution of his appeal. This Court has authority to do so.

7 RAP 7.2(f); CrR 3.2(h).

8 10. As recognized recently by the Massachusetts Supreme Court, in considering a stay of a
9 sentence pending appeal, “a judge must give careful consideration not only to the risks
10 posed by releasing the defendant -- flight, danger to others or to the community, and
11 likelihood of further criminal acts -- but also, during this pandemic, to the risk that the
12 defendant might die or become seriously ill if kept in custody.” Christie v.

13 Commonwealth, SJC-12927, 2020 WL 1545877, at *1 (Mass. Apr. 1, 2020).

14 11. In this case, Mr. ██████ was convicted of theft, a non-violent offense. His criminal
15 history consists of non-violent offenses. App. A (judgment and sentence).

16 12. Mr. ██████ has a supportive wife and place to reside.

17 13. The risk to the community or of flight is minimal and does not justify denial of an appeal
18 bond.

19 14. To mitigate the risk of death or serious illness to Mr. ██████ a stay of his sentence is
20 appropriate while Mr. ██████ exercises his state constitutional right to appeal.

21 15. Given the unique circumstances, Mr. ██████ contends that personal recognizance is
22 appropriate. Standard conditions are appropriate and reasonable.

23 16. Alternatively, bail in an amount between \$0 and \$150,000 is appropriate. Prior to being
24 found guilty, bail was set at \$150,000 with conditions. App. C.

1 THE SUPERIOR COURT FOR THE STATE
2 OF WASHINGTON FOR PIERCE COUNTY

3 STATE OF WASHINGTON,)

4 Plaintiff/Respondent,)

5 v.)

6 TIMOTHY [REDACTED])

7 Defendant/Appellant.)

Case No. 18-1-04280-3
(CoA No. 54418-1-II)

CONDITIONS OF RELEASE PENDING
APPEAL

8
9 THIS MATTER having come on regularly before the above entitled Court, upon application
10 of the defendant for an order approving his release pursuant to RAP 7.2(f) and CrR 3.2(h) on bail
11 pending appeal, therefore,
12

13 IT IS HEREBY ORDERED that the above-named defendant/appellant **may/may not** be
14 released from custody upon satisfactory posting of bail in the amount of \$ _____, and

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

17 _____
18 _____
19 _____

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

1 DONE IN OPEN COURT this ____ day of April, 2020.

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Honorable Jerry T. Costello
Pierce County Superior Court Judge

5 Presented by:

6 /s/

Richard Lechich (WSBA 43296)
7 Attorney for Timothy [REDACTED]

8
9 Approved as to form:

10
11

Kristie Barham (WSBA 32764)
12 Pierce County Deputy Prosecuting Attorney