

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

NO. 98352-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STEPHEN P. DOWDNEY JR.,

Petitioner,

v.

JUDGE HON. A. HOWARD

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDING PARTY

The Snohomish County Prosecutor's Office, on behalf of Judge Hon. A. Howard, responds to the petition for review of the decision of the Court of Appeals no. 80309-3-I dismissing the appeal from an order of the Superior Court denying the appellant's writ of mandamus as frivolous and moot.

II. STATEMENT OF THE CASE

Stephen P. Dowdney filed a writ of mandamus in Snohomish County Superior Court seeking an order directing the Everett District Court to issue a formal order dismissing charges filed against him in that court. The Superior Court dismissed the writ as moot.

Dowdney then filed a notice of appeal from the order dismissing the writ. The Court of Appeals called for briefing on the question of whether Dowdney could appeal the order of the Superior Court as a matter of right and if so whether the appeal was frivolous or moot. The State conceded that Dowdney could appeal the order of the Superior Court as a matter of right, but that the appeal was both frivolous and moot. The State pointed out that the District Court docket reflected that the charges in that court had

already been dismissed. The Court of Appeals then dismissed the appeal as frivolous and moot. Appendix A.

While this matter was pending in the Court of Appeals Mr. Dowdney filed a motion in this Court to have him declared indigent. See case no. 97553-1. This Court denied the motion for expenditure of public funds on October 3, 2019. App. B.

Mr. Dowdney now seeks discretionary review of the order dismissing his appeal and he again asks the court to expend public funds by waiving the filing fee.

III. ARGUMENT

A. THE PETITION FAILS TO DEMONSTRATE ANY GROUNDS JUSTIFYING REVIEW.

A petition for review by the Supreme Court will be accepted only in limited circumstances. The petitioner must demonstrate that the issues he seeks to have reviewed involve (1) a decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) a decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) the issue raises a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be

determined by the Supreme Court. RAP 13.4(b). None of these grounds justify review.

This case involves a dispute between the petitioner and the District Court as to whether felony charges filed in that court were dismissed. The District Court docket indicates that the charges have been dismissed. And the State agrees, those charges were dismissed when the State filed a felony charge in Superior Court. See App. A.

The Court of Appeals dismissed the appeal from the order denying the writ of mandamus as frivolous and moot. An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal. Ensley v. Mollmann, 155 Wn. App. 744, 760, 230 P.3d 599, 607 (2010). There can be no real issue that the felony charges filed in District Court have been dismissed long ago and are no longer pending in that court.

An appeal is moot if the court can no longer provide effective relief. Matter of Perejo, 5 Wn. App. 2d 558, 570, 428 P.3d 130 (2018). The petitioner seeks dismissal of a charge that has already been dismissed. Nothing any higher court can do will make the

charges any more dismissed. The issue raised in this appeal is therefore moot.

The decision of the Court of Appeals is not in conflict with a decision of this court or a published opinion of the Court of Appeals. It does not present any constitutional issues, nor does it involve a issue of public interest that this court should decide. The petition should therefore be denied.


The request to waive the filing fee for this petition should also be denied. Although Mr. Dowdney is in prison, and very likely indigent, the issue that he raises is completely without merit. Mr. Dowdney refuses to accept that he has no pending charges in Everett District Court. The record is clearly to the contrary. The issue is wholly frivolous. The petitioner should not be excused from paying a filing fee when he petitions the court to review an issue that is so clearly without merit, and when the court has previously denied a similar request in this same case.

IV. CONCLUSION

For the foregoing reasons the petition for review and the motion to waive the filing fee should be denied.

Respectfully submitted on May 27, 2020.

ADAM CORNELL
Snohomish County Prosecuting Attorney

By: 
KATHLEEN WEBBER, WSBA #16040
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STEPHEN P. DOWDNEY, Jr.,

Petitioner,

v.

JUDGE HON A. HOWARD,

Respondent.

No. 98352-6

DECLARATION OF DOCUMENT
FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 27th day of May, 2020, 2019, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:


ANSWER TO PETITION FOR REVIEW

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and to the Petitioner, Pro Se:

Stephen P. Dowdney, Jr., DOC# 971036
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 27th day of May, 2020, at the Snohomish County Office.


Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

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September 25, 2019

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CASE #: 80309-3-1

Stephen P. Dowdney, Jr., Appellant v. Judge Hon. A. Howard, Respondent

Counsel:

The following ruling by Commissioner Masako Kanazawa of the Court was entered on September 25, 2019, regarding the court's motion to determine appealability:

On August 6, 2019, Stephen Dowdney, pro se, filed a notice of appeal from a July 18, 2019 superior court order that denied his petition for a writ of mandamus. Dowdney sought a writ of mandamus to compel a district court judge to issue a formal order of dismissal. By letter, the district court informed Dowdney that the matter was dismissed more than three years ago on April 1, 2016. The superior court denied a writ as "moot" because the State had already withdrawn the charges in the district court and refiled them in superior court. The district court indicated that the prosecutor's office regularly files a formal complaint in the district court as a precursor to filing charges in superior court. Dowdney seeks a "formal" order of dismissal from which to appeal.

By ruling of August 28, 2019, I noted that the appeal appears frivolous or moot. I directed the parties to address whether the appeal should be dismissed as frivolous or moot. Both parties filed a brief in response to my August 28 ruling.

RAP 18.9 permits an appellate court to dismiss a moot or frivolous appeal. "A case is moot when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief." Spokane Research & Defense Fund v. City of Spokane, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005). "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal." Advocates for Responsible Dev. v. Growth Mgmt. Hearings Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010).

Dowdney argues that his appeal is not frivolous because whether his case has been actually dismissed in district court is "in debate as a result of [the superior court's] dilatory actions." He argues that the issue is not moot because this Court could direct the entry of a formal dismissal order.

Even if there is any technical issue about the dismissal in the district court, the superior court concluded, and the State represents, that Dowdney's district court matter has been dismissed and no longer pending as of April 1, 2016. The State is bound by its representation. Even if a formal dismissal order was entered, Dowdney would not be aggrieved by the order and would have no standing to appeal. Any question Dowdney seeks to resolve is theoretical. I conclude that the appeal is moot and frivolous.

This case is dismissed.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

jh

THE SUPREME COURT OF WASHINGTON

STEPHEN P. DOWDNEY JR.,)	No. 97553-1
)	
Appellant,)	ORDER
)	
v.)	Court of Appeals
)	No. 80309-3-1
SNOHOMISH COUNTY DISTRICT COURT,)	
et al.,)	Snohomish County Superior Court
)	No. 19-2-06469-1
Respondents.)	
)	
)	
)	

Department I of the Court, composed of Chief Justice Fairhurst and Justices Johnson, Owens, Wiggins and Gordon McCloud, considered this matter at its October 2, 2019, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Appellant's motion for expenditure of public funds is denied.

DATED at Olympia, Washington, this 3rd day of October, 2019.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

SNOHOMISH COUNTY PROSECUTOR'S OFFICE

May 27, 2020 - 3:16 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98352-6
Appellate Court Case Title: Stephen P. Dowdney Jr. v. Judge Hon. A. Howard
Superior Court Case Number: 19-2-06469-1

The following documents have been uploaded:

- 983526_Answer_Reply_20200527151606SC332464_9387.pdf
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