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SUPREME COURT  
STATE OF WASHINGTON  
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**Supreme Court No. 96908-6**  
COA No. 35686-8-III (consolidated w/35853-4-III)

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Plaintiff/Respondent

v.

CAMERON J. PETERSON,

Defendant/Petitioner.

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ANSWER TO PETITION FOR REVIEW

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## **I. IDENTITY OF RESPONDENT AND INTRODUCTION**

Respondent, State of Washington, was the plaintiff in the trial court and the respondent in the Court of Appeals.

In pursuit of collateral relief based upon a potential ineffective assistance of counsel claim, Peterson moved the trial court, on two separate occasions, claiming a right to compel a hospital to produce the victim's medical records. Those motions were denied.

Peterson requests this Court grant review under RAP 13.4(b)(3) and (4) without meeting his burden of identifying the substantial public interest necessary for review or what section of the Washington State Constitution is implicated. In addition, Peterson did not exhaust his available post-conviction remedies to obtain the medical records.

Specifically, Peterson failed to attempt process through RCW 70.02.060, the Uniform Health Care Information Act, which allows an attorney discovery of medical records if advance notice is provided to the patient and hospital and both are given an opportunity to seek a protective order. Peterson could have attempted process for the records on his own initiative under the statute for collateral relief, subpoenaed the records under the statute for a CrR 7.8(b) motion, or he could have requested the Court of Appeals remand his petition to the trial court for a reference hearing, where, upon a motion, reasonable discovery is permitted and,

again, Peterson could have followed the proper procedures under RCW 70.02.060 to compel production of the medical records for that hearing. He did not pursue any other avenues.

## **II. STATEMENT OF RELIEF SOUGHT**

Peterson filed a petition for review. Respondent seeks denial of Peterson's petition for review of the opinion issued by the Court of Appeals on December 18, 2018.

## **III. ISSUE PRESENTED**

Should this Court grant Peterson's petition for review if he pursued an "all-or-nothing" approach to obtain the victim's medical records post-conviction and did not exhaust all other available remedies better suited to accomplish the same task?

## **IV. STATEMENT OF THE CASE**

### *Procedural history.*

A jury convicted Peterson of second-degree assault. CP 7. The Court of Appeals, Division Three, affirmed the conviction by unpublished opinion. *State v. Peterson*, 197 Wn. App. 1010 (2016).

On July 12, 2017, Peterson filed a motion in the superior court for issuance of subpoena duces tecum pursuant to CrR 4.8, requesting the victim's medical records, nineteen months after the trial concluded. CP 36-56. The superior court denied the motion on October 20, 2017; the court

ruled that CrR 4.8 only applied to pre-trial matters. CP 83-86. Peterson filed a direct appeal on November 16, 2017, alleging the trial court erred by denying his motion. CP 87-88. On November 30, 2017, Peterson filed a motion for relief under CrR 7.8(b)(2), (3) and (5) in the superior court. The superior court transferred that motion to the Court of Appeals. The direct appeal and the PRP were consolidated.

#### **V. WHY REVIEW SHOULD NOT BE GRANTED**

In analyzing Peterson's petition for review it is important to note what the appellate decision did and did not decide. It did decide that Peterson's reliance upon CrR 4.8 was not well-taken as it does not establish a right or proper avenue to obtain post-conviction discovery. The decision did not decide that Peterson was prevented from obtaining or seeking to obtain these documents by other authorized means, as discussed below. Therefore, the appellate decision is limited in its breadth to its determination that CrR 4.8 does not grant a "right" to post-conviction and post-appeal cases.

Peterson has failed to satisfy his heavy burden under RAP 13.4(b) of demonstrating that the Court of Appeals' decision presents a significant question under the state constitution or an issue of substantial public interest. RAP 13.4(b)(3) and (4). Because the unique facts of this case are

controlled by extant law, no significant questions of constitutional law or substantial public interest are presented.

1. This case does not present an issue of significant public importance.

To obtain discretionary review in this Court, Peterson must establish the Court of Appeals' decision presents an issue of substantial public importance. RAP 13.4(b)(4). That rule states, in pertinent part:

b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: ... [i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

*Id.*

Examples of “substantial public interest” include an issue that “immediately affects significant segments of the population, and has a direct bearing on commerce, finance, labor, industry, or agriculture,” the Court “will take a ‘less rigid and more liberal’ approach to standing.” *State v. Watson*, 155 Wn.2d 574, 578, 122 P.3d 903 (2005). Likewise, even if an issue is moot, if an issue “presents a question of a public nature which is likely to recur, and it is desirable to provide an authoritative determination for the future guidance of public officials.” *Id.* at 478.

Other than by bare allegation, Peterson fails to identify any past, present, or future criminal cases in the State of Washington which have been or will be impacted by the Court of Appeals' unpublished decision.

Peterson's unquantified need for future guidance is unwarranted; there is not a likelihood of reoccurrence simply because Peterson failed to pursue several other readily available mechanisms to obtain the victim's medical records (as discussed below).

2. This case does not present a significant question of law under the Washington State Constitution.

Alternatively, Peterson must establish the Court of Appeals decision raises a significant question of law under Washington State constitution.

RAP 13.4(b)(3). That provision states, in pertinent part:

b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: ... [i]f a significant question of law under the Constitution of the State of Washington or of the United States<sup>1</sup> is involved.

*Id.*

Peterson posits the decision below raises a significant question under the Washington State Constitution regarding post-conviction relief. However, he fails to identify which section of the state constitution, if any, is implicated, let alone demonstrate a "significant question of law" is presented. Notwithstanding, Peterson had available post-conviction avenues which he could have pursued to obtain the victim's medical records regarding his allegation of ineffective assistance of counsel.

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<sup>1</sup> Peterson does not allege any violation of the federal constitution.



3. Post-conviction alternatives to obtain medical records.

On two separate occasions, Peterson took an intransigent approach under CrR 4.8 when he moved the superior court to compel a subpoena duces tecum for the victim's medical records, in pursuit of his ineffective assistance of counsel claim. On July 17, 2017, he moved the superior court to issue a subpoena duces tecum to Sacred Heart Medical Center for the victim's medical records. The superior court denied that motion finding that CrR 4.8 applies to pretrial discovery actions. Shortly thereafter, Peterson again moved the superior court to issue a subpoena duces tecum, for the same medical records, and also moved the court for relief from judgment under CrR 7.8(b)(2), (3) and (5) on the condition that the court order production of the medical records. In his CrR 7.8 motion, Peterson proffered a nominal argument that he received ineffective assistance of counsel asserting his trial counsel failed to obtain the medical records.<sup>2</sup> The superior court transferred that motion to the Court of Appeals as a personal restraint petition.

Peterson faults the Court of Appeals, stating:

Here, by requiring Peterson to present the alleged victim's actual medical records, the Court of Appeals essentially

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<sup>2</sup> Strikingly, Peterson has not produced an affidavit from his trial counsel regarding whether or not his counsel obtained the victim's medical records or assessed their viability for trial. Peterson's claim that his trial counsel did not obtain the victim's medical records is not supported by the record.

imposed as an initial burden the requirement of showing actual entitlement to relief, not simply the likelihood or potential for relief. As the Court of Appeals recognized, it is impossible for Peterson to demonstrate entitlement to relief without the actual records, which according to the Court of Appeals, he has no right to obtain through a court issued subpoena, even though he cannot get the records without such a subpoena.

Appellant's Br. at 7.

What Peterson fails to address or acknowledge, outside of the parameters of his "all-or-nothing" procedural pursuit of the victim's medical records by a subpoena duces tecum under CrR 4.8, is that he did not use an available, statutorily authorized procedure for obtaining those medical records. Peterson's lawyer could have attempted process through RCW 70.02.060. That statute, the Uniform Health Information Act,<sup>3</sup>

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<sup>3</sup> That statute states:

(1) Before service of a discovery request or compulsory process on a health care provider for health care information, an attorney shall provide advance notice to the health care provider and the patient or the patient's attorney involved through service of process or first-class mail, indicating the health care provider from whom the information is sought, what health care information is sought, and the date by which a protective order must be obtained to prevent the health care provider from complying. Such date shall give the patient and the health care provider adequate time to seek a protective order, but in no event be less than fourteen days since the date of service or delivery to the patient and the health care provider of the foregoing. Thereafter the request for discovery or compulsory process shall be served on the health care provider.

(2) Without the written consent of the patient, the health care provider may not disclose the health care information sought under subsection (1) of this section if the requestor has not complied with the requirements of subsection (1) of this section. *In the absence of a protective order issued by a court of competent jurisdiction forbidding compliance, the health*

provides that an attorney seeking health care information from a health care provider per a discovery request must give advance notice of at least 14 days to both the health care provider and the patient so either may obtain a “protective order.” The health care provider cannot provide the requested information without the written consent of the patient unless the attorney requesting the information has complied with the advance notice requirements. RCW 70.02.060(2). It is apparent that the statute requires a health care provider provide the requested records unless a court modifies or precludes the hospital from doing so.

Peterson has not provided any affidavit or documentation that he attempted to comply with or conformed to the requirements of RCW 70.02.060, in advance of his request to the trial court to order a subpoena duces tecum for the victim’s medical records. Peterson’s unbending tactical approach of exclusively relying on CrR 4.8 as his authority to compel the superior court to order medical documents avoided

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*care provider shall disclose the information in accordance with this chapter.* In the case of compliance, the request for discovery or compulsory process shall be made a part of the patient record.

(3) Production of health care information under this section, in and of itself, does not constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

RCW 70.02.060 (emphasis added).

the procedural requirements of RCW 70.02.060, disallowing the hospital and Zielke the ability to be heard and potentially quash the subpoena duces tecum and/or limit its potential use, including the redistribution of Zielke's protected medical records to third parties. Peterson's procedural maneuver also excluded Zielke and/or the hospital from moving the trial court to conduct an in-camera review of the requested medical records to the extent necessary for Peterson's motion. *See* CrR 4.7(h)(6).

As with Peterson's other available remedies and in pursuit of his inflexible tactic to compel the medical records by a subpoena duces tecum under CrR 4.8, he chose not to request the Court of Appeals order a reference hearing regarding his ineffective assistance of counsel claim, to determine the existence of the medical records and/or their contents. If a reference hearing had been granted, Peterson could have presumably followed RCW 70.02, and subpoenaed the victim's medical records for the reference hearing in an attempt to establish his ineffective assistance of counsel claim. It is unknown why he chose not to do so.

Having failed to use the appropriate statutory, compulsory mechanism to obtain the victim's medical records, Peterson cannot now complain that the Court of Appeals erred in denying a post-conviction discovery motion improperly made under CrR 4.8.

**VI. CONCLUSION**

For the reasons stated above, Respondent requests this Court deny the petitioner's request for review.

Respectfully submitted this 13 day of June 2019.

LAWRENCE H. HASKELL  
Prosecuting Attorney



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Larry Steinmetz #20635  
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Attorney for Respondent

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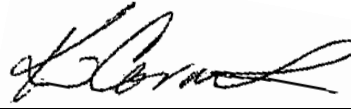
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on June 13, 2019, I e-mailed a copy of the Answer to Defendant's Petition for Review in this matter, pursuant to the parties' agreement, to:

Richard Wall  
rdwallps@comcast.net

6/13/2019  
(Date)

Spokane, WA  
(Place)

  
\_\_\_\_\_  
(Signature)

# SPOKANE COUNTY PROSECUTOR

June 13, 2019 - 2:25 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96908-6  
**Appellate Court Case Title:** State of Washington v. Cameron J. Peterson  
**Superior Court Case Number:** 15-1-01430-8

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