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STATE OF WASHINGTON
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NO. 99637-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JASON CURTIS WEST,

Appellant.

APPEAL FROM THE COURT OF APPEALS, DIVISION I OF THE
STATE OF WASHINGTON
NO. 80325-5-I (1/25/2021)
reconsideration denied 3/11/2021

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

	Page
A. ISSUES PRESENTED.....	3
B. STATEMENT OF THE CASE.....	3
C. THE COURT OF APPEALS DECISION TO AFFIRM DISMISSAL OF WEST'S WRIT IS UNREMARKABLE.....	6
E. CONCLUSION.....	10

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Harris, 114 Wn.2d 419, 423, 789 P.2d 60 (1990)..... 5, fn.1

Commanda v. Cary, 143 Wn.2d 651, 655, 23 P.3d 1086 (2001)..... 6

City of Seattle v. Holifield, 170 Wn.2d 230, 240, 240 P.3d 1162 (2010)
..... 6

State v. Koerber, 85 Wn. App. 1, 4, 931 P.2d 904, 905 (1996), as amended
(Feb. 21, 1997)..... 7

State v. Garrett, 108 Wn. App. 1015 (2001)..... 7

State v. Taylor, 150 Wn.2d 599, 603, 80 P.3d 605 (2003) 7, 8

Statutes

Washington State:

Chapter 7.16 RCW3

RCW 7.16.040 4, 6

RCW 7.16.300 4, 6

Rules and Regulations

Washington State:

CrR 3.3 7

RAP 13.4..... 4, 7, 9

A. ISSUES PRESENTED

1. Whether the court of appeals erred in holding the State's CrR 8.3(a) motion to dismiss filed in superior court could not be considered through a writ of review or prohibition that was also filed in superior court and warrants review by this Court pursuant to RAP 13.4(b).

B. STATEMENT OF THE CASE

West was charged with Attempted Robbery in the First Degree on July 17, 2017. Appendix at 2. On December 14, 2018, the parties jointly moved to continue trial until April 15, 2019, and a time-for-trial expiration date of May 15. Appendix at 10. These dates were confirmed on March 29 in an Order on Omnibus Hearing. Appendix at 12.

On April 16, defense counsel contacted the State to discuss availability and trial status. Counsel informed the prosecutor that its expert witness might be unavailable and they "may need to set a motion with the court to continue the trial to a date when he is available." Appendix at 16. The next day the prosecutor replied, stating that he had reviewed the case with supervisors and decided to proceed with the case on lesser chargers. The prosecutor informed West it was his intent to dismiss West's felony case and refile the case as misdemeanor charges in district court. Defense counsel responded, "The Superior Court has scheduled a hearing for April 22. I assume you are planning to obtain a dismissal prior to that hearing.

Please advise. If so, please forward a copy of any paperwork you intend to submit to the Court.” Appendix at 15. The State agreed to do so the next day. West did not indicate opposition to having his case moved to district court or a desire to be heard on the matter prior to dismissal.

On April 18, 2019, the State filed the Motion, Certification and Order of Dismissal, which requested dismissal without prejudice on the grounds that the case was being filed into King County District Court. Appendix at 18. The order was granted the same day. Appendix at 19. West did not object to the order of dismissal nor did he seek reconsideration.

On April 29, the day before West’s arraignment in district court, counsel filed a motion to dismiss. Appendix at 21. West alleged violations of the priority of action doctrine, the mandatory joinder rule, the time-for-trial rule, accused the State of forum shopping, and alleged governmental misconduct and mismanagement under CrRLJ 8.3(b). Appendix at 27. West did not allege a due process violation. He was arraigned on April 30 for Assault in the Fourth Degree and Theft in the Third Degree. Appendix at 21. On May 8, the court heard oral argument on the motion to dismiss, which it denied the next day. Id.

On May 13, West filed an application for writ of review and writ of prohibition. Appendix at 42, 45. He argued for the first time that the superior court order dismissing the charge of Attempted Robbery in the

First Degree was void as an improper *ex parte* contact. Appendix at 60–62. On May 14, the superior court entered Order on Return of Writ of Review or Prohibition, which requested the lower court record and established a briefing schedule. Appendix at 67. On July 17, the court denied the writ. Appendix at 71. West appealed pursuant to RAP 2.2(a).

On appeal, West again argued that the initial superior court order of dismissal was void. The court of appeals rejected this argument reasoning that the claim was not properly before them. Appendix at 74. The court held:

While West was not provided notice prior to the State obtaining its *ex parte* dismissal, West was provided the superior court’s order shortly after its entry. Instead of seeking reconsideration or other relief from the superior court, West moved in district court to dismiss the district court charges. West then sought a writ of review or prohibition from the superior court, raising for the first time the earlier superior court action dismissing the felony charge *ex parte*.

A writ of review or prohibition is limited to review of actions by inferior courts or tribunals. Neither the superior court, nor this court, have authority to review the superior court order dismissing the felony charge using a statutory writ. RCW 7.16.040; RCW 7.16.300. Because the superior court was limited to reviewing the district court’s actions, it did not err by not considering West’s due process claim.

Appendix 77 – 78 (No. 80325-5-1/4–5). Reconsideration of this issue was denied on March 11, 2021. Appendix at 83.

C. **THE COURT OF APPEAL'S DECISION TO AFFIRM
DISMISSAL OF WEST'S WRIT IS UNREMARKABLE.**

The writ in this case was inappropriate; it was an attempt to mask the fact that West did not challenge dismissal of the superior court charges because he did not want to remain in superior court. A petition for review will be granted only: (1) If the decision of the court of appeals is in conflict with a decision of the supreme court; or (2) if the decision of the court of appeals is in conflict with a published decision of the court of appeals; or (3) if 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). The decision of the Court of Appeals here was a correct application of RCW 7.16.040 and .300. The decision creates no conflict among appellate decisions, presents no constitutional claims, and is not an issue of substantial public interest. Review should be denied.

For good and sound tactical reasons, West never objected in the superior court to dismissal of the attempted robbery charge and to have his case adjudicated on lesser charges in district court. He did not tell the State he would object, and he did not ask the superior court to reconsider.¹ This

¹ Appellant argues that his email request on April 17, 2019 is a clear expression of his desire to be present before dismissal. He is mistaken; his message was wholly ambiguous. It read, "The Superior Court has scheduled a hearing for April 22. I assume you are planning to obtain a dismissal prior to that hearing. Please advise. If so, please

is not surprising. It is hard to imagine why a defendant would rather remain in superior court on greater charges than face misdemeanor charges in district court. If West was concerned about time for trial issues, he could have requested to have the misdemeanor charge litigated in superior court—which has jurisdiction over misdemeanors—or he could have asked the district court to accelerate his time for trial in light of the time already spent in superior court. He requested neither of these forms of relief.²

Instead, West chose to attempt to have the case dismissed from *district court*. When that attempt failed, he sought a writ, arguing that his case should not have been dismissed from superior court, but not once arguing that he wanted to return to superior court. The court of appeals properly affirmed the superior court's rejection of his argument.

A writ shall issue where the lower court (1) exceeds its jurisdiction or acts illegally and (2) “there is no appeal, nor in the judgment of the court, any plain, speedy, and adequate remedy at law.” Commanda v. Cary, 143 Wn.2d 651, 655, 23 P.3d 1086 (2001); RCW 7.16.040. Unless the Court finds both elements are present, the Court does not have jurisdiction for

forward a copy of any paperwork you intend to submit to the Court.” Appendix 15. Unlike the case he relies on, State v. Harris, 114 Wn.2d 419, 423, 789 P.2d 60 (1990), this email makes no express request to be present. Indeed, the statement could just as easily be read as defense counsel's preference *not* to appear for the April 22 hearing if the matter is going to be dismissed.

² The record does not show whether his expert witness had overcome his scheduling difficulties and was now available for an immediate trial.

review. City of Seattle v. Holifield, 170 Wn.2d 230, 240, 240 P.3d 1162 (2010). By statute, review is restricted to decisions made by an “inferior tribunal.” RCW 7.16.040; RCW 7.16.300. In this case, the inferior tribunal under review was the district court that denied Mr. West’s motion to dismiss.

West asked the reviewing court to decide an issue that was not raised in his motion to dismiss and that concerned an order which could not possibly have come from an inferior court.³ The court of appeals properly found that, pursuant to RCW 7.16, it did not have the jurisdiction to review the superior court’s order because the superior court was not the “inferior” court subject to the writ. This decision is consistent with precedent and does not warrant review pursuant to RAP 13.4(b)(1)–(2).

West chose not to seek reconsideration of the superior court’s order because he had no desire to remain in superior facing a felony charge. Moreover, West had no basis to seek dismissal in superior court because CrR 3.3 had not been violated and he had his own witness problems. On reconsideration, outright dismissal with prejudice was an unlikely remedy for an allegedly improper CrR 8.3(a) motion. See, State v. Koerber, 85 Wn. App. 1, 4, 931 P.2d 904, 905 (1996), as amended (Feb. 21, 1997); See e.g.,

³ See Appendix at 19; Appendix at 67 (Order on Return of Writ of Review or Prohibition and Motion, Certification and Order of Dismissal were both signed by The Hon. Superior Court Judge Chad Allred).

State v. Garrett, 108 Wn. App. 1015 (2001). The sole prejudice West has been able to identify by the reduction of these charges is that he is still subject to a criminal prosecution. Dismissal with prejudice would be an extreme remedy under the circumstances.

This Court's analysis in State v. Taylor applies to the present case. There, the court reasoned that dismissal without prejudice lacks the finality that would warrant review "because the legal and substantive issues are generally not resolved[.]" State v. Taylor, 150 Wn.2d 599, 603, 80 P.3d 605 (2003). At the time West's superior court matter was dismissed without prejudice there had been no dispositive rulings by the court on the merits of the case. Similarly in Taylor, the court reasoned that review under RAP 3.1 was not appropriate because the defendant whose case is dismissed without prejudice is not truly an aggrieved party "whose personal right or pecuniary interests have been affected. An aggrieved party is not one whose feelings have been hurt or who is disappointed over a certain result." Taylor, 105 Wn.2d at 604 (citations omitted). Had West wanted to challenge the State's motion to dismiss without prejudice, he had the opportunity to do so with the degree of scrutiny this court has found appropriate given the nature of his objection.

Instead, West strategically waited until he was in district court to object to the process, and then attempted to get the whole case dismissed

under a number of novel legal theories. Due process was not raised until after the court rejected this attempt.

E. CONCLUSION

The court of appeals correctly identified a critical jurisdictional impediment to West's challenge. The writ filed in superior court was limited to the decision of the lower, district court. West wanted to take advantage of the transfer to district court without incurring the risks of litigating his actions in superior court. The writ was properly rejected, that order was properly affirmed on appeal, and this petition raises no need to resolve conflicts in the law, no constitutional issue, and no issue beyond the narrow and fact-bound circumstances of this unusual case. Review is unwarranted under RAP 13.4(b).

DATED this 5th day of May, 2021.

Respectfully submitted,

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