Supreme Court No. 101889-4
(COA No. 38482-9-III)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,
Respondent,

v.

LINDSEY ALBRIGHT,
Petitioner.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY

---

# PETITION FOR REVIEW

---

KATE R. HUBER
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711
katehuber@washapp.org
waapofficemail@washapp.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

**Washington Supreme Court Cases**



**Washington Court of Appeals Cases**

**United States Supreme Court Cases**

**Washington Constitution**



**United States Constitution**



**Washington Statutes**



**Rules**

## Other Authorities

## A. IDENTITY OF PETITIONER AND DECISION BELOW

Lindsey Albright petitions for review of the Court of Appeals's March 14, 2023, published opinion (attached). RAP 13.4.

## B. ISSUES PRESENTED FOR REVIEW

1. CrR 4.7 provides people the right to discovery in criminal proceedings and imposes an obligation on the prosecution to disclose discovery. Nothing in CrR 4.7 limits this right and the corresponding duty to a particular stage or time of a criminal case. The Court of Appeals misinterpreted the rule when it limited the State's obligation to exclude postconviction discovery requests.

2. The discovery rules enshrined in CrR 4.7 advance multiple constitutional guarantees that work collectively to ensure the due process right to fair criminal proceedings, including the rights to disclosure of exculpatory evidence and to prepare and present a defense. Washington also protects the right to collateral attacks through article I, section 13's

provision of the right to habeas corpus, personal restraint petitions, and postconviction motions in RCW Chapter 10.73, CrR 7.8, and RAP Title 16. The Court of Appeals' approval of the trial court's order misinterpreting CrR 4.7 as never applying "to postconviction discovery requests" compromises convicted individuals' rights to pursue these postconviction remedies and violates these constitutional, statutory, and rule-based protections.

## C. STATEMENT OF THE CASE

Mr. Albright entered an *Alford*[1] plea to one count of assault for an incident occurring when he was 20. CP 10A-10P, 11; RP 3. In exchange, the prosecution dismissed four related charges and agreed to recommend the minimum standard range sentence.[2] CP 7-9, 10F, 12, 19. The court imposed a term of

[1] *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

[2] Mr. Albright also pleaded guilty to two counts on a different cause number to resolve an unrelated incident. CP 12; RP 3. The court imposed concurrent terms. RP 16.

120 months plus a 60 months firearm enhancement, totaling 180 months. CP 13; RP 16.

Two years after the court imposed its sentence, Mr. Albright filed a pro se "Motion to Compel State for Discovery." CP 20-22. Mr. Albright argued CrR 4.7 and caselaw entitled him to discovery materials and requested the court compel the State to disclose discovery to him. CP 20-22. He explained he needed the discovery "as part of his investigation of" and "to perfect" his personal restraint petition. CP 21. Mr. Albright stated he could not complete his petition without the requested discovery. CP 21.

The trial court denied Mr. Albright's motion, ruling the State is "under no obligation to provide discovery post-trial." RP 19. The order denying the motion states, "CrR 4.7 applies only to procedures before trial, not to postconviction discovery requests." CP 23 (citing *State v. Asaeli*, 17 Wn. App. 2d 697, 491 P.3d 245, *review denied*, 198 Wn.2d 1026 (2021)).

The Court of Appeals affirmed. Slip op. at 5. It disavowed the trial court's reliance on *Asaeli*'s "blanket statement" that CrR 4.7 applies only before trial and agreed "CrR 4.7 sometimes applies 'during trial.'" Slip op. at 4 n.3 (quoting CrR 4.7(h)(2)). But it rejected Mr. Albright's argument that the State has a continuing obligation to provide discovery and limited the State's duty to "the pendency of a criminal case." Slip op. at 3.

## D. ARGUMENT

### 1. The prosecution's CrR 4.7 duty to provide discovery applies to trial court proceedings post-trial.

Basic rules of statutory construction require courts to rely on the plain language of a statute to interpret its meaning. *In re Pers. Restraint of Brooks*, 197 Wn.2d 94, 100, 480 P.3d 399 (2021). Courts interpret rules "in the same manner as statutes" and apply the same principles of construction. *Jafar v. Webb*, 177 Wn.2d 520, 526, 303 P.3d 1042 (2013). Where the plain language of a rule is "unambiguous" and has only one reasonable interpretation, the court's inquiry ends. *State v.*

*Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the rule is ambiguous, the court must "interpret the statute in the defendant's favor." *State v. Conover*, 183 Wn.2d 706, 712, 355 P.3d 1093 (2015).

Criminal Rule 4.7 governs discovery rights and obligations. The rule provides "the prosecuting attorney *shall* disclose to the defendant" certain identified materials. CrR 4.7(a)(1)-(3) (describing "prosecutor's obligations") (emphasis added). Prosecutors also "shall" provide additional disclosure of certain other materials "upon request of the defendant." CrR 4.7(c). Finally, the court may require the prosecution to disclose other materials at its discretion. CrR 4.7(e). While the rule contemplates certain disclosures "no later than the omnibus hearing," CrR 4.7(a)(1), other disclosures are required "upon request." CrR 4.7(c). It also imposes a "continuing duty to disclose." CrR 4.7(h)(2); *State v. Krenik*, 156 Wn. App. 314, 320, 231 P.3d 252 (2010) (citing *State v. Greiff*, 141 Wn.2d 910, 919, 10 P.3d 390 (2000)).

Nowhere does the plain language of the rule limit the prosecution's obligation to disclose discovery or the defense's right to demand it to any particular stage of a case or time range. CrR 4.7. Moreover, the rule's explicit reference to the government's "continuing duty to disclose" suggests the rule's ongoing applicability. CrR 4.7(h)(2).

Nothing in the text of the rule itself imposes a temporal limitation on its reach. Washington Courts have interpreted the rule as imposing "a continuing duty to promptly disclose discoverable information." *Krenik*, 156 Wn. App. at 320 (relying on CrR 4.7(h)(2) and *Greiff*, 141 Wn.2d at 919). This interpretation is consistent with "[t]he philosophy behind the [discovery] rule," which "favors openness and ready disclosure." *City of Seattle v. Lange*, 18 Wn. App. 2d 139, 148, 491 P.3d 156, *review denied*, 198 Wn.2d 1024 (2021). Indeed, "the trend in criminal law has been toward the recognition and expansion of discovery techniques." 12 Royce A. Ferguson,

Jr., Washington Practice: Criminal Practice & Procedures § 1301 (3d ed. Oct. 2021 update).

The Court of Appeals has recognized the applicability of CrR 4.7 to postconviction motions filed in trial courts. *State v. Padgett*, 4 Wn. App. 2d 851, 424 P.3d 1235 (2018). Consistent with *Padgett* and CrR 4.7, the obligations of both the prosecutor and the defense attorney to comply with a defendant's request for materials must continue following entry of a conviction and imposition of sentence. *Id.* The duty to provide materials does not cease.

In *Padgett*, the Court of Appeals held a trial court erred in denying a pro se defendant's post-trial motion for disclosure of his client file and discovery materials. 4 Wn. App. 2d at 856. Although Mr. Padgett had already pleaded guilty and been sentenced, the court did not rely on the postconviction status of the motion to deny the claim. Instead, the court interpreted the broad discovery obligations of CrR 4.7 and the rules professional conduct governing counsel's duty to turn over

client files to hold Mr. Padgett was entitled to the requested materials. *Id.* at 854-55 (relying on CrR 4.7(h)(3)). The court also recognized the great prejudice in denying such discovery motions because it would deprive litigants "of a critical resource for completing a viable PRP" and prevent them "from accessing the type of information that he may need to complete his PRP." *Id.* at 855-56.

The Court of Appeals rejected Mr. Albright's reliance on *Padgett* and limited the application of CrR 4.7 to postconviction discovery motions to defense attorneys. Slip op. at 2-4. The opinion correctly recognizes the rules of professional conduct impose a continuing duty on defense attorneys to provide their clients trial files, even postconviction. But that Mr. Albright may also have recourse through a motion to compel production of his client file from his trial attorney does not relieve the prosecution of its obligation to provide discovery. While the Court of Appeals recognized the ongoing duty of defense attorneys, it erroneously restricted the State's

discovery obligation to "the pendency of a criminal trial." Slip op. at 3. This holding is inconsistent with the language of CrR 4.7 and the reasoning of *Padgett*.

Multiple cases have followed the reasoning of *Padgett*. *See, e.g., State v. Murry*, __ Wn. App. 2d __, 523 P.3d 794 (2022); *State v. Wallmuller*, No. 53062-7-II, 2020 WL 6888988, at *2 (Wash. Ct. App. 2020) (unpub.); *State v. Miller*, No. 81391-9-I, 2020 WL 3270320, at *1 (Wash. Ct. App. 2020) (unpub.); *State v. Wallmuller*, No. 37347-9-III, 2020 WL 2731098, at *2-*3 (Wash. Ct. App. 2020) (unpub.); *State v. Talbert*, No. 35294-3-III, 2019 WL 852338, at *5 (Wash. Ct. App. 2019) (unpub.).[3] The courts relied on CrR 4.7 to compel document production in these cases even though the defendants brought the motions during the postconviction phase.

[3] Cited pursuant to GR 14.1 as nonbinding authority for such persuasive value as the Court deems appropriate.

Rather than follow CrR 4.7 and *Padgett*, the Court of Appeals held "court rules such as CrR 4.7 do not govern a defendant's request for postconviction discovery from the State." Slip op. at 4. Although the opinion recognizes the flaw of *Asaeli* and ruled the prosecution's obligations extend to "during trial," it arbitrarily determined the government's discovery obligations cease with a conviction. Slip op. at 4.

CrR 4.7 contains no such rigid cutoff. CrR 4.7(a)(1) mandates the discovery prosecutors must automatically disclose in every case must be provided before the omnibus hearing. CrR 4.7(a)(1). But other provisions of the rule contain no similar time frame. For example, CrR 4.7(a)(2) and (3) do not require disclosure before the omnibus hearing. CrR 4.7(c), which governs additional disclosures that prosecutors must make "upon request and specification," ties the timing of disclosure to the time of the request. Similarly, CrR 4.7(e), addressing additional discovery within a court's discretion, contains no specific deadline. Finally, the continuing duty to

disclose requires disclosure "promptly" upon discovery, not just before omnibus. CrR 4.7(h)(2). The Court of Appeals ignored these provisions to conclude the entire rule is inapplicable to postconviction motions. This Court should accept review. RAP 13.4(b)(2), (4).

**2. The Court of Appeals's untenably narrow interpretation of CrR 4.7 violates Mr. Albright's rights to pursue legally available challenges to his conviction and creates doubt about the rule's continuing constitutionality.**

CrR 4.7 governs discovery in criminal cases, but the right to discovery stems from several constitutional guarantees. Due process entitles accused persons to fundamentally fair proceedings. U.S. Const. amend. XIV; Const. art. I, § 3. This right does not cease after a finding of guilt. *See, e.g.*, *Betterman v. Montana*, 578 U.S. 437, 448, 136 S. Ct. 1609, 194 L. Ed. 2d 723 (2016) (Fourteenth Amendment right to fundamentally fair proceedings applies to postconviction stage); *State v. Bartholomew*, 101 Wn.2d 631, 640, 683 P.2d 1079

(1984) (applying article I, section 3 right to fundamentally fair proceeding to postconviction stage).

The rights to due process and fair proceedings rely on a person's access to evidence. *State v. Grenning*, 169 Wn.2d 47, 54, 234 P.3d 169 (2010); *State v. Boyd*, 160 Wn.2d 424, 434, 158 P.3d 54 (2007). This access to evidence is crucial to the meaningful opportunity to present a defense. U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22; *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984).

Appellate courts have not yet recognized a general right to discovery "at the appellate court level," *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 391, 972 P.2d 1250 (1999), but Mr. Albright moved in the *trial* court for discovery in a trial proceeding according to CrR 4.7. CP 20-22. While postconviction discovery is not identical to pretrial discovery, *Gentry* recognized a person's ability "to obtain or test existing

evidence in the government's possession." *Gentry*, 137 Wn.2d at 392. That is all Mr. Albright sought here.

In addition, the Fourteenth Amendment and article I, section 3 impose an affirmative, continuing duty on the prosecution to disclose evidence material to a person's guilt or punishment, including impeachment and exculpatory evidence. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); *In re Pers. Restraint of Stenson*, 174 Wn.2d 474, 486, 276 P.3d 286 (2012). The government's duty to disclose *Brady* information is ongoing and does not end when a case is resolved and a person is sentenced. *Pennsylvania v. Ritchie*, 480 U.S. 39, 60, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987).

Due process also requires the government to disclose all exculpatory and impeachment evidence to a defendant, whether it is requested or not. *Strickler v. Greene*, 527 U.S. 263, 280, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999); *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985). The Court of Appeals's holding that Mr. Albright may

not seek discovery postconviction conflicts with the prosecution's ongoing *Brady* obligations.

The Due Process Clause also protects the right to fundamentally fair judicial proceedings. U.S. Const. amend. XIV; Const. art. I, § 3. In Washington, this includes the right to collateral attack through writs of habeas corpus, personal restraint petitions, and postconviction motions. Const. art. I, § 13; RCW Chapter 10.73; RAP Title 16. Collectively, these provisions guarantee the right to seek judicial redress and to access the courts via collateral attacks.

Where our constitution, statutes, or rules provide a mechanism to challenge unlawful restraint, litigants must have meaningful access to the information necessary to bring such a challenge. A right alone is insufficient without the ability to exercise it meaningfully. For example, article I, section 22's right to self-representation includes the right to "reasonable access to state provided resources that will enable him to prepare a meaningful pro se defense." *State v. Silva*, 107 Wn.

App. 605, 622, 27 P.3d 663 (2001). "Without some means by which to defend against the charges against him, an accused's right to represent himself would be meaningless." *Id.*

Just as access to resources is necessary to exercise the right to self-representation meaningfully, access to discovery is necessary to exercise the right to collateral attack meaningfully. The court's refusal to allow Mr. Albright access to information necessary for his collateral attack further violates his right to fundamentally fair proceedings, to present a defense, and to habeas corpus. U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 13, 22.

In addition, the Constitution requires the open administration of justice, which guarantees the right of access to the courts. Const. art. I, § 10. This Court has held the constitutional right of access to the courts entitles parties to broad discovery in civil cases. *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 782-83, 819 P.2d 370 (1991). CrR 4.7, like civil discovery rules, "recognize[s] and implement[s] the right

of access" and "is necessary to ensure access to the party seeking the discovery." *Id.* at 782.

*Padgett* recognized discovery required by CrR 4.7 is "a critical resource for completing a viable PRP." 4 Wn. App. 2d at 855-56. Because collateral attacks are valid mechanisms for challenging unlawful restraint, the court must permit meaningful access to the information necessary to litigate a collateral attack properly. The Court of Appeals's opinion denies Mr. Albright this access. This Court should accept review. RAP 13.4(b)(3)-(4).

## E. CONCLUSION

For all these reasons, this Court should accept review. RAP 13.4(b).

In compliance with RAP 18.17(b), counsel certifies the word processing software calculates the number of words in this document, exclusive of words exempted by the rule, as 2,520 words.

DATED this 11th day of April, 2023.

Respectfully submitted,

KATE R. HUBER (WSBA 47540)
Washington Appellate Project (91052)
Attorneys for Petitioner
katehuber@washapp.org
wapofficemail@washapp.org

**FILED**
**MARCH 14, 2023**
**In the Office of the Clerk of Court**
**WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

| | | |
|---|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>LINDSEY DOMINIQUE ALBRIGHT,<br><br>Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. 38482-9-III<br><br><br><br>PUBLISHED OPINION |

PENNELL, J. — Two years after his conviction, Lindsey Albright filed a motion to compel discovery from the State. Mr. Albright did not cite any exceptional circumstances to justify his motion. He merely referenced superior court criminal rules governing a defendant's right of access to their own lawyer's file. The trial court denied the motion.

We affirm. The rules requiring a defense attorney to disclose their files to their client do not transfer to the State. When it comes to the State, postconviction discovery is generally unavailable absent a showing of extraordinary good cause. Because Mr. Albright did not make this showing, the trial court correctly denied his motion.

## FACTS

In May 2019, Lindsey Albright entered an *Alford*[1] plea to one count of first-degree assault. The superior court accepted Mr. Albright's plea and sentenced him to 120 months' confinement plus 60 months for a firearm enhancement.

In September 2021, Mr. Albright filed a pro se "Motion to Compel State for Discovery." Clerk's Papers at 20-22. In his motion, Mr. Albright sought "an order to Compel State to disclose discovery. . . . [p]ursuant to CrR 4.7(g)(h)." *Id*. at 20. The trial court denied the motion.

Mr. Albright timely appeals.

## ANALYSIS

Mr. Albright argues that the State is required to produce discovery materials posttrial pursuant to our decision in *State v. Padgett*, 4 Wn. App. 2d 851, 424 P.3d 1235 (2018). He is incorrect. *Padgett* addressed an individual's right to obtain materials from their own attorney, not the right to obtain discovery from the State.

Attorneys have ongoing obligations to their clients, even after the close of a particular case or the termination of representation. *See* RPC 1.16(d). An attorney's post-representation obligations to a client include surrendering papers, such as a client's file,

[1] *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

upon request. *See id.*; Wash. State Bar Ass'n Rules of Prof'l Conduct Comm., Advisory Op. 181 (rev. 2009), available at https://ao.wsba.org/searchresult.aspx?year=&num=181&arch=False&rpc=&keywords=. Based on an attorney's ongoing obligations to their client, we held in *Padgett* that the combined force of RPC 1.16(d) and CrR 4.7(h)(3) means an attorney must turn over a client file at the client's request upon termination of representation. 4 Wn. App. 2d at 854. If the client file contains discovery, then the client may be able to receive that discovery as part of the client file, subject to appropriate redactions. *Id.* at 854-55. Because a client's right to their file is rooted in the attorney-client relationship, a client's right to their file is not conditioned on a showing of need. *See id.* at 854.

The State, on the other hand, does not have obligations to criminally accused persons akin to those of legal counsel. In a criminal case, the State is the defendant's party opponent. The State has an obligation to produce discovery during the pendency of a criminal case. *See* CrR 4.7(a); *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). This is a fundamental component of litigation, civil or criminal. But once a case is over, the State's ordinary discovery obligations end.[2] This is true even

[2] Under RPC 3.8(g), a prosecutor has an ongoing obligation to disclose "new, credible, and material evidence creating a reasonable likelihood [ ] that a convicted defendant is innocent."

if a conviction is appealed or challenged through a personal restraint petition. *See In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390-91, 972 P.2d 1250 (1999). Courts have inherent power to order discovery in the postconviction context, but only in exceptional circumstances where the requesting party shows "good cause," defined as "a substantial likelihood the discovery will lead to evidence that would compel relief under RAP 16.4(c)." *Id.* at 390-92.

Mr. Albright's motion did not assert any exceptional circumstances that would justify postconviction discovery from the State. Instead, he relied solely on CrR 4.7, as interpreted in *Padgett*. Consistent with *Gentry*, court rules such as CrR 4.7 do not govern a defendant's request for postconviction discovery from the State.[3] *See* 137 Wn.2d at 390-91. The trial court therefore correctly denied Mr. Albright's motion.

Mr. Albright certainly is entitled to request his client file from his trial counsel. He may also be entitled to information from a state entity pursuant to a public records request. *See* ch. 42.56 RCW. But Mr. Albright is not entitled to postconviction discovery from the State, as was requested in his motion to the superior court.

[3] We disagree with the blanket statement in *State v. Asaeli* that "CrR 4.7 applies only to procedures before trial." 17 Wn. App. 2d 697, 698, 491 P.3d 245 (2021). By its plain terms, CrR 4.7 sometimes applies "during trial." CrR 4.7(h)(2). Furthermore, as explained in *Padgett*, the combined force of RPC 1.16(d) and CrR 4.7(h)(3) applies to a client's postconviction request for disclosure of their own attorney's client file.

## CONCLUSION

The order denying Mr. Albright's motion for discovery is affirmed.

Pennell, J.

WE CONCUR:

Siddoway, C.J.

Lawrence-Berrey, J.

**DECLARATION OF FILING AND MAILING OR DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 38482-9-III**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Bret Roberts, DPA
[bret.roberts@co.yakima.wa.us]
Yakima County Prosecutor's Office
[Appeals@co.yakima.wa.us]

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: April 11, 2023

# WASHINGTON APPELLATE PROJECT

## April 11, 2023 - 4:28 PM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Court of Appeals Division III |
| **Appellate Court Case Number:** | 38482-9 |
| **Appellate Court Case Title:** | State of Washington v. Lindsey Dominque Albright |
| **Superior Court Case Number:** | 18-1-00765-3 |

**The following documents have been uploaded:**

- 384829_Petition_for_Review_20230411162750D3751239_3604.pdf
  This File Contains:
  Petition for Review
  *The Original File Name was washapp.041123-01.pdf*

**A copy of the uploaded files will be sent to:**

- Appeals@co.yakima.wa.us
- bret.roberts@co.yakima.wa.us
- greg@washapp.org
- wapofficemai@washapp.org

**Comments:**

---

Sender Name: MARIA RILEY - Email: maria@washapp.org
**Filing on Behalf of:** Kate Huber - Email: katehuber@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

**Note: The Filing Id is 20230411162750D3751239**