

FILED  
Court of Appeals  
Division II  
State of Washington  
8/12/2021 3:48 PM

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/12/2021  
BY ERIN L. LENNON  
CLERK

No. 99930-9  
Court of Appeals No. 54035-5-II

THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent

v.

BENJAMIN ASaelI

Petitioner.

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PETITION FOR REVIEW

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GREGORY C. LINK  
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 610  
Seattle, Washington 98101  
(206) 587-2711

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A. IDENTITY OF PETITIONER

Petitioner Benjamin Asaeli asks this Court to accept review of the published opinion of the Court of Appeals in *State v. Asaeli*, \_\_ Wn. App. 2d \_\_, 2021 WL 3012299 (54035-5-II, May 25, 2021) pursuant to RAP 13.4.

B. OPINION BELOW

After he was convicted, Mr. Asaeli filed a motion for release of discovery pursuant to CrR 4.7 in superior court. Case law establishes the rule has application both before and after trial. Nonetheless, the trial court denied his motion solely on the basis that it was made after trial.

Contrary to numerous decisions of this Court, the Court of Appeals narrowed the rule concluding the rule does not apply once trial begins.

C. ISSUE PRESENTED

This Court and the Court of Appeals have previously held that CrR 4.7, governing discovery in criminal cases, continues to apply even after the trial has begun. The Court of Appeals published opinion concludes the rule does not

apply once trial has begun. This new interpretation of the rule contradicts this Court's decisions and creates an issue of significant constitutional import.

#### D. STATEMENT OF THE CASE

After his convictions for a number of offenses, Mr. Asaeli filed a "Motion to Produce Discovery Material" in Superior Court relying on CrR 4.7. CP 1-3.

Concluding CrR 4.7 did not apply after a trial was complete; the trial court denied the motion. CP 7-8.

The Court of Appeals affirmed, going even further than the trial court, reasoning CrR 4.7 "applies only to procedures before trial." Opinion at 1.

#### E. ARGUMENT

##### **1. The provisions of CrR 4.7 must continue to apply to trial court proceedings post trial.**

Court rules are interpreted using the rules of statutory construction. *State v. Blilie*, 132 Wn.2d 484, 492, 939 P.2d 691 (1997). There is no need to construe a statute or rule that is plain and unambiguous. *State v. Delgado*, 148 Wn.2d 723,

727, 63 P.3d 792 (2003); *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994). A court may not add terms to an unambiguous statute or rule. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318, 320 (2003).

CrR. 4.7 contains no temporal limitation on its reach. Nowhere does the rule say it applies only before trial. Indeed, it is clear the rule creates a continuing duty to disclose information. *State v. Greiff*, 141 Wn.2d 910, 919, 10 P.3d 390 (2000). Further, courts have regularly applied the provisions of CrR 4.7 after convictions. For example in *State v. Padgett*, the Court of Appeals concluded CrR 4.7(h)(3) together with RPC 1.16 required trial counsel to disclose discovery to their client when the client request a copy of the client file after trial. 4 Wn. App. 2d 851, 854-55, 424 P.2d 1235 (2018).

Nonetheless, the Court of Appeals opinion concludes the provisions of CrR 4.7 do not apply post-conviction. To be sure, the court makes no effort to why some provisions of the rule apply after trial has commenced while others do not. Nor

does the opinion make any effort to delineate which provision might fall in each of these undefined categories.

The opinion is contrary to the prior interpretation of CrR 4.7 regularly applied by both this Court and the Court of Appeals. This Court should accept review under RAP 13.4.

**2. The opinion of the Court of Appeals incorrectly limits the reach of CrR 4.7 to pretrial proceedings contrary to existing case law and create serious doubts as to the rule's continuing constitutionality.**

Limiting CrR 4.7 to only pretrial proceedings casts grave constitutional doubt on the rule. Courts “construe statutes to avoid constitutional doubt.” *Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d 398, 434, 341 P.3d 953 (2015) (*State v. Robinson*, 153 Wn.2d 689, 693–94, 107 P.3d 90 (2005)).

The Due Process Clause of the Fourteenth Amendment guarantees a criminal defendant the right to a fair trial and a meaningful opportunity to present a defense. U.S. Const. amend. XIV; *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 81 L.Ed.2d 413 (1984). Due process requires the

government disclose to a defendant material evidence. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). This requires the government disclose to a defendant all exculpatory or impeachment evidence whether it is requested or not. *Strickler v. Greene*, 527 U.S. 263, 280, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999); *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L.Ed.2d 481 (1985).

“The underlying notion behind . . . *Brady* is that ‘[s]ociety wins not only when the guilty are convicted but when criminal trials are fair.’” *In re Stenson*, 174 Wn.2d 474, 486, 276 P.3d 286 (2012) (citing *Brady*, 373 U.S. at 87).

Limiting CrR 4.7 to pretrial proceedings increases the likelihood of *Brady* violations. Even as CrR 4.7 is currently interpreted to mandate an ongoing disclosure obligation on prosecutors, *Brady* violations occur. If that obligation is artificially truncated at the start of trial, the scope and number of constitutional violations will only increase.

This Court should reject an interpretation of the rule which leads to such unconstitutional outcomes. Because it



will invite constitutional violations, this Court should accept review of the opinion of the Court of Appeals.

F. CONCLUSION

This Court should accept review of the opinion of the Court of Appeals.

Respectfully submitted this 11<sup>th</sup> day of August, 2021.

A handwritten signature in black ink, appearing to read "Gregory C. Link". The signature is written in a cursive style with a large initial "G" and "L".

Gregory C. Link – 25228  
Attorney for Petitioner  
Washington Appellate Project  
[greg@washapp.org](mailto:greg@washapp.org)

July 13, 2021

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

BENJAMIN SALOFI ASAELI,

Appellant.

No. 54035-5-II

**ORDER GRANTING MOTION TO  
PUBLISH AND PUBLISHING OPINION**

Respondent State of Washington and third party Washington Association of Prosecuting Attorneys each have moved this court to publish its May 25, 2021 opinion in this case. After consideration, the court grants the motions. Accordingly, it is

ORDERED that the final paragraph in the opinion that reads: “A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for publish record in accordance with RCW 2.06.040, it is so ordered” is deleted. It is further

ORDERED that the opinion will be published.

PANEL: Jj. Maxa, Cruser, Veljacic

FOR THE COURT:

  
MAXA, P.J.

May 25, 2021

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

BENJAMIN SALOFI ASAELI,

Appellant.

No. 54035-5-II

UNPUBLISHED OPINION

MAXA, J. – Benjamin Asaeli appeals the superior court’s denial of his postconviction CrR 4.7 motion for discovery materials. We hold that CrR 4.7 applies only to procedures before trial, and that Asaeli has not shown a due process right to postconviction discovery. Accordingly, we affirm the superior court’s order denying Asaeli’s motion.

**FACTS**

In 2006, a jury found Asaeli guilty of first degree murder by extreme indifference, second degree felony murder, first degree assault, and possession of a stolen firearm. This court affirmed Asaeli’s convictions on direct appeal. *State v. Asaeli*, 150 Wn. App. 543, 208 P.3d 1136 (2009). The mandate was issued on November 17, 2009.

In 2019, Asaeli filed a CrR 4.7 motion to produce discovery in the superior court. He requested (1) all correspondence between the prosecution and defense, (2) documentation that shows proof of his criminal history, (3) physical or tangible objects in the State’s possession that may be relevant to his innocence or guilt, (4) any documents or records that questions or raises

doubts about the accuracy or reliability of any scientific and/or expert testing, (5) criminal records of all of the State's witness, (6) any evidence that may undermine the credibility of any State witness, (7) all exculpatory evidence that the State may possess, (8) any mitigating evidence regarding his guilt, and (9) any statements of non-witnesses obtained by the State in preparing its case in chief.

The superior court originally transferred the matter to this court as a personal restraint petition. This court rejected the transfer and remanded to the superior court because Asaeli's motion was not bought under CrR 7.8. Order Rejecting Transfer, *In re Pers. Restraint of Asaeli*, No. 53598-0-II (Wash. Ct. App. June 11, 2019).

The superior court subsequently denied Asaeli's motion, concluding that CrR 4.7 applies to pretrial discovery procedures and not to postconviction proceedings. Asaeli appeals the superior court's order denying his motion for discovery materials.

#### ANALYSIS

Asaeli argues that the superior court erred by denying his postconviction CrR 4.7 motion for the State to produce discovery materials. We disagree.

In general, we review discovery decisions based on CrR 4.7 for abuse of discretion. *State v. Vance*, 184 Wn. App. 902, 911, 339 P.3d 245 (2014). However, whether a court rule applies to a particular fact scenario is a question of law we review de novo. *State v. Kindsvogel*, 149 Wn.2d 477, 480, 69 P.3d 870 (2003).

We apply the same principles to interpreting court rules that we apply to interpreting statutes. *State v. Mankin*, 158 Wn. App. 111, 122, 241 P.3d 421 (2010). The primary goal of court rule interpretation is to ascertain and give effect to the Supreme Court's intent. *State v. Waldon*, 148 Wn. App. 952, 962, 202 P.3d 325 (2009). This requires looking at the plain

language of the rule, the context of the rule, related provisions, and the rule's scheme as a whole. *State v. Reisert*, 16 Wn. App. 2d 321, 324, 480 P.3d 1151 (2021). As part of this process, we may look to the rule's title to assist in interpreting a court rule. *See id.* at 325. When words in a court rule are plain and unambiguous, further interpretation is not necessary and we apply the court rule as written. *Mankin*, 158 Wn. App. at 122.

CrR 4.7 appears in Title 4 of the Superior Court Criminal Rules, which is titled "Procedures Prior to Trial." This title indicates that the Supreme Court intended CrR 4.7 to apply to pretrial discovery procedures, not after a defendant has been convicted. In addition, CrR 4.7(a)(1), which addresses the prosecutor's discovery obligations, states that discovery material must be produced no later than the omnibus hearing. The omnibus hearing obviously is a pretrial hearing. Nothing in CrR 4.7 states or even suggests that its provisions apply after conviction.

We conclude that CrR 4.7 does not apply to postconviction proceedings. Therefore, Asaeli had no right to file a motion for discovery under CrR 4.7.

The Supreme Court in *In re Personal Restraint of Gentry* addressed a postconviction motion for discovery from the standpoint of due process. 137 Wn.2d 378, 390-91, 972 P.2d 1250 (1999). The court stated, "From a due process standpoint, prisoners seeking postconviction relief are not entitled to discovery as a matter of ordinary course, but are limited to discovery only to the extent the prisoner can show good cause to believe the discovery would prove entitlement to relief." *Id.* Here, Asaeli has not shown good cause for obtaining discovery. Therefore, due process did not support his motion.

Because Asaeli's CrR 4.7 motion was filed 13 years after he was convicted at trial, we hold that the superior court did not err in denying the motion for discovery materials.

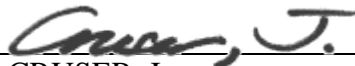
CONCLUSION

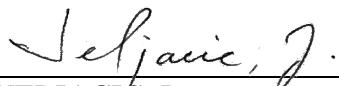
We affirm the superior court's denial of Asaeli's postconviction CrR 4.7 motion for discovery materials.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
MAXA, P.J.

We concur:

  
\_\_\_\_\_  
CRUSER, J.

  
\_\_\_\_\_  
VELJACIC, J.

## DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 54035-5-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

respondent Kristie Barham, DPA  
[kristie.barham@piercecountywa.gov]  
[PCpatcecf@co.pierce.wa.us]  
Pierce County Prosecutor's Office

petitioner

Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: August 12, 2021

# WASHINGTON APPELLATE PROJECT

August 12, 2021 - 3:48 PM

## Transmittal Information

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**Appellate Court Case Title:** State of Washington, Respondent v. Benjamin Salofi Asaeli, Appellant  
**Superior Court Case Number:** 04-1-05087-3

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