

FILED
SUPREME COURT
STATE OF WASHINGTON
12/13/2022 4:17 PM
BY ERIN L. LENNON
CLERK

NO. 1014554

SUPREME COURT OF THE STATE OF WASHINGTON

CAROLYN SIOUX GREEN

Appellant.

v.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND HEALTH SERVICES,
ET AL.

Respondents.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

DEREK MILLIGAN
WSBA No. 59651
Assistant Attorney General
P.O. Box 40124
7141 Cleanwater Drive SW
Olympia WA, 98504-0124
(360) 586-6565
Derek.Milligan@atg.wa.gov
OID No. 91021

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	DECISION BELOW	2
III.	COUNTERSTATEMENT OF THE ISSUE PRESENTED FOR REVIEW	3
IV.	COUNTERSTATEMENT OF THE CASE.....	3
V.	REASONS WHY REVIEW SHOULD BE DENIED	7
	A. The Court of Appeals Correctly Applied the Law with Respect to the Statute of Limitations and Determined that Equitable Tolling Did Not Apply to Ms. Green’s Case.....	8
	B. Ms. Green’s Disagreement with the Court of Appeals Decision That Her Claim was Time Barred by the Statute of Limitations Does Not Warrant Review	12
VI.	CONCLUSION	17

TABLE OF AUTHORITIES

Cases

<i>CTS Corp. v. Waldburger</i> , 573 U.S. 1 (2014).....	10
<i>Green v. Department of Social and Health Services, et. al.</i> , No. 55790-8-II, 2022 WL 4138895 (Wash. Ct. App. Sep. 13, 2022).....	2, 6, 7, 10, 11
<i>Price v. Gonzalez</i> , 4 Wn. App. 2d 67, 75, 419 P.3d 858 (2018).....	8, 10, 11
<i>State v. Duvall</i> , 86 Wn. App. 871, 940 P.2d 671 (1997).....	10

Statutes

Former RCW 4.16.190(1)	3, 8
RCW 4.16.080(2)	8
RCW 4.16.190.....	6
RCW 4.16.190(1)	9
RCW 4.92.100(1)	5

Rules

CR 12 (b)(6)	5
RAP 13.4	16
RAP 13.4(b).....	7, 12, 15, 16

RAP 13.4(b)(1).....	9
RAP 13.4(b)(2).....	9

I. INTRODUCTION

In 2020, Carolyn Sioux Green filed a complaint against the State of Washington, Department of Social and Health Services (State), concerning treatment she received at Western State Hospital in 2001. The superior court dismissed the complaint with prejudice, finding that the statute of limitations for Ms. Green's claims had expired in 2004. Ms. Green then appealed the superior court's decision, arguing that the statute of limitations should have been tolled due to equitable tolling. In an unpublished opinion, the Court of Appeals affirmed the trial court's order of dismissal and held that the trial court did not err when it dismissed Ms. Green's complaint with prejudice based on the statute of limitations and that Ms. Green did not meet her burden to establish that equitable tolling applied.

Review of the Court of Appeals' decision is not warranted. This appeal involves straightforward issues of statutory interpretation and the application of well-settled law. Ms. Green's arguments amount to no more than a disagreement

over the Court of Appeals' clear and coherent application of the statute of limitations and the requirements of equitable tolling, and its determination that Ms. Green's complaint was correctly dismissed with prejudice because her complaint was time barred. Ms. Green's disagreement with the Court of Appeals' decision is insufficient to warrant review.

II. DECISION BELOW

The decision of which Ms. Green seeks review is an unpublished opinion filed on September 13, 2022, by Division II of the Court of Appeals, *Green v. Department of Social and Health Services*, et. al., No. 55790-8-II, 2022 WL 4138895 (Wash. Ct. App. Sep. 13, 2022) (unpublished), where the court upheld the trial court's dismissal of Ms. Green's complaint with prejudice based on the statute of limitations.

III. COUNTERSTATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Ms. Green did not present any evidence to support her argument that the statute of limitations was subject to equitable tolling based on either a disability that prevented her from understanding the nature of the proceedings, within the meaning of former RCW 4.16.190(1), or bad faith, deception, or false assurances by the State. Did the Court of Appeals correctly determine that Ms. Green failed to meet her burden to establish that equitable tolling applied and uphold the trial court's dismissal with prejudice based on the statute of limitations?

IV. COUNTERSTATEMENT OF THE CASE

Ms. Green was detained at Western State Hospital from July 2, 2001 to July 5, 2001. CP 4-6, CP 57-59. On July 5, 2001, the Pierce County Superior Court ordered Ms. Green to be detained for involuntary treatment for up to 14 days at American Lake Veterans Administration Hospital, and Ms. Green was transferred to the hospital that day. CP 53, 58.

On September 30, 2020, more than 19 years after her detention at Western State Hospital, Ms. Green filed her Complaint against the State. CP 2-23. On November 13, 2020, Ms. Green filed a “Demand for Relief Sought By Plaintiff,” seeking two billion dollars in damages and other relief “for unlawful imprisonment, maiming of the Plaintiffs [sic] brain, maiming of other body parts, loss of wages and economic value, loss of life, loss of liberty, loss of pursuit of happiness.” CP 44-45. Ms. Green’s Complaint centered on her detention at Western State Hospital from July 2, 2001 to July 5, 2001.¹

Ms. Green alleged she was involuntarily medicated without a court hearing; that the petition to commit her for 14 days lacked a signature; that the commitment evaluators failed

¹ Throughout the records Ms. Green filed with the court, she references her detention in Thurston County prior to July 2, 2001, and her detention in the American Lake Veterans Administration Hospital after July 5, 2001. Neither Thurston County nor the Veterans Administration are parties to this case.

to take into account her hip injury when conducting the evaluation for the petition; and that she did not voluntarily sign the waiver of her right to remain off of medications 24 hours before her hearing. CP 5.

On December 3, 2020, the State filed a motion to dismiss arguing that Green's complaint should be dismissed because she failed to state a claim under CR 12 (b)(6), Ms. Green's claim was precluded by the statute of limitations, and Ms. Green's complaint should be dismissed as she was not in compliance with the requirements for tort claims against the state or its agents pursuant to RCW 4.92.100(1). CP 101-106.

In response to the State's motion to dismiss, Ms. Green filed a motion for summary judgment against the State. CP 114-460.

The superior court denied Ms. Green's motion for summary judgment and granted the State's motion to dismiss with prejudice. CP 630-631.

Ms. Green appealed the superior court's order, arguing that her claims were not time barred by the statute of limitations because equitable tolling should have been applied. *Green*, 2022 WL 4138895. The Court of Appeals disagreed.

In its decision, the Court of Appeals first addressed whether Ms. Green's claim should be tolled under RCW 4.16.190 due to personal disability. *Id.* The court concluded that tolling under this statute did not apply to Ms. Green's case as "the evidence she presented in the trial court does not support her claim that she had a mental disability that prevented her from understanding the nature of the proceedings at any time between July 2001 and 2020." *Id.*

The Court of Appeals then addressed Ms. Green's argument that her claim should not have been time barred due to equitable tolling. *Id.* The court did not find Ms. Green's argument persuasive. "Green primarily argues equitable tolling. However, she fails to provide any meaningful evidence or analysis showing both bad faith, deception, or false assurances

on the part of DSHS and that she acted with reasonable diligence.” *Id.* Thus, the Court of Appeals held that the trial court did not err when it dismissed Ms. Green’s complaint with prejudice based on the statute of limitations, and it affirmed the trial court’s dismissal with prejudice. *Id.*

Following the Court of Appeals decision, Ms. Green filed a motion for reconsideration. The Court of Appeals denied Ms. Green’s motion. Ms. Green now seeks review by this Court.

V. REASONS WHY REVIEW SHOULD BE DENIED

Ms. Green’s disagreement with the decision below does not warrant review because none of the criteria in RAP 13.4(b) are met.

The Court of Appeals’ determination that Ms. Green’s complaint was time barred due to the statute of limitations does not raise significant questions of law under the U.S. Constitution, it does not present an issue of substantial public interest, and it is not in conflict with a decision from the Court.

Rather, this appeal involves straightforward issues of statutory interpretation and the application of well-settled law. The Court of Appeals properly applied the statute of limitations and the premise of equitable tolling and determined that Ms. Green's complaint was correctly dismissed with prejudice as her complaint was time barred. Ms. Green's disagreement with the Court of Appeals' decision is insufficient to warrant review as articulated below.

A. The Court of Appeals Correctly Applied the Law with Respect to the Statute of Limitations and Determined that Equitable Tolling Did Not Apply to Ms. Green's Case

The Court of Appeals correctly applied RCW 4.16.080(2), former RCW 4.16.190(1) (2006), and *Price v. Gonzalez*, 4 Wn. App. 2d 67, 75, 419 P.3d 858 (2018), to determine that the trial court did not err when it dismissed Ms. Green's complaint with prejudice based on the statute of limitations. Ms. Green argues that the Court of Appeals did not correctly apply the law regarding equitable tolling in her case. But Ms. Green does not

cite relevant statutes or law as to why the Court of Appeals was incorrect in their determination. Accordingly, she has not established a conflict with any published appellate decisions. *See* RAP 13.4(b)(1), (2).

The Court of Appeals first looked at whether Ms. Green's claim should be tolled pursuant to RCW 4.16.190(1). RCW 4.16.190(1) provides that if a person is "incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, ... the time of such disability shall not be a part of the time limited for the commencement of action."

The Court of Appeals concluded that Ms. Green failed to establish that the statute of limitations should have been tolled under RCW 4.16.190(1), because the evidence she presented to the trial court did not support her claim that she had a mental disability that prevented her from understanding the nature of the proceedings at any time between July 2001 and 2020.

Green, 2022 WL 4138895 at *2. In fact, the Court of Appeals recognized that the evidence showed that, during the period that Ms. Green stated she was unable to understand the nature of the proceedings, she had the mental acuity to graduate with honors from Pierce College in 2010 and graduate from the University of Washington – Tacoma in 2014 with a degree in environmental science. *Id.*

The Court of Appeals then addressed the issue of equitable tolling and correctly decided that it did not apply to Ms. Green’s case. Equitable tolling applies to statutes of limitations “when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action.” *CTS Corp. v. Waldburger*, 573 U.S. 1, 9 (2014) (quoting *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014)). The doctrine of equitable tolling is to be used only sparingly. *State v. Duvall*, 86 Wn. App. 871, 874, 940 P.2d 671 (1997).

The party asserting entitlement to tolling bears the burden of proof. *Price*, 4 Wn. App. 2d at 75. In addition, equitable tolling

of the statute of limitations may apply when justice requires. *Id.* The party asserting that equitable tolling should apply bears the burden of showing (1) bad faith, deception, or false assurances on the part of the defendant and (2) that the plaintiff acted with reasonable diligence. *Id.*

Applying the above analysis, the Court of Appeals found that Green failed to “provide any meaningful evidence or analysis showing both bad faith, deception, or false assurances on the part of DSHS and that she acted with reasonable diligence.” *See Green*, 2022 WL 4138895, at *2. Since the trial court found that Ms. Green did not meet her burden of proof as the party asserting the argument of tolling, the Court of Appeals correctly held that the trial court did not err in their dismissal of Ms. Green’s complaint with prejudice based on the statute of limitations. *Id.*

The reasoning the Court of Appeals applied in determining that the statute of limitations were not tolled was sound and based upon established law as set forth in the applicable statutes. The

Court of Appeals did not show bias, partiality, or unfairness in their application of this well-settled law and precedent. The Court of Appeals' decision is not in conflict with any other cases nor does it create an issue of substantial public interest. As such, review by this Court under RAP 13.4(b) is not warranted and the Court should deny the petition for review.

B. Ms. Green's Disagreement with the Court of Appeals Decision That Her Claim was Time Barred by the Statute of Limitations Does Not Warrant Review

Ms. Green contends that review by this Court is warranted because this case raises significant questions of law under the U.S. Constitution, as well as issues of law that conflict with this Court's decisions, and that this matter involves issues of substantial public interest that should be determined by the Court. *See* Pet. for Review at 26-33. Ms. Green is incorrect on all accounts and review by this Court under RAP 13.4(b) is not warranted.

First, Ms. Green argues that the finding that her complaint was time barred by the statute of limitations raises significant

questions of law that conflict with this Court's decisions and the U.S. Constitution. *See* Pet. for Review at 26-27. However, Ms. Green does not cite any law that purportedly is in conflict with the Court of Appeals' decision in this matter. In fact, Ms. Green only cites to *Dunner*, citing *In re Det. of Labelle*, 107 Wn.2d 196, 728 P.2d 138 (1986), for the proposition that clarifying the statutory scheme governing civil commitment is a matter of substantial interest. *See* Pet. for Review at 26. However, Ms. Green does not make a connection or argue how the holding in *Labelle* raises an issue of substantial public interest in this case or how it applies to the statute of limitations or the premise of equitable tolling.

Second, Ms. Green contends that her rights under the First, Second, Fifth, and Fourteenth Amendments were violated. However, Ms. Green does not state how the Court of Appeals' decision regarding equitable tolling violated her constitutional rights, but she seems to make the argument based upon her underlying *tort* claim. Ms. Green argues that her alleged illegal

confinement interfered with her right to bear arms, and the drugs she was allegedly forced to take impacted her thoughts and speech purportedly violating her First Amendment rights *See* Pet. for Review at 26-27. These arguments have no nexus to the issue of the statute of limitations. Ms. Green's arguments are made without explanation or how they would apply to the Court of Appeals' opinion regarding the application of the statute of limitations or the premise of equitable tolling.

Third, Ms. Green states that this matter raises an issue of substantial public interest because Ms. Green is a veteran, the Veterans Administration was involved in her case in 2001, and numerous veterans have interactions with Western State Hospital. *See* Pet. for Review at 27-31. Ms. Green argues that alleged forced medical treatment of veterans by the State is a matter of public interest that warrants review. *See* Pet. for Review at 27-31. Ms. Green further states that "the public needs protection from the intrusive forced treatment by predatory illegal actions of the State. Long-term effects of

psychiatric medications cause irreparable injury.” *See* Pet. for Review at 29-30. Again, Ms. Green’s arguments focus on her underlying tort claim and do not speak to how this Court of Appeals’ decision regarding the statute of limitations is a matter of substantial public interest.

Ms. Green also argues that the Americans with Disabilities Act (ADA) is implicated in this case but fails to cite any relevant law or authority as to how it is applicable. Ms. Green argues that her rights under the ADA were violated warranting review under substantial public interest because the State “unnecessarily confine[d] Appellant in a hospital facility.” *See* Pet. for Review at 31. Again, Ms. Green’s argument as to why this matter warrants review as a matter of public interest only speaks to her underlying tort claim and does not address the Court of Appeals’ decision with respect to the statute of limitations.

All of Ms. Green’s arguments above as to why this matter requires review under RAP 13.4(b), are in relation to her *underlying* tort claim. Ms. Green’s tort claims were not before

the Court of Appeals or this Court, because the superior court dismissed her complaint based on the statute of limitations. Accordingly, the question before the Court is whether Ms. Green's *equitable tolling claim* warrants review under RAP 13.4(b). Since Ms. Green has failed to establish a conflict with Court precedent, the Constitution, or a substantial public interest and accordingly, her claim does not warrant review by this Court under any provisions under RAP 13.4(b).

\

\

\

\

\

\

\

\

\

\

VI. CONCLUSION

Ms. Green has failed to demonstrate sufficient grounds to warrant review by this Court under RAP 13.4. Her petition for review should be denied.

This document contains 2,658 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 13th day of December, 2022.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to read 'Derek Milligan', written over a horizontal line.

DEREK MILLIGAN,
WSBA No. 59651
Assistant Attorney General
Attorney for Respondent

CERTIFICATE OF SERVICE

I, *Stephaine Barry*, state and declare as follows:

I am over the age of 18 years and I am competent to testify to the matters set forth herein. I certify that on December 13, 2022, I served a true and correct copy of this **ANSWER TO PETITION FOR REVIEW** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

Appellant, pro se
CAROLYN SIOUX GREEN
PO Box 38097
Phoenix, Arizona 85069
 Via COA E-filing at: candidCarolyn@gmail.com.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 13th day of December 2022, at Olympia, Washington.


STEPHAINE BARRY
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

December 13, 2022 - 4:17 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,455-4
Appellate Court Case Title: Carolyn Sioux Green v. State of Washington, DSHS, et al.
Superior Court Case Number: 20-2-07851-0

The following documents have been uploaded:

- 1014554_Answer_Reply_20221213160917SC799058_2794.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was 003_Green_Answer_Pet4Rvw_FINAL.pdf
- 1014554_Notice_20221213160917SC799058_9255.pdf
This File Contains:
Notice - Association of Counsel
The Original File Name was 002_NOA_Milligan.pdf

A copy of the uploaded files will be sent to:

- candidCarolyn@gmail.com
- derek.milligan@atg.wa.gov
- stephaine.barry@atg.wa.gov

Comments:

Sender Name: Stephaine Barry - Email: stephaine.barry@atg.wa.gov

Filing on Behalf of: Sarah Jane COAts - Email: sarah.coats@atg.wa.gov (Alternate Email: shsappealnotification@atg.wa.gov)

Address:
P.O. Box 40124
Olympia, WA, 98504-0124
Phone: (360) 586-6565

Note: The Filing Id is 20221213160917SC799058