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STATE OF WASHINGTON

NO. 46032-7-II

COURT OF APPEAL OF THE STATE OF WASHINGTON
DIVISION II

91341-2

CECIL DUDGEON,

Appellant, Pro Se,
v.
STEVE BOYER, SHERIFF OF KITSAP COUNTY,

Respondent.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

# PETITION FOR REVIEW

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## A. IDENTITY OF PETITIONER

Cecil Dudgeon asks this Court to accept review of the Court of Appeals' Unpublished Opinion affirming the trial court's dismissal of Mr. Dudgeon's Petition For Writ of Certiorari.

## B. COURT OF APPEAL'S DECISION

Petitioner seeks review of the Unpublished Opinion entered on January 27, 2015. (Copy in the Appendix).

## C. ISSUES PRESENTED FOR REVIEW

Issues Pertaining To Assignments of Errors

1. Mr. Dudgeon, relying on the plain language interpretation of RCW 7.16.040 and the explicit language expressed in the relevant case law, submitted his petition to the superior court (CP 2-64) and his appeal to the Court of Appeals seeking amelioration of a blatant injustice being done to him by the Kitsap County Sheriff's Office. The superior court granted a CR 12(b)(6) motion to dismiss presented by Respondent alleging failure to state a claim upon which relief could be granted (CP 90, 91). The Court of Appeals affirmed (APP A).

Whether the plain language interpretation of the relevant statute and case law is such that it is in fact permitted for the court, when considering a decision made by an inferior tribunal that is being challenged by writ of certiorari as being an erroneous decision, to make a determination of fact based on the substantial evidence presented in order to render a decision that should have been rendered by that inferior tribunal and thus negate a manifest injustice, and whether the superior court erred in not so doing, and whether the court of appeals erred in not remanding the case back to the superior court with instructions to so determine?

2. Immediately upon his release from the Washington State Special Commitment Center, SCC, Mr. Dudgeon reported to the Kitsap County Sheriff's Office to complete sex offender registration procedures. Mr. Dudgeon proffered substantial, current, relevant evidence to the Sheriff's representative, Detective Dillard, supporting Mr. Dudgeon's claim that he should be assigned a risk level no higher than level I (CP 4, 9, 12, 23-55, 60-64). Dillard stated that RCW 4.24.550(6) required consideration only of the recommendation of the End of Sentence Review Committee, ESRC, when assigning a risk level. Dillard stated the ESRC had assigned a risk level III to Mr. Dudgeon and that as far as he, Dillard, was concerned, the ESRC assigned risk level was all he needed and Mr. Dudgeon would remain a level III from then on (CP 4, 6, 7, 74, 80, 81, RP 5, 6).

The information upon which the risk level III classification was originally based was stale by several years and was moot in any case due to the State's own expert stating that Mr. dudgeon did not meet commitment criteria, i.e. did not suffer from a paraphilia, and that he presented a negligible risk (1-4%) to offend, i.e. was not a danger to the community (CP 3, 4).

Whether the superior court and the Court of Appeals erred in allowing to stand the arbitrary and capricious decision made by the Kitsap County Sheriff's representative, which decision was based on stale information rendered moot by the State's own actions, and in not correcting this erroneous and profoundly injurious decision by the inferior tribunal in a manner the plain language interpretation of the relevant statute and case law provides?

## D. STATEMENT OF THE CASE

Mr. Dudgeon, an 81 year old man, was unconditionally released from civil commitment at the SCC on February 12, 2013 (CP 4, 19) having been evaluated and found by the State's

expert, Amy Phenix, Ph.D., to not meet commitment criteria and to be a negligible risk to offend if released to the community (CP 3, 4). This finding is in consonance with the previous evaluations and findings completed by three other nationally recognized and imminently qualified clinical psychologists who had, in the very recent past, completed extensive evaluations of Mr. Dudgeon (CP 3, 4, 23-64).

Upon his unconditional release from the SCC Mr. Dudgeon took copies of the above referenced evaluations, along with other substantial supporting evidence, to the Kitsap County Sheriff's Office to complete the required sex offender registration process (CP 4, 9, 12, 23-55, 60-64). Mr. Dudgeon met with Sheriff's Detective Dillard, the Community Sex Offender Registration Officer, and attempted to discuss with him the proffered substantial evidence supporting Mr. Dudgeon's claim that he should be assigned a risk level I. Detective Dillard refused to review or discuss that proffered substantial evidence, stating Mr. Dudgeon had been assigned a risk level III by the ESRC and as far as he, Dillard, was concerned that risk level assignment was all he needed and Mr. Dudgeon would remain so from then on (CP 4, 6, 7, 74, 80, 81, RP 5, 6).

On December 17, 2013 Mr. Dudgeon filed a Petition For Writ Of Certiorari with the Kitsap County Superior Court in accordance with RCW 7.16.040 requesting that the court exercise its powers under RCW 7.16.040 and the established relevant case law to correct an erroneous decision by an inferior tribunal and, in consideration of the substantial evidence presented, to render the decision that should have been rendered by that inferior tribunal (CP 2, 3).

The superior court dismissed Mr. Dudgeon's Petition on February 27, 2014 (CP 90, 91) and Mr. Dudgeon timely filed an appeal with the Washington State Court of Appeals, Division II, on April 9, 2014. The Court of Appeals affirmed the superior court's dismissal nine months later on January 27, 2015 (ATCH A).

## E. SUMMARY OF ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Mr. Dudgeon now comes before This Court seeking redress of the significant impairment the lower courts have wrought upon Mr. Dudgeon's inalienable right to his pursuit of happiness as set forth in the Declaration of Independence and upon his rights to meaningful due process and equal protection as guaranteed by the Fourth, Fifth, Eighth and Fourteenth Amendments to The United States Constitution.

### Standard of Review

These proceedings require interpretation of the 1990 Community Protection Act, RCW 7.16.040, RCW 4.24.550 and RCW 72.09.345 as they pertain to risk levels assigned to sex offenders. Interpretation of state statutes and of the Community Protection Act is a question of law. Questions of law are reviewed de novo. *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001); *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

As stated earlier, upon his unconditional release from the SCC, Mr. Dudgeon immediately reported to the Kitsap County Sheriff's Community Sex Offender Registration Offices, Detective Dillard, to complete the sex offender registration process. Mr. Dudgeon brought with him copies of the aforementioned evaluations by the State's expert and the three other eminently qualified psychologists mentioned who had completed individual in-depth evaluations of Mr. Dudgeon in recent past. Mr. Dudgeon also included copies of sworn court

testimony, depositions, affidavits and other official records all supporting Mr. Dudgeon's claim that he should be rated no higher than a risk level I (CP 4, 9, 12, 23-55, 60-64), and all a part of Mr. Dudgeon's official record in this matter. Detective Dillard refused to review or discuss any of this proffered substantial evidence presented by Mr. Dudgeon stating that the ESRC assigned risk level was all he needed and that Mr. Dudgeon would so remain from then on (CP 4, 6, 7, 74, 80, 81, RP 5, 6).

The decision by Detective Dillard to assign and keep Mr. Dudgeon as a risk level III without even considering any of the substantial evidence proffered by Mr. Dudgeon supporting his claim that he should be assigned no higher than a risk level I, is an arbitrary and capricious decision totally lacking in merit or the exercise of any discerning discretion. It likewise exhibited no reliance upon any "competent proof" or "substantial proof" as referred to in Respondent's Opening Brief (APP B). Dillard's decision was based entirely on that sole source input from the ESRC, which input was based on information that was stale by several years and was therefore lacking any probative impact, and has been rendered moot in any case by the State's own actions.

It should be noted that upon his scheduled release from the SCC Mr. Dudgeon had been assigned a risk level classification of I on two different occasions by that same ESRC. However, immediately prior to his imminent unconditional release, that was arbitrarily and precipitously changed to a level III, apparently at the direction at final approval by the ESRC chairperson, Kim Acker, who gave as her reason that Mr. Dudgeon had not participated in the state run "treatment" program at the SCC (RP 5). This was a facile decision made with no justifying foundation. The State's expert, Dr. Phenix, had already determined that Mr. Dudgeon did not meet commitment

criteria, i.e. did not suffer from a paraphilia, and that he was a negligible risk (1-4%) to offend, i.e. was not a danger to society. Ergo, there was nothing in Mr. Dudgeon's psychological profile indicating a need for "treatment", which nullifies Acker's reasoning for the precipitous complete reversal she effected in assigning the bogus level III to Mr. Dudgeon.

The superior court is empowered to and should have accepted Mr. Dudgeon's Petition For Writ Of Certiorari, considered the merits of the case and then rendered the decision that should have been rendered by the inferior tribunal. This Court should accept review based on RAP 13.4(b)(3) and (4), due to the significant question of law under the Constitution and the substantial public interest involved in these matters at bar.

## F. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### 1. THE PLAIN LANGUAGE INTERPRETATION OF THE APPLICABLE STATUTES AND THE EXPLICIT LANGUAGE OF THE RELEVANT CASE LAW CLEARLY SUPPORT THE COURT ACCEPTING A WRIT OF REVIEW TO CORRECT AN ERRONEOUS DECISION BY AN INFERIOR TRIBUNAL AND TO RENDER THE DECISION THAT SHOULD HAVE BEEN RENDERED BY THAT LOWER TRIBUNAL.

Respondent repeatedly indicated throughout these proceedings that Mr. Dudgeon asked the court to do something it is precluded by law from doing. This is not the case. Mr. Dudgeon is not suggesting that the court should interfere with any co-equal branch of the government, i.e. the Sheriff's Department, in the performance of its general duties, either to take general control of Respondent's business or of its general course of conduct. *Walker v. Munro*, 124 Wn.2d 402, 407-410, 879 P.2d 920 (1994) (quoting *State ex rel. Taylor v. Lawlor*, 2 Wn.2d 488, 490, 98 P.2d 658 (1940); *Vangor v. Munro*, 115 Wn.2d 536, 543, 798 P.2d 1151 (1990).

Mr. Dudgeon did not attempt to suggest to the court that it should substitute its judgment for that of the lower tribunal, the Sheriff's Office, by directing or influencing a decision by that

office on a matter that was pending. Mr. Dudgeon petitioned the court to correct an erroneous and extremely injurious decision that had already been made and which was wreaking great impairment on Mr. Dudgeon's fundamental right to his pursuit of happiness and which denied him meaningful due process and equal protection (CP 2, 3, 9, 14, RP 11).

Seeking relief through the Writ of Review under RCW 7.16.040 and the well established relevant case law is the only avenue available to Mr. Dudgeon to seek redress of the great injury being done to him.

"The assignment of a risk level classification to a sex offender under RCW 4.24.550 and RCW 72.09.345 is a quasi-judicial function that is subject to judicial review by means of a writ of review under RCW 7.16.040.". *In re Det. Of Enright*, 131 WA.App. 706, 708(2006).

"Because the act of classifying Mr. Enright as a level III offender resembles a court function, the ESRC and the law enforcement agency participated in a quasi-judicial function that may be challenged by a writ of certiorari under RCW 71.16.040.". Id at 716.

RCW 7.16.040 authorizes a Writ of Review to "correct any erroneous or void proceeding" engaged in by "an inferior tribunal, board or officer exercising judicial functions,". RCW 7.16.040.

In drafting the language of RCW 7.16.040, had the Legislature intended that the only interpretation of the language in the statute "...to correct any erroneous or void proceeding..." meant the courts could only remand the petition back to the inferior tribunal for a "do over", then that language would have been included in the statute. It wasn't. For good reason. In many cases, as is the case here, that limited course of action could not result in a fair and reasonable resolution to the problem.

For Mr. Dudgeon to have redrafted and resubmitted his Petition For Writ Of Certiorari requesting that the court find the lower tribunal's decision to be an erroneous one and to send it back to the lower office for reconsideration (RP 15) would have been an exercise in futility. The Sheriff's office, through its designated representative, had already made its official position quite clear – that it would exercise no discerning discretion in deciding Mr. Dudgeon's risk level, consider none of the substantial evidence proffered by Mr. Dudgeon supporting his claim that he should be labeled no higher than a risk level I, would rely solely on the input from the ESRC which information was rendered moot in any case by the State's own expert, and would never change Mr. Dudgeon's risk level no matter the circumstances, substantial evidence proffered or time lapsed in the future (CP 4, 6, 7, 74, 80, 81, RP 5, 6).

To have had the matter remanded to the Sheriff's office for reconsideration, therefore, would have foreclosed Mr. Dudgeon's avenue for redress as surely as the granting of Respondent's CR 12(b)(6) motion did. As stated in the established case law, to afford meaningful due process "...there must be a balancing analysis.". *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed. 2d 287.

Mr. Dudgeon is not challenging the RCW 4.24.550 itself, nor the Sheriff's right to assign risk levels under its auspices. Mr. Dudgeon, under RCW 7.16.040 and the well established explicitly clear case law, is challenging the punitive "tunnel vision" exercised by the Sheriff's representative in arbitrarily and capriciously assigning the highest risk level possible to Mr. Dudgeon without even considering any of the abundant substantial evidence Mr. Dudgeon proffered supporting his being assigned as a risk level I, and relying instead solely on information stale by many years which had been rendered moot as well. "...plaintiff did not

challenge the governing ordinance, but only the manner of its application...", "...thus, plaintiff's claim for damages did not arise from the invidious or irrational enforcement of an invalid ordinance, but from the manner of enforcement of a valid ordinance.". *Lutheran Day Care v. Snohomish County*, 119 Wash.2d 91, 112, 829 P.2d 746 (1992).

The Fourth Amendment protection provides that a finding of probable cause must be based on facts that are not stale and thus lacking in probative impact. In this case the sole source information upon which the Respondent based its decision to classify Mr. Dudgeon as a risk level III was not only stale by several years, but had been rendered moot by the State's own actions. The Court of Appeals at Footnote 4 of its findings stated "...we note that the Sheriff's office risk level classification here does not appear arbitrary and capricious or unsupported by substantial evidence.". This begs the question: what substantial evidence did the Court refer to that wasn't several years stale and rendered to be moot in any case? None was presented at trial.

The remedy needed and justified here is for the court to realistically correct that injurious, erroneous decision by the Sheriff's office as the plain language or RCW 7.16.040 and the relevant case law clearly authorizes it to do so. This would bring to a close the unjust injury being inflicted upon Mr. Dudgeon, his home life and family due to the obloquy, threats and harassment, possibly even deadly, being aimed at him because he is labeled as an undeserved risk level above the appropriate, supportable level I. This was addressed fully in Mr. Dudgeon's petition (CP 5, 6, 12, 13).

Precedent in matters of this nature was established by this Court over a century ago. "...by virtue of a writ of review... the office of such writ is only to enter the judgment which should have been rendered by the lower tribunal." And "But we think the undisputed rule of law

is that the office of a writ of review is to enforce the judgment which should have been rendered by the lower tribunal.". *Bringgold v. Spokane*, 19 Wash. 333, 336, 53 P.368 (1898). Other following cases reflect the same opinion. "A writ of review presupposes that, if an error has been made by an inferior tribunal, a reviewing court can adjudge its correction, and that the matter before it shall proceed to final determination according to law.". *State v. Mead*, 100 P. 1033 (1909).

"Findings of superior court in certiorari proceedings to review determination of state superintendant of public instruction were based upon written record of administrative proceedings, which was before reviewing court in its entirety, and hence such findings were not binding upon reviewing court which could disregard such findings and determine merits of questions raised in superior court. RCW 7.16.120, 28.88 020/030/070.". *Appeal of Black*, 47 Wash. 2d 42, 287 P.2d 96 (1955).

"Given the function of a writ of certiorari is to secure the rendition of 'the judgment which should have been rendered by the lower tribunal,'...". *Punton v. City of Seattle Public Safety Com'n*, 32 Wash.App. 959, 970, 650 P.2d 1138 (1982).

"Special appellate function of superior court reviewing propriety of administrative action necessarily limits the extent of the court's jurisdiction to extent of rendering the judgment that should have been rendered by lower tribunal.". *Chaussee v. Snohomish County Council*, 38 Wash. App. 630, 689 P.2d 1084 (1984).

The plain language interpretation of the controlling statute and the explicit language of the cited relevant case law make it abundantly clear that the court can correct an erroneous, arbitrary and capricious decision by a lower tribunal by rendering the decision that should have

been rendered by that lower tribunal in consideration of the substantial evidence before the court. The court may find the lower tribunal's decision to be so egregious as to be arbitrary and capricious, but such a finding is not necessary for the court to grant relief. *Hayes v. City of Seattle*, 131 Wash. 2d 706, 934 P.2d 1179 (1997).

The superior court's dismissal of Mr. Dudgeon's Petition For Writ Of Certiorari, unheard, forecloses access to the avenue of redress that the statutory and established case law provide and to which Mr. Dudgeon is entitled. As *Halvorson* confirms, "...the motion to dismiss, based on failure of complaint and opening statement to state a claim upon which relief can be granted, can be granted only where it is clear beyond a doubt from reading the complaint, hearing the opening statement, and considering offers of proof that plaintiff cannot prove facts which would entitle them to relief. *Halvorson v. Birchfield Boiler, Inc.*, 76 Wash.2d 759, 458 P.2d 897 (1969).

"Motions to dismiss pursuant to CR 12(b)(6) are sparingly granted; it must appear beyond doubt that the plaintiff can prove no set of facts consistent with the complaint which would entitle them to relief. *Halvorson v. Dahl*, 89 Wn.2d 673, 574 P.2d 1190 (1978).". *Collins v. Lomas & Nettleton Co.*, 29 Wash.App. 415, 628 P.2d 855 (Div I 1981).

"The motion should be granted 'sparingly and with caution in order to make certain that plaintiff's not improperly denied a right to have his claim adjudicated on the merits'.". *Fondren v. Klickitat County*, 79 Wash.App. 850, 905 P.2d 928, n.2, 3 (DIV III 1995).

The stated reliance by the Sheriff's representative on the sole source of information as provided by the ESRC – which was stale by several years and which had been rendered moot by the state's own actions – to classify Mr. Dudgeon as a risk level III (CP 4, 6, 7, 74, 80, 81) and

the unjustified granting of the state's CR 12 (b)(6) motion (CP 90, 91) without reviewing the substantial relevant evidence Mr. Dudgeon proffered supporting his claim of deserving to be classified no higher than a risk level I (CP 23-66), subjects Mr. Dudgeon to the unjustified continued profound impairment to his pursuit of happiness and sense of well being and denies him meaningful due process and equal protections (CP 5, 6, 12, 13, 76-79), cited supra.

The statute controlling the level of risk to be assigned, RCW 72.09.345, states that "The Committee shall classify as risk level I those sex offenders whose risk assessment indicates a low risk of reoffense within the community at large.". This Court has established that the use of "shall" is mandatory language. Accord: *Rios v. Dept. of Labor and Industries*, 145 Wn.2d 453, 501 n.11, 39 P.3d 761 (2002).

By not reviewing the substantial evidence Mr. Dudgeon presented supporting assigning him a risk level of I and relying instead exclusively on the stale, moot information provided by the ESRC, the arbitrary decision to classify Mr. Dudgeon as a risk level III is wholly without justification and violates his fundamental right to the pursuit of happiness and his meaningful due process and equal protection rights (supra) that are guaranteed to any citizen before the state takes action that severely impairs the individual's well being. Mr. Dudgeon's rights under the Eighth Amendment were also impinged. "...failure to review mitigating evidence would violate the Eighth Amendment to the United States Constitution unless tactical reasons existed for presenting no mitigating evidence.". *State v. Sagastegui*, 135 Wash.2d 67, 954 P.2d 1311 (1998). Mr. Dudgeon presented substantial, current, relevant evidence supporting his claim, all of which the Sheriff's representative refused to review or discuss. The superior court was empowered to hear Mr. Dudgeon's petition and, if the court felt it was indeed a valid showing of arbitrariness

on the part of the sheriff's representative, to render the decision that should have been rendered by that lower office based on the court's consideration of the merits of the case.

2. THE COURT SHOULD HAVE WEIGHED THE ABUNDANCE OF CURRENT, RELEVANT, SUBSTANTIAL EVIDENCE SUPPORTING MR. DUDGEON BEING CLASSIFIED AS A RISK LEVEL I, AGAINST THE LACK OF ANY SUBSTANTIAL EVIDENCE SUPPORTING THE ASSIGNMENT OF A RISK LEVEL III TO MR. DUDGEON AND THEN RENDERED THE DECISION BASED ON THOSE MERITS OF THE CASE.

"The Washington Supreme Court has held that 'a public agency must have some evidence of an offender's future dangerousness, likelihood of reoffense, or threat to the community, to justify disclosure to the public in a given case.'". *Russell v. Gregoire*, 124 F.3d 1079, 1082 (9th CIR 1997). Risk level classification and disclosure to the public are controlled by RCW 72.09.345 and RCW 4.24.550. "RCW 4.24.550 itself provides neither standards nor definitions to guide law enforcement agencies in determining an offender's classification.". *State v. Ramos*, 149 Wash. App. 266, 202 P.3d 383 (Wash. App. Div. 2, 2009). The agencies are thus given wide latitude in assigning risk levels and disclosing to the public. This does not go so far, however, as to permit arbitrary assignment or risk levels II or III with out the "...evidence of an offender's future dangerousness, likelihood of reoffense or threat to the community to justify disclosure to the public in a given case." *Russell v. Gregoire*, 124 F.3d 1079, 1082 (9th CIR 1997).

This is exactly what happened in this instant case. The policy of the Respondent as set forth by its representative, Detective Dillard, was to accept a sole source of information – that provided by the ESRC – as the only justification for permanently labeling Mr. Dudgeon as a risk

level III. That stale information was based on data found in the WA SORL[1] prepared on Mr. Dudgeon over ten years prior by an individual with no academic credentials to adequately prepare that person to do so. That document, as it applied to Mr. Dudgeon, was subsequently thoroughly professionally discredited by a nationally recognized eminently qualified clinical psychologist (CP 7, 8, 60-64).

In any event, it was stated in open court (RP 5) that the ESRC had assigned a risk level I to Mr. Dudgeon on two occasions just prior to his release from the SCC. That decision was arbitrarily and precipitously changed to level III at the last moment, apparently when it went before the ESRC chairperson, Kim Acker, for final approval. She stated as her reason for the complete reversal that Mr. Dudgeon had not participated in the state run "treatment" program while at the SCC. As stated earlier, this supposition of the need for "treatment", ostensibly in the opinion of Acker, was rendered completely moot by the state's own actions in finding that Mr. Dudgeon did not suffer from paraphilia (didn't meet commitment criteria) and was not a danger to society (negligible risk to offend), ergo, there was nothing in Mr. Dudgeon's psychological profile triggering the need for "treatment".

Subsequent to his unconditional release from the SCC Mr. Dudgeon voluntarily underwent even more psychological evaluations while meeting with Dr. Mark Whitehill, an accredited clinical psychologist with decades of practiced and proven professional expertise in the relevant scientific field. Dr. Whitehill evaluated Mr. Dudgeon and his wife, independently and together, the Dudgeon home environment, their relationship, plan for the future and other family relationships. Dr. Whitehill concluded that Mr. Dudgeon had no treatment criteria

[1] The Washington Sex Offender Risk Level document, (WA SORL) is no longer in use in Washington State.

needing attention and that Mr. Dudgeon should be considered to be a level I risk potential, and if he were to be classified as a level I – which would facilitate his return to his home – his risk potential would be negligible under that home environment (CP 57, 58).

In adopting the sole source input from the ESRC – based on stale ill-founded information which has been rendered moot in any case – as the only "evidence" he would consider in assigning a risk level III to Mr. Dudgeon and deeming it to be permanent, Respondent precluded Mr. Dudgeon from ever receiving a fair and objective hearing by that agency regarding risk level classification regardless of what substantial evidence Mr. Dudgeon could proffer in his favor.

This runs blatantly contra to the well established tenets of the law requiring that a realistic and objective hearing be provided before a deprivation of rights takes place. *Fuentes v. Shevin*, 407 US. 67, 81, 92 S.Ct. 1983-84 (1972), and that the determination of facts be based on substantial evidence. In certiorari proceedings, "...issues of fact must be supported by substantial evidence. *St.v. Pierce County*, 65 Wash.App. at 619, 829 P.2d 217 (1992).". *North South Airpark Ass'n. v. Haagen*, 87 Wash. App. 765, 769, 942 P.2d 1068 (1997). "On appeal from an administrative decision reviewed by writ of certiorari, this court must determine de novo whether the Board's decision was supported by substantial evidence.". *Dillon v. Seattle Police Pension Bd.*, 82 Wash. App. 168, 170, 916 P.2d 956 (1996); "...a reviewing court must 'hold unlawful and set aside agency actions, findings and conclusions found to be ... unsupported by substantial evidence'.". *N.L.R.B v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 110 S.Ct. 1542 (U.S. 1990).

In view of the arbitrary administrative action and abuse of discretionary power evidenced by this refusal by the classifying agency to review or discuss the substantial, relevant and current

evidence Mr. Dudgeon proffered supporting his claim to be properly classified as a risk level I and stating that that agency would keep Mr. Dudgeon classified as a level III risk from then on, leaves Mr. Dudgeon with no recourse but to seek the safeguard provided by the courts to prevent the continued profound adverse impact on his fundamental right to the pursuit of happiness and to his meaningful due process and equal protection rights as previously cited. Brosius instructs that when a designated agency, i.e. the sheriff in the sex offender's county of release, is to accomplish the assignment of a level of risk to offender, procedural safeguards must exist to control arbitrary administrative action and abuse of discretionary power. *State v. Brosius*, 154 WA. App. 714, 225 P.3d 1049 (WA. APP. DIV II, 2010).

## G. CONCLUSION

In consideration of the extremely adverse impact on Petitioner's right to his pursuit of happiness and on his meaningful due process and equal protection rights, this Court should accept this petition for review, reverse the findings by the Court of Appeals and remand the case back to the Superior Court with instructions to consider the relevant, substantial factual evidence proffered and then render its decision accordingly.

Sworn to and respectfully submitted this 19th day of February, 2015.

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# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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| CECIL DUDGEON,<br><br>Appellant,<br><br>v.<br><br>STEVE BOYER, SHERIFF OF KITSAP COUNTY,<br><br>Respondent. | No. 46032-7-II<br><br>UNPUBLISHED OPINION |

WORSWICK, P.J. — Cecil Dudgeon filed a petition for writ of certiorari requesting that the superior court direct the Kitsap County Sheriff's Department to modify his sex offender risk classification from level III to level I. The superior court granted Kitsap County Sheriff Steve Boyer's CR 12(b)(6) motion to dismiss Dudgeon's petition for failure to state a claim upon which relief could be granted. Dudgeon appeals from the superior court's dismissal order. We affirm.

## FACTS[1]

After his release from civil commitment as a sexually violent predator, Dudgeon reported to the Kitsap County Sheriff's Office to register as a sex offender as required under RCW

[1] Because we are reviewing the trial court's grant of Boyer's CR 12(b)(6) motion to dismiss, the following facts are based on the allegations contained in Dudgeon's petition, which allegations we accept as true for the purpose of reviewing his appeal. *See Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998) (When reviewing a trial court's order of dismissal under CR 12(b)(6), the appellate court "accept[s] as true the allegations in a plaintiff's complaint and any reasonable inferences therein.")

A

9A.44.130. Dudgeon met with Detective Doug Dillard, the Kitsap County Community Sex Offender Registration Officer. Dudgeon presented several documents to Dillard, which documents Dudgeon claimed to show that he should be classified as a low risk level I sex offender. Dillard refused to consider Dudgeon's documents, stating that he was adopting the end of sentence review committee's classification[2] of Dudgeon as a high risk level III sex offender. The Kitsap County Sheriff's Office classified Dudgeon as a level III sex offender on February 12, 2013.

On December 17, 2013, Dudgeon filed petition for writ of certiorari, which petition requested the superior court to "direct[] the Kitsap County Sheriff's Department . . . to modify [his] level III risk classification." Clerk's Papers (CP) at 2. Boyer filed a CR 12(b)(6) motion to dismiss Dudgeon's petition. Boyer's motion asserted that the court lacked authority to direct a particular result in the discretionary risk level classification decision of the sheriff's office and, thus, must dismiss Dudgeon's petition for failing to state a claim upon which relief could be granted. The superior court held a hearing on Boyer's motion to dismiss on February 27, 2014.

At the hearing, the superior court asked Boyer what relief would be available to Dudgeon if the sheriff's office acted arbitrarily and capriciously when classifying him as a level III sex offender. Boyer responded that the court could invalidate the sheriff's classification decision and

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[2] RCW 72.09.345 requires the end of sentence review committee to submit to local law enforcement agencies a risk level classification for sex offenders that are being released from confinement. When classifying a risk level for an offender, local law enforcement agencies are required to review the committee's risk level classification. RCW 4.24.550(6). And if the local law enforcement agency "classifies an offender differently than the offender is classified by the end of sentence review committee . . . the law enforcement agency . . . shall notify the end of sentence review committee . . . and submit its reasons supporting the change in classification." RCW 4.24.550(10).

send the case back to the sheriff's office for a new decision, but that it could not direct the sheriff's office to reach a particular result. Dudgeon argued that the trial court had authority to modify his sex offender risk level classification under RCW 7.16.040 and RCW 9A.44.140 if it determined that the sheriff's office's classification was not supported by substantial evidence. The trial court orally ruled:

> Well, I think you're both right. I think that Mr. Dudgeon does have the opportunity to petition [the] Superior Court through a writ of certiorari to ask whether or not—or for the Court to make a determination as to whether or not the Sheriff's Office's designation of a level three was arbitrary and capricious, so I think he is entitled to, under [*In re Det. of*] *Enright*, [131 Wn. App. 706, 128 P.3d 1266 (2006),] seek that relief.
>
> But, likewise, I agree with [Boyer's counsel]: I don't believe that I have the ability, authority, or power to redesignate Mr. Dudgeon. I think all I can do, if I was inclined to do it, if I was convinced to do it, would be to send Mr. Dudgeon and his case back to the Sheriff's Office for another evaluation, if I were to determine that the first evaluation was arbitrary and capricious.
>
> So, Mr. Dudgeon, I guess what I'm telling you is that you're asking that I somehow engage in a fact finding hearing, and then ultimately you're asking I reevaluate you, and you're asking that I place you as a level one because you believe that's the more appropriate assignment. And I don't believe I have that authority or power. I think all I can do is determine whether or not the Sheriff's Office acted arbitrarily and capriciously in determining that you were a level three.
>
> So, I guess, I'm granting the motion to dismiss as it relates to the request for reclassification. I'm denying the motion as [it] relates to—if you want to make a request as to whether or not the Sheriff's Department's determination was arbitrary and capricious. And in your response, you indicate that you do find that—you believe that it was error, and that the level three assignment was unsupported by substantial evidence.
>
> So you're in one part arguing, I think to a certain extent, the Sheriff's Office was arbitrary and capricious in its determination; but then you go on to ask me to reclassify you, and that's not a power that I believe I have under the statute.

Report of Proceedings at 12-14. That same day, the superior court entered its written order dismissing Dudgeon's petition under CR 12(b)(6). Dudgeon appeals.

ANALYSIS

Dudgeon contends that the superior court erred when it dismissed his petition for writ of certiorari under CR 12(b)(6) because the superior court had authority under RCW 7.16.040 to direct the Sheriff's Office to classify him as a level I sex offender. We disagree and affirm the superior court's order dismissing Dudgeon's petition for writ of certiorari.

We review de novo a trial court's ruling on a CR 12(b)(6) motion for failure to state a claim upon which relief can be granted. *Reid v. Pierce County*, 136 Wn.2d 195, 200-201, 961 P.2d 333 (1998). When reviewing whether the trial court's dismissal order was proper under CR 12(b)(6), we assume that the factual allegations contained within the plaintiff's complaint are true, as well as any reasonable inferences therein. *Reid*, 136 Wn.2d at 201. We will affirm a trial court's CR 12(b)(6) dismissal order "only if it appears beyond a reasonable doubt that no facts exist that would justify recovery." *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994).

Chapter 7.16 RCW controls the procedures for a court's consideration of a petitioner's writ of certiorari. RCW 7.16.040 provides:

> A writ of review[3] shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.

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[3] RCW 7.16.030 states, "The writ of certiorari may be denominated the writ of review."

Dudgeon argues that RCW 7.16.040 provided the superior court with statutory authority "to correct" the sheriff's office's risk classification decision by directing the sheriff's office to classify him as a level I sex offender. He thus contends that the trial court erred when it dismissed his petition under CR 12(b)(6). He is incorrect.

When deciding whether to grant a petition for writ of certiorari, a superior court's authority is limited to a determination of the following five questions:

> (1) Whether the body or officer had jurisdiction of the subject matter of the determination under review.
>
> (2) Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination.
>
> (3) Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator.
>
> (4) Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination.
>
> (5) Whether the factual determinations were supported by substantial evidence.

RCW 7.16.120. Dudgeon's petition for writ of certiorari, however, requested relief beyond that authorized under RCW 7.16.120, because it sought a factual determination from the superior court that he should be classified as a level I sex offender.

In *Andrew v. King County*, 21 Wn. App. 566, 574-75, 586 P.2d 509 (1978), Division One of this court held that a superior court exceeded its scope of review under RCW 7.16.120 when it made a factual determination that was within the discretionary decision-making authority of the inferior tribunal being reviewed. In so holding, the *Andrew* court reasoned:

> The Superior Court cannot . . . determine from the testimony and evidence what the facts were. Nor can we.
>
> "It seems clear that our statutory certiorari and review proceeding contemplates a review in the courts of the proceeding had in an inferior tribunal only upon the record of such proceeding made therein, and that

> such review is in no sense a trial *de novo* of the questions determined by the inferior tribunal sought to be reviewed."

21 Wn. App. at 574 (quoting *State ex. Rel. Spokane & I.E.R. Co. v. State Board of Equalization*, 75 Wash. 90, 134 P. 695 (1913)); *see also Seattle Police Department v. Werner*, 163 Wn. App. 899, 907, 261 P.3d 218 (2011) (When reviewing an inferior tribunal's decision under RCW 7.16.120, "an appellate court is not to substitute its own judgment for that of the fact finder."). The *Andrew* court thus held that, under RCW 7.16.120, the only proper remedy from a successful writ of certiorari was to remand to the inferior tribunal for a new proceeding. 21 Wn. App. 576.

Here, RCW 4.24.550(6)(b) vested the Kitsap County Sheriff's Office with statutory authority to "assign risk level classifications to all offenders about whom information will be disseminated." In assigning a risk level classification, the Kitsap County Sheriff's Office exercises a quasi-judicial function and has "significant discretion in making that decision." *In re Enright*, 131 Wn. App. at 715. Thus, when a court reviews a classification decision in a petition for writ of certiorari and determines that substantial evidence did not support the decision under RCW 7.16.120(5), the only proper remedy is to vacate the classification decision and to remand to the local law enforcement agency for a new classification decision. *Andrew*, 21 Wn. App. 576; *Werner*, 163 Wn. App. at 907.

Accordingly, accepting the truth of Dudgeon's allegations, and even assuming that such allegations support a conclusion that his classification as a level III sex offender was not

supported by substantial evidence,[4] the superior court's dismissal of his petition was nonetheless proper because Dudgeon sought a remedy that was unavailable to him in a petition for writ of certiorari. We therefore affirm the superior court's grant of Boyer's CR 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, P.J.

We concur:

Melnick, J.

Sutton, J.

[4] Although we need not reach the issue because we hold that the superior court's dismissal of Dudgeon's petition under CR 12(b)(6) was proper in light of Dudgeon's request for a remedy that was unavailable to him, we note that the sheriff's office's risk level classification here does not appear arbitrary and capricious or unsupported by substantial evidence. Under RCW 4.24.550(6), the sheriff's office was required to consider the end of sentence review committee's risk level classification when assigning a risk level classification to Dudgeon. Dudgeon previously petitioned the superior court to direct the end of sentence review committee to rescind its classification decision, which petition the superior court denied on February 21, 2013. The February 21 superior court order denying Dudgeon's prior petition, the committee's classification decision, and the evidence relied upon by the committee in reaching that decision are not reviewable in this appeal from the superior court's order dismissing Dudgeon's December 17, 2013 petition.

**NO. 46032-7-II**

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CECIL DUDGEON,
Appellant,

v.

STEVE BOYER, SHERIFF OF KITSAP COUNTY
Respondent.

# RESPONDENT'S OPENING BRIEF

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was made by the ESCR. The Sheriff's Office must only explain its classification when the classification differs from the one provided by the ESGR. RCW 4.24.550(10). This shows that the classification made by the Kitsap County Sheriff's Office is sufficiently supported by competent proof and substantial evidence as a matter of law.

## V. CONCLUSION

For the reasons outlined above, Mr. Dudgeon simply was not entitled, and the superior court was not authorized to grant, the relief he requested in the certiorari proceeding—modification of his sex offense classification from a level III to a level I. This would involve more than a simple determination as to whether the Kitsap County Sheriff Office's level III designation is supported by substantial evidence and lawful, as permitted under RCW 7.16.120, but would require that the reviewing court initiate an investigation into the facts, weigh the credibility of expert reports, and enter findings of fact to determine Mr. Dudgeon's "proper" classification. This is beyond the scope of review permitted in a certiorari proceeding which is clearly outlined in RCW 7.16.120. As a matter of law, the superior court had no authority to grant Mr. Dudgeon's request. For this reason, this Court should affirm the superior court's dismissal of Mr. Dudgeon's writ of certiorari.

# RCW 4.24.550

(1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW 9A.44.128 or a kidnapping offense as defined by RCW 9A.44.128; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

(2) Except for the information specifically required under subsection (5) of this section, the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Except for the information specifically required under subsection (5) of this section, local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and, if the offender is a student, the public or private school regulated under Title 28A RCW or chapter 72.40 RCW which the offender is attending, or planning to attend. The agency may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, public libraries, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; (c) for offenders classified as risk level III, the agency may also disclose relevant, necessary, and accurate information to the public at large; and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. Unless the information is posted on the web site described in subsection (5) of this section, this list shall be maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

C

(5)(a) When funded by federal grants or other sources, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered kidnapping and sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders, level I registered sex offenders during the time they are out of compliance with registration requirements under RCW 9A.44.130, and all registered kidnapping offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, and address by hundred block.

(ii) For level II offenders, and level I sex offenders during the time they are out of compliance with registration requirements under RCW 9A.44.130, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(iii) For kidnapping offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents within a reasonable period of time after the offender registers with the agency. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

## RCW 7.16.040

A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.

RCW 72.09.345

(1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders.

(3) The committee shall assess, on a case-by-case basis, the public risk posed by:

(a) Offenders preparing for release from confinement for a sex offense or sexually violent offense committed on or after July 1, 1984;

(b) Sex offenders accepted from another state under a reciprocal agreement under the interstate corrections compact authorized in chapter 72.74 RCW;

(c) Juveniles preparing for release from confinement for a sex offense and releasing from the department of social and health services juvenile rehabilitation administration;

(d) Juveniles, following disposition, under the jurisdiction of a county juvenile court for a registerable sex offense; and

(e) Juveniles found to have committed a sex offense and accepted from another state under a reciprocal agreement under the interstate compact for juveniles authorized in chapter 13.24 RCW.

(4) Notwithstanding any other provision of law, the committee shall have access to all relevant records and information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

(5) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the offender's proposed release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

(6) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

(7) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

D

**IN CONGRESS, July 4, 1776.**

**The unanimous Declaration of the thirteen united States of America,**

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed

## PURSUIT OF HAPPINESS

"The right to the pursuit of happiness is one of the inherent, natural and inalienable rights, applicable to all citizens. As one for the purposes for which government is organized, such right is protected by its incorporation into various constitutions."

"...it is clear that it must comprise personal freedom, exemption from oppression or invidious discrimination... it also includes... the right to enjoy the domestic relations and the privileges of the family and home."

16A C.J.S CONSTLAW § 737, PURSUIT OF HAPPINESS

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

| | |
|---|---|
| CECIL DUDGEON,<br><br>Appellant,<br>v.<br><br>STEVE BOYER, SHERIFF OF KITSAP COUNTY,<br><br>Respondent. | Case No.: 13-2-02714-5<br>Court of Appeals Cause No.: 46032-7-II<br><br>DECLARATION OF SERVICE |

The undersigned hereby declares, under penalty of perjury under the laws of Washington State, that he deposited the below noted documents in the United States Mail, First Class Postage prepaid on the 19th day of February, 2015, to be sent to the following entities:

DEBORAH BOE, DEPUTY PROSECUTING ATTORNEY
KITSAP COUNTY PROSECUTOR'S OFFICE, CIVIL DIVISION
614 DIVISION STREET, MS 35A
PORT ORCHARD, WA 98366

COURT OF APPEALS
DIVISION II
950 BROADWAY STE 300
TACOMA, WA 98402

1) APPELLANT'S PETITION FOR REVIEW
2) CERTIFICATE OF MAILING

Signed 19th day of February, 2015 at Port Orchard Kitsap County

CECIL DUDGEON, APPELLANT, PRO SE



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