

FILED
Court of Appeals
Division II
State of Washington
10/17/2018 9:26 AM
No. 51178-9-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

V.

ROBERT WOODWARD, APPELLANT

Appeal from the Superior Court of Mason County
The Honorable Toni. A. Sheldon, Judge

No. 11-1-00088-5

BRIEF OF RESPONDENT

MICHAEL DORCY
Mason County Prosecuting Attorney

By
TIM HIGGS
Deputy Prosecuting Attorney
WSBA #25919

521 N. Fourth Street
PO Box 639
Shelton, WA 98584
PH: (360) 427-9670 ext. 417

TABLE OF CONTENTS

	Page
A. State’s Counterstatements of Issues Pertaining to Appellant’s Assignments of Error.....	1
B. Facts and Statement of the Case.....	1
C. Argument.....	1
1) RPC 1.16(d) compels Woodward’s trial court attorney to provide him with a copy of his client file, but the State should not be made a party to Woodward’s dispute with his attorney.....	2
2) The prosecution has no duty to provide open-ended discovery directly to Woodward to aid his search for an issue to raise in a personal restraint petition.....	4
D. Conclusion.....	5

State’s Response Brief
Case No. 51178-9-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

TABLE OF AUTHORITIES

Table of Cases

	Page
<u>State Cases</u>	
<i>Ameriquest Mortgage Co. v. Office of Attorney Gen. of Washington</i> , 177 Wn.2d 467, 300 P.3d 799 (2013).....	4
<i>In re Pers. Restraint of Gentry</i> , 137 Wn.2d 378, 972 P.2d 1250 (1999).....	5
<u>Statutes</u>	
Chapter 42.56 RCW.....	4
<u>Court Rules</u>	
CrR 4.7.....	2, 3, 4, 5
RAP 10.3(b).....	1
RPC 1.16(d).....	1, 2, 3

State’s Response Brief
Case No. 51178-9-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

A. STATE'S COUNTER-STATEMENTS OF ISSUES
PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

- 1) RPC 1.16(d) compels Woodward's trial court attorney to provide him with a copy of his client file, but the State should not be made a party to Woodward's dispute with his attorney.
- 2) The prosecution has no duty to provide open-ended discovery directly to Woodward to aid his search for an issue to raise in a personal restraint petition.

B. FACTS AND STATEMENT OF THE CASE

For the purposes of the issues raised in this appeal, the State accepts Woodward's statement of facts. RAP 10.3(b).

C. ARGUMENT

In his assignment of error, Woodward avers that "[t]he trial court erred when it denied [his] motion to compel [his] trial attorney *and the prosecutor* to provide him *discovery* for the purposes of pursuing his personal restraint petition." Br. of Appellant at 1 (emphasis added).

Woodward's motion in the trial court asked the trial court to order one of his trial court attorneys to provide him with his client file and with a copy of the discovery file that the prosecutor had provided to the attorney. CP

State's Response Brief
Case No. 51178-9-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

49. Together with his motion, however, Woodward also filed a document entitled “Declaration in Support of Motion to Compel Discovery/Evidence.” CP 50-58 (capitalization altered from original). On page 4-5 of his declaration, Woodward asked the court to allow him to conduct a broad discovery expedition directly with the prosecutor’s office. CP 53-54. Woodward filed his discovery request on August 7, 2017, a date which was long after the trial court had entered judgment and sentence on September 8, 2014. CP 34, 50.

1) RPC 1.16(d) compels Woodward’s trial court attorney to provide him with a copy of his client file, but the State should not be made a party to Woodward’s dispute with his attorney.

WSBA Advisory Opinion 2117 provides guidance in the instant case. This Advisory Opinion opines that, subject to the redaction requirements of CrR 4.7(h)(3), “[a]t the conclusion of the representation... the obligation of the attorney is [to] turn the file over to the client.” *Id.* at 3. To the extent that the client file includes criminal discovery provided by the prosecutor to the defense, CrR 4.7(h)(3) clearly provides that “a defense attorney shall be permitted to provide a copy of the materials to

State’s Response Brief
Case No. 51178-9-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.”

In the instant case, however, Woodward’s trial attorney said that he could not give Woodward a copy of the discovery or client file because he no longer had possession of them. RP 2; CP 72-73. The trial attorney surmised that he may have given the discovery and client file to Woodward’s new attorney who substituted in the case to represent Woodward at resentencing. *Id.* The trial court judge, also, surmised that the substituted counsel may now possess the discovery and client file. RP 2, 4. Woodward informed the court that he had requested the materials from his new attorney, but the record does not clearly answer whether the substitute attorney in fact had possession of the discovery and client file or whether she had, would, or was willing to provide them to Woodward. RP 4.

The State contends that CrR 4.7(h)(3) and RPC 1.16(d) require Woodward’s attorney to make appropriate redactions to the discovery in the attorney’s possession, to submit the redacted copies to the court or the prosecutor for approval, and – once the redactions are approved by the prosecutor or the court – to provide the redacted copies of discovery and

State’s Response Brief
Case No. 51178-9-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

the client file to Woodward. However, the State does not have an attorney-client relationship with the defendant and has no control over Woodward's attorneys, and the State should not be made a party to any dispute between Woodward and his attorneys. The State has no control over whether Woodward's attorney has retained a copy of the client file or discovery. If Woodward chooses, he can seek the discovery records from the prosecutor's office under chapter 42.56 RCW. *Ameriquest Mortgage Co. v. Office of Attorney Gen. of Washington*, 177 Wn.2d 467, 485–86, 300 P.3d 799 (2013). But the prosecutor, of course, has no way of providing Woodward's client file.

2) The prosecution has no duty to provide open-ended discovery directly to Woodward to aid his search for an issue to raise in in a personal restraint petition.

CrR 4.7(a) is a *pretrial* rule that requires the prosecution to provide discovery to the defendant “no later than the omnibus hearing.” *Id.* at (1). At page 7 of his brief, Woodward writes that “a prosecutor’s duty to provide discovery to a defendant in a criminal case is governed by CrR 4.7(a)...” On appeal Woodward concedes that he is seeking “discovery... for the purpose of aiding him in the argument of his pending Personal Restraint Petitions (PRPs).” Br. of Appellant at 2. However, there is no

State's Response Brief
Case No. 51178-9-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

generalized constitutional or rule-based right to discovery in non-capital, post-conviction proceedings. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 389–94, 972 P.2d 1250, 1256–59 (1999), *as amended* (June 30, 1999).

D. CONCLUSION

The State agrees that Woodward’s attorneys have a duty to provide him with a copy of his client file and to provide him with copies of the discovery materials that the State provided to his attorneys (with appropriate redactions and the approval of the prosecutor or the court as provided by CrR 4.7), but the State has no control over whether Woodward’s attorneys have retained copies of these materials. To the extent that the State has retained copies of the discovery materials, Woodward can request copies of these materials under the Public Records Act, if he chooses. However, Woodward appears to conflate the CrR 4.7 provision for the transfer of redacted copies of pre-trial discovery materials with a supposed right to conduct discovery anew post-conviction in preparation of identifying potential issues to raise in a personal restraint petition. Woodward does not have a right to post-conviction discovery.

State’s Response Brief
Case No. 51178-9-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

Thus, the State contends that this Court should deny Woodward's appeal.

DATED: October 16, 2018.

MICHAEL DORCY
Mason County
Prosecuting Attorney



Tim Higgs
Deputy Prosecuting Attorney
WSBA #25919

State's Response Brief
Case No. 51178-9-II

Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

MASON CO PROS ATY OFFICE

October 17, 2018 - 9:26 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51178-9
Appellate Court Case Title: State of Washington, Respondent v. Robert Woodward, Appellant
Superior Court Case Number: 11-1-00088-5

The following documents have been uploaded:

- 511789_Briefs_20181017092527D2802669_0849.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 51178-9-II --- State v. Woodward --- Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- jahayslaw@comcast.net

Comments:

Sender Name: Timothy Higgs - Email: timh@co.mason.wa.us
Address:
PO BOX 639
SHELTON, WA, 98584-0639
Phone: 360-427-9670 - Extension 417

Note: The Filing Id is 20181017092527D2802669