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No. 101014-1

**IN THE SUPREME COURT OF THE
STATE OF WASHINGTON**

JOHN GARRETT SMITH,
Petitioner,

v.

ANTHONY GOLIK,
Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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A. INTRODUCTION

Petitioner appeals Division II's decision to uphold the trial court's entry of an order of dismissal with prejudice pursuant to CR 12(b)(6). This matter is just the latest of many causes of action Petitioner Smith has filed in an attempt to relitigate the admissibility of evidence used in his criminal trial.[1] The gravamen of nearly all of these causes of action is that there is an

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[1] Petitioner Smith has also filed the following lawsuits: *Smith v. Haynes, et al*., No. 3:18-cv-05144-RBL; *Smith v. Browne*, *et al*., No. 3:18-cv-05166-RBL; *Smith v. Aldridge, et al*., No. 3:18-cv-05191-RBL, *Smith v. Walker, et al*., No. 3:18-cv-05211-BHS, *Smith v. Settle, et al*., No. 3:18-cv-05221-RJB-JRC; *Smith v. Lloyd, et al*., No. 3:18-cv-05224-RBL; *Smith v. United States*, No. 3:18-cv-05225-RBL; *Smith v. Haynes, et al.*, No. 3:19-cv-05206-RBL; *Smith v. Jones, et al*., No. 3:20-cv-05059-RBL. In addition, he has filed eight lawsuits in the District of Oregon: *Smith v. Lewis*, No. 3:17-cv-01017-SI; *Smith v. Collier*, No. 3:17-cv-01018-SI; *Smith v. Wash. Dep't of Corr*., No. 3:17-cv-01130-SI; *Smith v. Clark*, No. 3:17-cv-01131-SI; *Smith v. Golik*, No. 3:17-cv-01132-SI; *Smith v. Ferguson*, No. 3:17-cv-01189-SI; *Smith v. Aldridge*; 3:17-cv-01485-HZ; *Smith v. Aldridge*, 3:17-cv-01998-HZ. The foregoing list does not include the numerous petitions for habeas corpus he has filed, all of which contain the same theme as that advanced here.

ongoing conspiracy to prevent the "original recording" of his assault on his wife (June 2, 2013) from being released.

Petitioner Smith makes no attempt to even articulate a coherent argument in his Petition for Review. In fact, aside from a passing reference in the first sentence of the introduction, Petitioner Smith does not even reference RAP 13(b) which controls whether this Court will grant accept a matter for review. Instead, Petitioner Smith simply refiles the same 3-page document that he has presented in all of the numerous meritless cases he has filed despite having lost numerous challenges to the admissibility of this evidence at the trial level, the Court of Appeals, and the Washington Supreme Court.

The filing giving rise to this litigation was a Petition for Emergency Writ of Mandamus which was filed in Clark County Superior Court on February 7, 2020. Division II correctly upheld the trial courts dismissal of the petition by noting that Petitioner Smith had a "plain, speedy, and adequate remedy at law", therefore making Writ of Mandamus "not a proper remedy."

Petitioner Smith makes no attempt address the decision of Division II. Indeed, this petition, like nearly all of vexes litigation Petitioner Smith has filed previously, raises no argument of merit and is akin to a petulant child stamping its foot.

Finally, this Answer does not address Petitioner's "Motion for Entry of Default Judgment" as it is not a cognizable claim. Importantly, Respondent was not made aware of this filing until the Court's Letter from August 2, 2022.[2] Regardless, Petitioner's Motion for Default asserts a right to default based on "Defendant's and State's sheer failure to defend." Obviously, Defendant has not only defended, but has prevailed at both the trial court and Court of Appeals.

B. STATEMENT OF THE CASE

[2] This is unfortunately consistent with nearly all prior matters filed by Petitioner Smith. For example, as noted in Respondent's Brief to the Court of Appeals, during the pendency of this litigation, Petitioner Smith filed no fewer than 28 documents with the Court which were not properly served on Respondent's counsel.

This matter arises out of a Petition for Emergency Writ of Mandamus which was filed in Clark County Superior Court on February 7, 2020. (CP 1). Although the facts related to this litigation are convoluted, those relevant to the decision of Division II are outlined succinctly in the opinion itself.

C. ARGUMENT TO DENY REVIEW

The decision to grant discretionary review is controlled by the factors outlined in RAP 13.4(b) which includes the following:

> A petition for review will be accepted by the Supreme Court 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.

In his Petition for Review, Petitioner Smith fails to reference any of the RAP 13.4(b) criteria, much less assert an argument that any of the criteria are met. Indeed, none of them apply.

(1) Division II Correctly Held in Its Unpublished Opinion That a Writ of Mandamus is Not a Proper Remedy to Enforce the PRA.

Division II correctly noted that, although Petitioner Smith's briefing was convoluted, he was "attempting to have his complaints about his PRA request addressed through a mandamus action." COA Opinion, Pg. 3.

The moving party bears the burden of demonstrating he is entitled to a Writ of Mandamus - an extraordinary remedy that is sparingly used. *Eugster v. City of Spokane*, 118 Wn. App. 383, 402, 76 P.3d 741 (2003) The legal framework requires the applicant to satisfy three elements before a writ will issue: (1) the party subject to the writ is under a clear duty to act; (2) the applicant has no plain, speedy and adequate remedy in the ordinary course of law; and (3) the applicant is beneficially interested. RCW 7.16.160. *Eugster v. City of Spokane*, 118 Wn. App. at 402.

Division II dismissed Petitioner Smith's appeal by noting that under the PRA, where an agency fails to properly provide a requester with a record, the requestor may bring an action to compel production pursuant to RCW 42.56.550.

Putting aside the numerous chances that Petitioner Smith had to challenge the evidence prior to his filing a Writ of Mandamus, Division II correctly noted that he could still file an action under the PRA. Indeed, that is the correct mechanism to seek enforcement. More importantly to the present petition, because this allowed for a "plain, speedy, and adequate remedy at law for Smith's complaints, a writ of mandamus is not a proper remedy." COA Opinion at Pg. 4. The Court of Appeals therefore upheld the decision of the trial court.

(2) Division II's Unpublished Opinion Does Not Conflict with Existing Precedent

Again, Petitioner Smith makes no attempt to comply with the guidelines outlined in RAP 13.4(b). Indeed, there is no effort made to even articulate cogent argument. Instead, Petition Smith

simply regurgitates the same 3 page "argument" that he has submitted to numerous courts in numerous jurisdictions. The Petition for Review fails to cite a single decision of either the Supreme Court, or Court of Appeals, which conflicts with the Division II's unpublished opinion. Obviously, that is because the case law controlling the issuance of a Writ of Mandamus is well established and supports the opinion of Division II. The fact that Petitioner Smith has a "plain, speedy, and adequate remedy at law" precludes him from utilizing the extraordinary remedy of a Writ of Mandamus. No published opinions contradict that fact.

(3) <u>This Is Not a Case for the Supreme Court</u>

Again, Petitioner Smith makes no attempt to argue that this case warrants Supreme Court review because it addresses an important question of law or affects the public interest under RAP 13.4(b)(3) or (4). Nor can he; this case involves a discrete issue relevant only to petitioner. Petitioner Smith alleges a wide-ranging conspiracy to which he is supposedly the only victim.

Essentially, he claims that Clark County (courts and prosecutors), the Vancouver Police Department, and even his own attorneys, have conspired to fabricate evidence against him. Division II properly ruled that a Writ of Mandamus was not a proper mechanism for Petitioner Smith to continue litigating this matter. In sum, this case turns on unique facts, and its ultimate outcome will have no ripple effect beyond Petitioner Smith.

Finally, Division II narrowed its opinion by declining to address the numerous other arguments raised by Respondent instead relying on the low hanging fruit of Petitioner Smith having an adequate remedy available to him. The Supreme Court is not needed to properly resolve this dispute. The Court should decline review.

D. CONCLUSION

The Court should deny review. Division II's unpublished opinion creates no conflicts with existing precedent. Petitioner Smith argues no other basis for granting review

under RAP 13.4(b), nor do any exist because this case only involves facts unique to Petitioner. This case simply does not merit Supreme Court review.

Certificate of Compliance-RAP 18.17

This response contains 1710 words

DATED this 1st day of September, 2022.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Sheryl Thrasher, hereby certify that on this 1st day of September 2022, I electronically filed the foregoing, *Respondent's Answer to Petition for Review* using the Washington State JIS Appellate Courts' Portal, which will send notification of such filing to the following and also certify I sent via USPS regular mail to the following:

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