

No. 44712-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Raynard Chargualaf,

Appellant.

Mason County Superior Court Cause No. 11-1-00396-5

The Honorable Judge Amber Finlay

Appellant's Opening Brief

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ASSIGNMENTS OF ERROR 1

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 1

STATEMENT OF FACTS AND PRIOR PROCEEDINGS 2

ARGUMENT 3

**The trial court should have ordered defense counsel to provide
Mr. Chargualaf with a copy of his file, including
appropriately redacted discovery materials. 3**

A. Standard of Review 3

B. Mr. Chargualaf’s file belongs to him, and must be
given to him under RPC 1.16(d) and CrR 4.7(h)(3). 3

CONCLUSION 7

TABLE OF AUTHORITIES

WASHINGTON STATE CASES

Ameriquest Mortgage Co. v. Office of Attorney Gen. of Washington, 177 Wn.2d 467, 300 P.3d 799 (2013)..... 3, 6

City of Seattle v. Holifield, 170 Wn.2d 230, 240 P.3d 1162 (2010) 4

Goldmark v. McKenna, 172 Wn.2d 568, 259 P.3d 1095 (2011) 5, 6

State v. Grayson, 154 Wn.2d 333, 111 P.3d 1183 (2005) 3, 6

State v. Sanchez, 171 Wn. App. 518, 288 P.3d 351 (2012), *reconsideration denied* (Jan. 28, 2013)..... 3, 6

OTHER AUTHORITIES

CrR 4.7 1, 3, 4, 5, 6

RPC 1.16 1, 3, 4, 5, 6, 7

RPC 3.7 3

WSBA Formal Ethics Opinion 181 (1987)..... 4, 5

ASSIGNMENTS OF ERROR

1. The trial court erred by refusing to order Mr. Chargualaf's attorney to provide his client a copy of his file pursuant to RPC 1.16(d).
2. The trial court erred by refusing to order Mr. Chargualaf's attorney to provide his client a copy of appropriately redacted discovery, pursuant to CrR 4.7(h)(3).

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Upon termination of representation, an attorney must protect the client's interests by surrendering the papers and property to which the client is entitled. Defense counsel in this case refused to provide Mr. Chargualaf any portion of his file. Should the trial court have ordered defense counsel to provide Mr. Chargualaf his file under RPC 1.16(d)?
2. A trial court's authority to regulate discovery includes the obligation to redact discovery materials so they can be provided to the defendant. The trial court denied Mr. Chargualaf's motion for a copy of his discovery materials in this case. Did the trial court abuse its discretion under CrR 4.7(h)(3) by failing to order that appropriately redacted discovery materials be provided to Mr. Chargualaf?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

A jury convicted Raynard Chargualaf of first-degree burglary, first-degree robbery, and four counts of first-degree kidnapping. Each conviction included a firearm enhancement; he was also convicted of unlawful possession of a firearm in the second degree. The sentencing court imposed 592 months in prison, and Mr. Chargualaf appealed. Judgment and Sentence, Supp. CP; Notice of Appeal (5/16/12), Supp. CP.

While his appeal was pending, he asked for a copy of the discovery that had been provided his trial attorney, Ron Sergi. CP 14. Sergi declined to provide a copy, and suggested that Mr. Chargualaf make a public disclosure request. CP 15-16.

Mr. Chargualaf filed a motion asking the court to order Sergi to provide discovery. CP 7. He explained that he wished to prepare for post-conviction proceedings, and outlined several reasons why he needed to have the materials Sergi received as discovery. CP 7-8. For example, “[p]erhaps the prosecution withheld evidence from Mr. Sergi in discovery, or maybe the sheriff failed to turn over material exculpatory evidence to the prosecution.” CP 7-8.

At a hearing on the motion, both Sergi and the prosecuting attorney urged the court to deny the motion. RP 3-4. The court denied the motion,

advising Mr. Chargualaf to consult with his appellate attorney, and/or to file a public disclosure request. RP 4; CP 6.

Mr. Chargualaf appealed the order denying his motion. CP 4.

ARGUMENT

THE TRIAL COURT SHOULD HAVE ORDERED DEFENSE COUNSEL TO PROVIDE MR. CHARGUALAF WITH A COPY OF HIS FILE, INCLUDING APPROPRIATELY REDACTED DISCOVERY MATERIALS.

A. Standard of Review

Discovery rulings are reviewed for an abuse of discretion.

Ameriquist Mortgage Co. v. Office of Attorney Gen. of Washington, 177 Wn.2d 467, 478, 300 P.3d 799 (2013). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Id.* Failure to exercise discretion is an abuse of discretion. *See State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005).

B. Mr. Chargualaf's file belongs to him, and must be given to him under RPC 1.16(d) and CrR 4.7(h)(3).

In a criminal case, a trial court has the authority to enforce an attorney's ethical obligations. *See, e.g., State v. Sanchez*, 171 Wn. App. 518, 545, 288 P.3d 351 (2012), *reconsideration denied* (Jan. 28, 2013) (addressing RPC 3.7). Upon termination of representation, an attorney

must continue to protect the client's interests. RPC 1.16(d). This requires counsel to "surrender[] any papers and property to which the client is entitled..." RPC 1.16(d).

A client is generally entitled to the entire client file. *See* WSBA Formal Ethics Opinion 181, p. 3. (1987). This includes more than just those papers provided by the client. Ethics Opinion 181. The lawyer may only "retain papers relating to the client to the extent permitted by other law." RPC 1.16(d). Such exceptions are "limited." Ethics Opinion 181, p. 3.

Discovery in a criminal case is governed by CrR 4.7. The court has authority to regulate discovery. CrR 4.7(h). This includes the power to redact discovery so that materials can be provided to the defendant:¹

Custody of Materials. Any materials furnished to an attorney pursuant to these rules shall remain in the exclusive custody of the attorney... Further, a defense attorney *shall be permitted to provide a copy of the materials to the defendant* after making appropriate redactions which are approved by the prosecuting authority or order of the court.

CrR 4.7(h)(3) (emphasis added).

Court rules are interpreted with reference to principles of statutory construction. *City of Seattle v. Holifield*, 170 Wn.2d 230, 237, 240 P.3d 1162 (2010). Interpretation starts with the plain language of the rule. *Id.* If

¹ Release is also permitted upon agreement of the parties.

the plain language is subject to only one interpretation, the inquiry ends, “because plain language does not require construction.” *Id.* The word “shall” is “presumptively imperative and creates a mandatory duty unless a contrary legislative intent is shown.” *Goldmark v. McKenna*, 172 Wn.2d 568, 575, 259 P.3d 1095 (2011).

Under CrR 4.7(h)(3), an attorney “shall be permitted” to provide the defendant appropriately redacted discovery. The rule’s use of the word “shall” is presumed to be mandatory. *Goldmark*, 172 Wn.2d at 575.

The rule provides no exceptions. CrR 4.7(h). Nor does anything in the rule terminate the court’s authority following conviction. CrR 4.7(h).

Here, the court declined to order defendant’s attorney Sergi to provide Mr. Chargualaf his file. CP 6; RP 4. Mr. Chargualaf is entitled to his entire file under RPC 1.16(d). *See Ethics Opinion 181*, pp. 2-3. This includes the right to materials other than discovery (unless Sergi asserts some “other law,” as provided in RPC 1.16(d)). It also includes discovery materials with “appropriate redactions which are approved by the prosecuting authority or order of the court.” CrR 4.7(h)(3).

Sergi had an ethical obligation to provide Mr. Chargualaf his entire file. The trial court had the authority to enforce this ethical obligation.

Sanchez, 171 Wn. App. at 545. The court declined to do so without providing a reason. CP 6; RP 4.

Furthermore, Mr. Chargualaf was entitled to an appropriately redacted copy of discovery materials from Sergi's file. CrR 4.7(h)(3). The court refused to comply with CrR 4.7(h)(3), and provided no reason for its ruling. CP 6; RP 4.

The record does not establish that the court actually exercised discretion. CP 6; RP 4. Furthermore, the court's failure to comply with CrR 4.7(h)(3) is based on an error of law: the rule is mandatory, and has no exceptions. CrR 4.7(h)(3); *Goldmark*, 172 Wn.2d at 575.

The court abused its discretion by refusing to order Sergi to turn over the non-discovery portions of his file, and by failing to redact the discovery so that it could be provided to Mr. Chargualaf in compliance with the criminal discovery rules. RPC 1.16(d); CrR 4.7(h)(3). The court failed to articulate a tenable basis for its decision. CP 6; RP 4.

The trial judge either failed to exercise discretion or exercised discretion based on an erroneous interpretation of CrR 4.7(h). Regardless of the reason, the trial court abused its discretion. *Ameriquest*; 177 Wn.2d at 478; *Grayson*, 154 Wn.2d at 342.

The trial court's order must be vacated, and the case remanded with instructions to order Sergi to provide the file to Mr. Chargualaf. RPC

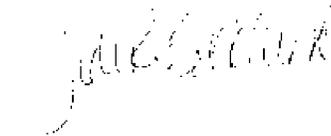
1.16(d). If appropriate, the court may order redactions to the discovery portions of the file. RPC 4.7(h)(3).

CONCLUSION

The trial court's Order on Defendant's Motion for Discovery must be vacated. The case must be remanded to the trial court. On remand, the court must order Sergi to provide Mr. Chargualaf with his file.

Respectfully submitted on August 6, 2013,

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

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1313 North 13th Avenue
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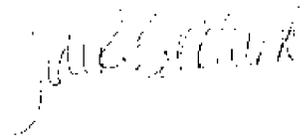
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on August 6, 2013.



Jodi R. Backlund, WSBA No. 22917
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BACKLUND & MISTRY

August 06, 2013 - 9:24 AM

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