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SUPREME COURT
STATE OF WASHINGTON
3/12/2020
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Court of Appeals
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COURT OF APPEALS NO. 77800-5-1
SUPREME COURT NO. 98270-8

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

STATE OF WASHINGTON,

Respondent,

v.

BRYANT JIETA

Appellant.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The State of Washington asks for review of the Court of Appeals decision designated in part II.

II. COURT OF APPEALS DECISION

The Court of Appeals affirmed the dismissal of the charges against the defendant in a published opinion filed February 10, 2020. Citations to the opinion are not yet available. A copy of the decision is set out in the appendix.

III. ISSUE

Under CrRLJ 8.3(b), can a court dismiss a case based on the court's own mismanagement?

IV. STATEMENT OF THE CASE

On May 4, 2015, a complaint was filed in the South Division of Snohomish County District Court charging the defendant (respondent), Bryant Jieta, with fourth degree assault (domestic violence) and third degree malicious mischief. CP 39. According to police reports, the defendant had broken down the door of the apartment he shared with his fiancé, He then punched her in the head. This was observed by three neighbors. CP 42-43.

The defendant appeared for arraignment on May 19. The court determined that he needed a Marshallese interpreter. The

record does not explain the nature of the defendant's language difficulties. CP 31. There followed multiple attempts to hold the arraignment and a subsequent pre-trial hearing. CP 31-38. Several times, the proceedings were delayed by the unavailability or ineffectiveness of the interpreter. Proceedings were also delayed by the defendant's own failure to appear on three occasions. CP 87-88. Additionally, four continuances were granted at defense request. CP 34-36

When the defendant was arraigned on July 13, 2015, he requested a constructive arraignment date of July 7. That request was granted. CP 33. Other than that, the record does not reflect any defense objections to the delays until August 26, 2016. Nor does it show any objection by the defense to the continued use of the same interpreter, or any request for appointment of a new one. CP 31-36.

On August 26, the defendant orally moved for dismissal under CrRLJ 8.3. CP 37. This was followed up by a written motion filed on August 31. CP 44-51. The motion included defense counsel's declaration setting out the history of the case. CP 45-47. The court granted the defendant's motion. The court found that it had "repeatedly made arrangements with the same interpreter

throughout the proceedings despite his proven unreliability.” CP 88, finding no. 18. This action on the part of the court constituted “governmental mismanagement.” CP 89, conclusion no. 7. That “mismanagement” deprived the defendant of effective assistance of counsel, thereby warranting dismissal. Id., conclusion no. 8. The court did not enter any written finding or conclusion that the defendant’s right to a fair trial had been materially affected. CP 87-89; see CrRLJ 8.3(b).

The State appealed to Superior Court. It argued that the court’s own administrative failure did not constitute “governmental misconduct.” CP 22-26. The court rejected this argument and affirmed the dismissal. CP 6-7. The Court of Appeals granted discretionary review and affirmed.

V. ARGUMENT

THIS COURT SHOULD REVIEW THE COURT OF APPEALS’ NOVEL EXPANSION OF A 45-YEAR OLD RULE.

This case raises an important issue concerning the interpretation of CrRLJ 8.3(b):

The court, in the furtherance of justice after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused’s right to a fair trial.

Although this case arises from a district court decision, the impact of the issue is not limited to that context. CrRLJ 8.3(b) is identical to CrR 8.3(b). The issue thus affects prosecutions in all trial courts.

The "governmental misconduct" language of CrRLJ 8.3(b) was intended to limit the discretion of courts to dismiss cases. Task Force Comment to Rule 8.3, quoted in 4B Tegland, Rules Practice at 690-91 (7th ed. 2008). The Court of Appeals' interpretation turns this principle on its head. According to the Court of Appeals, a court can dismiss a case based on its own "misconduct." So any case is now subject to dismissal by any trial court. A court need simply mismanage the case and use that mismanagement as a basis for dismissal.

In reaching this conclusion, the Court of Appeals largely ignored the history and purpose of CrRLJ 8.3(b). Instead, it defined the term "governmental misconduct" by looking at a dictionary definition of "governmental." Slip op. at 5. This is like defining "real estate" by looking at dictionary definitions of "real" ("true; not merely ostensible, nominal, or apparent") and "estate" ("a piece of landed property, especially one of large extent with an elaborate house on

it”).¹ Legal terms often have meanings that differ from those of their component words.

The terms “governmental misconduct” was first employed by this court in State v. Starrish, 86 Wn.2d 200, 544 P.2d 1 (1975). That case construed former RCW 10.46.090, which authorized dismissal of prosecutions “in furtherance of justice.” This court limited such dismissals to cases where there had been “governmental misconduct or arbitrary action of the type historically regarded by this court as sufficient to support a dismissal of a criminal charge.” Starrish, 86 Wn.2d at 205-06. As examples of such misconduct, the court cited cases involving a prosecutor’s violations of a plea agreement, police eavesdropping on an attorney-client conference, and a prosecutor re-filing a greater charge after the defendant had pleaded guilty to a lesser charge. Id. n. 9, citing State v. Sonneland, 80 Wn.2d 343, 494 P.2d 469 (1972); State v. Cory, 62 Wn.2d 371, 382 P.2d 1019 (1963); and State v. Satterlee, 58 Wn.2d 92, 361 P.2d 168 (1961).

In the ten years prior to the adoption of CrRLJ 8.3(b), the court continued the term in the same way. Whenever it referred to

¹ These definitions are taken from dictionary.com (as viewed 3/10/2020).

allegations of “governmental misconduct,” it meant misconduct of prosecutors or law enforcement officers. State v. Burri, 87 Wn.2d 175, 183, 550 P.2d 507 (1976) (prosecutor’s improper use of special inquiry proceedings); State v. Whitney, 96 Wn.2d 578, 580, 637 P.2d 956 (1981) (police entrapment of defendant’s accomplice); State v. Frederick, 100 Wn.2d 550, 556, 674 P.2d 136 (1983) (prosecutor’s coercion of guilty plea); State v. Laureano, 101 Wn.2d 745, 762, 682 P.2d 889 (1984) (prosecutor’s delay in providing discovery); State v. Wolken, 103 Wn.2d 823, 700 P.2d 319 (1985) (illegal search by police); State v. Knapstad, 107 Wn.2d 346, 350, 729 P.2d 48 (1986) (prosecutor’s insistence on proceeding despite clear inability to prove case). There were undoubtedly criminal cases during those years that were mismanaged by courts. Yet never once did this court use the term to refer to judicial “misconduct.”

In the ensuing years, the result has been the same. Almost all cases that have upheld dismissal under CrRLJ 8.3(b) or its Superior Court equivalent were based on misconduct by prosecutors. See, e.g., State v. Michielli, 132 Wn.2d 229, 243-45,

937 P.2d 587 (1997)² (late amendment of charges); State v. Dailey, 93 Wn.2d 454, 610 P.2d 357 (1980) (failure to comply with discovery requirements); State v. Martinez, 121 Wn. App. 21, 86 P.3d 1210 (2004) (failure to disclose exculpatory evidence); State v. Stephans, 47 Wn. App. 600, 604, 736 P.2d 302, 304 (1987) (encouraging witness's custodian to disobey court order). In one form or another, CrR 8.3 has been in effect for over 45 years. See Criminal Rules for Superior Court, 82 Wn.2d 1114, 1169 (eff. July 1, 1973). In all those decades, only two cases before the present case attempted to apply the rule to judicial misconduct — and in one the attempt was rejected.

This two exceptions are City of Seattle v. Knutson, 62 Wn. App. 31, 813 P.2d 124 (1991); and State v. Moore, 121 Wn. App. 889, 91 P.3d 136 (2004). In Knutson, Division One reversed a dismissal based on a municipal court's "administrative failure" in failing to prove a clerk for trial. Conversely in Moore, Division Three upheld the dismissal of a firearm's charge based on a juvenile

² The continuing validity of Michielli is questionable. The court held that the prosecutor's misconduct forced the defendant to waive his speedy trial rights. Michielli, 132 Wn.2d at 244. Under a subsequent rule amendment, however, cases cannot be dismissed for time-for-trial reasons except as expressly required by CrR 3.3, a statute, or the constitution. CrR 3.3(h); State v. Kone, 165 Wn. App. 420, 436 ¶ 46, 266 P.3d 916 (2011).

court's failure to notify the defendant that he could no longer possess a firearm. (In a later case, this court reached a similar result without reference to CrR 8.3. It treated the absence of proper warnings as a statutory violation, which is remedied by dismissing the subsequent prosecution. State v. Minor, 162 Wn.2d 796, 174 P.3d 1162 (2008).) These inconsistent results underline the need for a determination by this court.

There is a clear reason for distinguishing between "misconduct" by courts and that committed by prosecutors or police. Actions of prosecutor or police typically occur outside of court. The only judicial remedy is usually post-hoc. Errors committed by courts, however, are subject to correction by the judicial process itself. There is no reason to add a new remedy of dismissal to the existing remedies.

In the present case, for example, the effect of the Court of Appeals decision is to relieve the defendant of the burden of objecting, shifting that burden to the prosecutor. If the defendant had believed that the use of a particular interpreter violated his rights, he could have asked the court to obtain a different one. Instead, he waited for the opportunity to move for dismissal. The duty to object thus fell on the prosecutor. Indeed, the prosecutor

was apparently responsible for taking effective action to *ensure* that the court obtained a different interpreter. Failing that, the cost falls on the prosecution — and the victim — of seeing the case dismissed notwithstanding strong evidence of the defendant's guilt.


The Court of Appeals expansion of CrRLJ 8.3(b) creates an issue of substantial public interest that should be determined by this court. Review should be granted under RAP 13.4(b)(4).

VI. CONCLUSION

This court should accept review, reverse the Court of Appeals, and remand the case for trial.

Respectfully submitted on March 11, 2020.

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

THE STATE OF WASHINGTON,

Petitioner,

v.

BRYANT JIETA,

Respondent.

No. 77800-5-1

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The undersigned certifies that on the 11th day of March, 2020, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

PETITION FOR REVIEW

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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 11th day of March, 2020, at the Snohomish County Office.



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

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

STATE OF WASHINGTON,)	No. 77800-5-I
)	
Appellant,)	
)	
v.)	
)	PUBLISHED OPINION
BRYANT JIETA,)	
)	FILED: February 10, 2020
Respondent.)	
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VERELLEN, J. — This case presents the narrow question of first impression whether CrRLJ 8.3(b) allows for dismissal of criminal charges due to mismanagement by court administration. The State contends the court system is not "governmental" within the scope of the "governmental misconduct" portion of the rule. Because the plain language of the rule extends to "governmental" mismanagement and court administration is governmental in nature, CrRLJ 8.3(b) applies.

Under the circumstances here, we need not define the types of conduct or degree of mismanagement by court administration required to support relief under CrRLJ 8.3(b).

The trial court did not err in applying CrRLJ 8.3(b) to dismiss Jieta's charges due to court mismanagement.

Therefore, we affirm.

FACTS¹

Bryant Jieta was first arraigned on charges of fourth degree assault and third degree malicious mischief in Snohomish County District Court on May 19, 2015. The court continued the arraignment after ordering that Jieta be provided a Marshallese interpreter. Over the next 15 months, the court held 14 more pretrial hearings, and the interpreter repeatedly failed to appear telephonically or personally. On August 26, 2016, Jieta moved under CrRLJ 8.3(b) to dismiss all charges. On September 12,—another hearing where the interpreter failed to appear—the court dismissed all charges with prejudice and found the interpreter's absences "seriously interfered with Mr. Jieta's right to representation by counsel."² Of 14 pretrial hearings conducted after the court directed the appointment of a interpreter, the interpreter failed to appear 10 times, appeared by phone—ineffectively—two times, and appeared in person two times. The superior court affirmed the dismissal on the State's RALJ appeal.

The State sought discretionary review in this court, which was granted on the narrow question whether CrRLJ 8.3(b) can apply when court administration mismanages a case.

¹ All facts are from the district court's findings except where otherwise noted. The findings are uncontested and are verities on appeal. State v. Coleman, 6 Wn. App. 2d 507, 516, 431 P.3d 514 (2018), review denied, 193 Wn.2d 1005 (2019).

² Report of Proceedings (Sept. 12, 2016) at 22.

ANALYSIS

Generally, we review a decision to dismiss under CrRLJ 8.3(b)³ for abuse of discretion.⁴ But the narrow question here is limited to whether “governmental misconduct” under CrRLJ 8.3(b) can extend to mismanagement by court administration. We review interpretation of a court rule de novo.⁵

We interpret court rules the same way we interpret statutes, looking to the rule’s plain language to determine its meaning.⁶ We determine a rule’s plain meaning by considering its text, surrounding context, related provisions, and the regulatory scheme as a whole.⁷ A rule’s plain meaning governs our interpretation unless it is ambiguous.⁸ If the rule is subject to only one reasonable interpretation, then it is unambiguous and “our inquiry ends” because no further interpretation is necessary.⁹

CrRLJ 8.3(b) gives courts discretion to dismiss “any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice

³ CrRLJ 8.3(b) and CrR 8.3(b) use identical language, so case law from one can be used to interpret the other. See City of Seattle v. Holifield, 170 Wn.2d 230, 238, 240 P.3d 1162 (2010) (analyzing CrRLJ 8.3(b) using cases considering CrR 8.3(b)).

⁴ State v. Salgado-Mendoza, 189 Wn.2d 420, 427, 403 P.3d 45 (2017).

⁵ Holifield, 170 Wn.2d at 236.

⁶ Id. at 237.

⁷ State v. Basra, 10 Wn. App. 2d 279, 285, 448 P.3d 107 (2019), review denied, 455 P.3d 133 (2020).

⁸ State v. Davis, 3 Wn. App. 2d 763, 788, 418 P.3d 199 (2018).

⁹ Holifield, 170 Wn.2d at 237.

to the rights of the accused which materially affect the accused's right to a fair trial." To satisfy the rule, the alleged misconduct "need not be of an evil or dishonest nature; simple mismanagement is sufficient."¹⁰

The judiciary has a statutory duty of appointing an interpreter "to assist the [defendant] throughout the proceedings."¹¹ Reliable interpreter services are necessary to secure a non-English speaking defendant's fair trial rights.¹² Thus, to assist a defendant "throughout the proceedings," the interpreter must actually deliver translation services throughout the proceedings.

The State does not dispute that the court mismanaged its obligation to provide Jieta a reliable interpreter.¹³ And the State does not dispute that Jieta was prejudiced by the interpreter's many absences and failings.¹⁴ The only remaining question is whether court administration is "governmental" for purposes of the rule.

¹⁰ State v. Wilson, 149 Wn.2d 1, 9, 65 P.3d 657 (2003) (quoting State v. Michielli, 132 Wn.2d 229, 239, 937 P.2d 587 (1997)).

¹¹ RCW 2.43.030.

¹² State v. Aljaffar, 198 Wn. App. 75, 83, 392 P.3d 1070 (2017); see RCW 2.43.010 ("It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.").

¹³ See App. Br. at 1 (framing the issue as whether "a court can dismiss a case based on the court's own mismanagement").

¹⁴ See id. (not assigning error to the conclusion that Jieta was prejudiced); Clerk's Papers at 83 (conceding on appeal to the superior court that "the lack of an interpreter deprived [Jieta] of those rights [to counsel and to understand the proceedings against him].").

The term "governmental" is not defined in Washington's rules of criminal procedure, so we can use a dictionary.¹⁵ An institution is "governmental" when it is "of or relating to government or the government of a particular political unit."¹⁶ Courts are a foundational part of Washington's government at all levels.¹⁷ Under the plain meaning of the rule's text, courts are governmental.

The rule's purpose supports this textual interpretation. The purpose of CrR 8.3(b) is to ensure fairness to defendants by protecting their right to a fair trial.¹⁸ Thus, when mismanagement by court personnel prevents a defendant from receiving reliable interpreter services and effective assistance of counsel for more than one year, the defendant has a viable claim of "governmental misconduct" consistent with the text and purpose of CrRLJ 8.3(b).¹⁹

¹⁵ See Basra, 10 Wn. App. 2d at 285 (using a dictionary for undefined terms in CrR 8.3(b)).

¹⁶ WEBSTER'S THIRD NEW INT'L DICTIONARY 983 (2002).

¹⁷ See Const. art. IV, § 1, *et. seq.*; State v. Jones, 6 Wash. 452, 461-62, 34 P. 201 (1893) (explaining the "respective duties" of the "several departments" of Washington State's government, including the "judicial department").

¹⁸ CrRLJ 8.3(b); see City of Kent v. Sandhu, 159 Wn. App. 836, 841, 247 P.3d 454 (2011) (citing State v. Chichester, 141 Wn. App. 446, 457, 170 P.3d 583 (2007) (explaining dismissal can be appropriate where the proceedings were unfair to the defendant and prejudiced his right to a fair trial)).

¹⁹ On this narrow appeal and limited briefing, we do not purport to articulate precisely what constitutes administrative mismanagement of interpreter services. Our determination merely acknowledges that repeatedly assigning the same ineffective and unreliable interpreter for 15 hearings over more than a year without attempting to hire another interpreter presents a viable claim of court administrative mismanagement for purposes of CrRLJ 8.3(b).

The State asserts the word “governmental” as used in CrRLJ 8.3(b) is ambiguous and the history of the rule is inconsistent with any application to court administrative mismanagement. But under our rules of statutory interpretation, we consider legislative history only after determining a statutory term is ambiguous.²⁰ Because the plain meaning of CrRLJ 8.3(b) is unambiguous, it is not necessary to interpret CrRLJ 8.3(b) based on its history.²¹

The few cases to touch on this question are of limited assistance and are not controlling. The State argues City of Seattle v. Knutson already decided this issue.²² But the holding of Knutson is that a defendant seeking dismissal under CrRLJ 8.3(b) must demonstrate prejudice. It did not address the issue here. Knutson involved the failure of a municipal court to comply with an interlocal agreement to provide jurors, prosecutors and/or court clerks for proceedings in district court. This court reversed the district court’s dismissal under CrRLJ 8.3(b) because the district court did not find prejudice, and the defendant did not argue prejudice resulted from the asserted mismanagement.²³ The Knutson court did not cite authority or apply the rules of statutory interpretation to conclude a

²⁰ See State, Dep’t of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 12, 43 P.3d 4 (2002) (explaining that interpreting a statute based on legislative history is appropriate only after determining it is ambiguous).

²¹ Holifield, 170 Wn.2d at 237.

²² 62 Wn. App. 31, 813 P.2d 124 (1991).

²³ Id. at 33-34.

municipal court's administrative failures could not constitute governmental misconduct for purposes of CrRLJ 8.3(b).²⁴

Jieta relies on State v. Irby, but Irby's analysis is not directly applicable here.²⁵ In Irby, the court considered whether dismissal was justified under CrR 8.3(b) when county jail guards actively infringed on the defendant's right to counsel by reading his legal correspondence.²⁶ The court did not consider whether the jail guards' misconduct was "governmental" because the parties agreed the guards were state actors.²⁷

Jieta also relies on State v. Moore.²⁸ Moore involved a judge's failure to provide notice of the loss of firearm rights to a convicted felon, as required by former RCW 9.41.047(1)(a). The Moore court stated that "the court's failure constituted governmental mismanagement under CrR 8.3(b)."²⁹ But the opinion does not include any analysis about the scope of CrR 8.3(b). Moore relied on State v. Leavitt for its conclusion, but Leavitt does not address CrR 8.3(b) at all.³⁰ Leavitt considered whether a felon's due process rights were violated when he was convicted of unlawful possession of a firearm after the original sentencing

²⁴ Id. at 34.

²⁵ 3 Wn. App. 2d 247, 415 P.3d 611 (2018).

²⁶ Id. at 251.

²⁷ Id. at 253.

²⁸ 121 Wn. App. 889, 91 P.3d 136 (2004).

²⁹ Id. at 895.

³⁰ 107 Wn. App. 361, 371, 27 P.3d 622 (2001).

court failed to provide notice of his loss of firearm rights.³¹ Moore appears to support Jieta's argument, but neither it nor Leavitt considered the specific legal issue presented here. Knutson, Irby, and Moore are of limited assistance on the narrow legal question before us.³²

The State also contends that, even if court mismanagement can qualify as government misconduct under CrRLJ 8.3(b), the appropriate remedy was a new trial, and the district court abused its discretion by dismissing all charges. Its argument is inapposite under these circumstances. The State's premise is that a judge's legal error cannot be the basis for dismissal.³³ But the district court did not dismiss the charges against Jieta due to judicial error. The court dismissed the charges because administrative mismanagement by court personnel deprived Jieta of effective interpreter services and assistance of counsel. We are not convinced that judicial error can be a basis for dismissal under CrRLJ 8.3(b), but that issue is not before us.

CONCLUSION

On the narrow issue presented on discretionary review, we hold that "governmental misconduct" for purposes of CrRLJ 8.3(b) can extend to

³¹ Id. at 372-73.

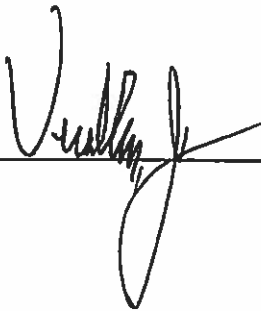
³² In his briefing, Jieta also argues that State v. Starrish, 86 Wn.2d 200, 206, 544 P.2d 1 (1975), controls. But at oral argument, Jieta conceded the language he relied upon from Starrish was dicta. We agree.

³³ E.g., App. Br. at 12 ("There are numerous cases in which defendants were denied a fair trial by judges' violations of legal restrictions. The remedy has always been a new trial, not dismissal."), at 15 (CrRLJ 8.3(b) "does not, however, provide an additional remedy of dismissal for judicial error.").


mismanagement by court administration. We need not decide the exact types of court mismanagement that could warrant relief or when dismissal is an appropriate remedy for such mismanagement. On the record before us, the State does not establish that the trial court erred in its conclusion that CrRLJ 8.3(b) may extend to a court's administrative mismanagement of its statutory obligation to provide translator services.

Therefore, we affirm.

WE CONCUR:







SNOHOMISH COUNTY PROSECUTOR'S OFFICE

March 11, 2020 - 2:37 PM

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