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Court of Appeals
Division II
State of Washington
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NO. 53178-0-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

vs.

MARK GELINAS, RESPONDENT

Discretionary Review from the Mason County Superior Court
No. 18-2-00590-23

BRIEF OF RESPONDENT
AND
MOTION TO DISMISS APPEAL FOR MOOTNESS

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TABLE OF CONTENTS

I. Motion to Dismiss for Mootness.....1
II. Argument on Motion to Dismiss.....1
III. Facts.....2
IV. Argument.....3
V. Conclusion.....8

TABLE OF AUTHORITIES

U.S. Supreme Court Cases

Stack v. Boyle, 342 U. S. 1, 4-5, 72 S.Ct. 1, 96 L.Ed. 3 (1951).....5

Washington Cases

Blomstrom v. Tripp, 189 Wn.2d 379, 402 P.3d 831 (2017).....7

City of Spokane v. Ward, 122 Wn. App. 40, 44-45, 92 P.3d 787 (2004)...8

Heaney v. Seattle Municipal Court, 35 Wn. App. 150, 155, 665 P.2d 918 (1983).....7

In re Det. of J.S., 138 Wn. App. 882, 889-90, 159 P.3d 435 (2007).....2

State v. Branstetter, 85 Wn. App. 123, 935 P.2d 620 (1997).....6

State v. Chhom, 162 Wn.2d 451, 458, 173 P.3d 234 (2007).....5

State v. Evans, 177 Wn.2d 186, 193, 298 P.3d 724 (2013).....4

State v. Kohles, 81 Wn. App. 678, 916 P.2d 440 (1996).....7

State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196 (2005).....4

State v. Rose, 146 Wn. App. 439, 191 P.3d 83 (2008).....7

State v. Theilken, 102 Wash.2d 271, 275, 684 P.2d 709 (1984).....4

State v. W.W., 76 Wn. App. 754, 757, 887 P.2d 914 (1995).....4

Washington Court Rules

CR 83.....7

CrRLJ 2.5.....	3, 5, 6, 8
CrRLJ 3.4.....	3, 5, 6
GR 7.....	7

I. MOTION TO DISMISS FOR MOOTNESS

Comes now Mark Gelinias, through counsel, Bruce Finlay, and moves the Court for an order dismissing this appeal for mootness. The grounds for this motion are that Mr. Gelinias has resolved the underlying case, which began as a prosecution in the Mason County District Court and then went to superior court on a writ of review. Mr. Gelinias's case in district court was resolved on November 7, 2019.

II. ARGUMENT ON MOTION TO DISMISS

An issue is moot when a court can no longer provide meaningful relief. But, a court may review a moot case that involves matters of continuing and substantial public interest. When determining whether to review a moot appeal, courts consider the following criteria:

(1) The public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future

guidance to public officers; and (3) the likelihood that the question will recur. In re Det. of J.S., 138 Wn. App. 882, 889-90, 159 P.3d 435 (2007).

Here, there are no appellate cases discussing this issue, which indicates that there is no recurring question. Mr. Gelinas has no incentive to litigate this appeal; his case in district court from which this appeal originated has been resolved. Mr. Gelinas knows of no other cases on appeal from the lower court level to the appellate level, either, nor has the State cited any. For these reasons, this Court should find that the appeal is moot and dismiss it.

III. FACTS

Mark Gelinas signed a scheduling order that scheduled a readiness hearing that was not defined by the state court rule as a necessary hearing for him to attend. Mr. Gelinas' attorney appeared at the readiness hearing, but Mr. Gelinas did not personally appear. CP 148. The Mason County District Court issued a warrant for his arrest for failure to appear. CP 152.

Mr. Gelinas challenged the warrant by writ of certiorari to superior court. CP 1. The Mason County Superior Court determined that the District Court erred in ordering and issuing a bench warrant for Mr. Gelinas. CP 19-20. Mr. Gelinas' case has been resolved and he has no interest in proceeding.

IV. ARGUMENT

CrRLJ 2.5, authorizes a lower court defendant to appear through a lawyer.

It reads as follows with emphasis added:

The court may order the issuance of a bench warrant for the arrest of any defendant who has failed to appear before the court, either in person **or by a lawyer**, in answer to a citation and notice, or an order of the court, upon which the defendant has promised in writing to appear, or of which the defendant has been served with otherwise received notice to appear, if the sentence for the offense charged may include confinement in jail.

CrRLJ 2.5.

CrRLJ 3.4 reads in relevant part as follows:

- a) When Necessary.** The defendant shall be present at the arraignment, at every stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.
- (b) Effect of Voluntary Absence.** The defendant's voluntary absence after the trial has commenced in his or her presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by its lawyer for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.
- (c) Defendant Not Present.** If in any case the defendant is not present when his or her personal attendance is necessary, the court

may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.

This rule is unambiguous and requires no construing. It means what it says. The only hearings where the defendant's presence is necessary are arraignment and trial. Readiness is not defined as a hearing in which the defendant's presence is necessary.

The starting point of every statutory or rule analysis is that if the words are clear and unambiguous there is no need to resort to rules of construction. State v. Theilken, 102 Wash.2d 271, 275, 684 P.2d 709 (1984). If the language of a rule is unambiguous, it must be given its plain meaning. State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196 (2005). Court rules must be construed so that no word, clause or sentence is superfluous, void or insignificant. State v. W.W., 76 Wn. App. 754, 757, 887 P.2d 914 (1995). If a rule or statute is ambiguous, it must be construed strictly in favor of the defendant. State v. Evans, 177 Wn.2d 186, 193, 298 P.3d 724 (2013) (rule of lenity). This rule, as erroneously construed by the district court, penalized the defendant by issuance of a warrant. If the district court's local rule and practice requires every defendant to appear for every hearing, the state rule is read completely out of existence.

Court rules are analyzed, and “construed” if necessary, in the same manner as are statutes. State v. Chhom, 162 Wn.2d 451, 458, 173 P.3d 234 (2007).

An accused has a long-standing, recognized right to freedom before conviction. This traditional right supports the unhampered preparation of a defense, and serves to prevent the infliction of punishment before conviction. Unless this right is preserved, “the presumption of innocence, secured only after centuries of struggle, would lose its meaning.” *Stack v. Boyle*, 342 U. S. 1, 4-5, 72 S.Ct. 1, 96 L.Ed. 3 (1951).

Mr. Gelinas appeared at the readiness hearing by a lawyer, but was not personally present. If a court can order a defendant to personally appear, to every hearing including those that are not necessary per the rules, even where her lawyer appears, then CrRLJ 3.4 and CrRLJ 2.5 cease to exist; they have no legal meaning whatsoever in Mason County District Court and the policy purpose of easing the burden on the defendant disappears entirely. But the State’s Motion does not even mention these rules.

It is true that a court can order a defendant to appear at a hearing that would otherwise not be defined by CrRLJ 3.4 as “necessary”, but the State ignores the case law’s policy grounds of authorizing a warrant where

the defendant's absence prevents the court from proceeding. But the court was not prevented from proceeding here.

As noted by State v. Branstetter, 85 Wn. App. 123, 935 P.2d 620 (1997), CrR 3.4 (the superior court version of CrRLJ 3.4) is clearly intended to apply only to those hearings at which the defendant's presence is always required, such as arraignments and suppression hearings with factual issues. Id. at 128, n. 1; and the intent of CrR 3.3's drafters was to re-start the speedy trial period "[w]hen after arraignment a defendant absents himself and so prevents the case from proceeding." Id., at 128-129. Thus, a warrant is appropriate where the defendant's personal absence prevents the court from proceeding; but it is not appropriate otherwise. Mr. Gelinas' absence here in no way prevented the court from proceeding. Further, CrR 3.4 does not apply in district court; CrRLJ 3.4 and CrRLJ 2.5 are the rules at issue and must be read together.

The significant problem with the State's reliance on Branstetter is CrRLJ 2.5, which has no counterpart in the superior court rules and therefore the cases cited by the State provide no help to the State's position. CrRLJ 2.5 expressly authorizes the defendant to appear through a lawyer instead of personally appearing. Mr. Gelinas did in fact appear though his lawyer.

The appellate courts of this state have made it clear in recent years that a person charged with a crime is entitled to release without conditions unless the trial court finds that there is a substantial reason to impose a condition. Even then, the court must impose the least restrictive condition and “standard” conditions are not allowable because they are not based on individual factors. Blomstrom v. Tripp, 189 Wn.2d 379, 402 P.3d 831 (2017); State v. Rose, 146 Wn. App. 439, 191 P.3d 83 (2008). Requiring a person to appear at unnecessary hearings can cost him his job; it cannot be the least restrictive condition.

A local court rule must be consistent with rules adopted by the Supreme Court. GR 7; CR 83. Local court rules are inconsistent with state rules, and thereby invalid, if they are inconsistent with the state rules. “Inconsistent” for this purpose means so antithetical that it is impossible as a matter of law that they can both be effective. Heaney v. Seattle Municipal Court, 35 Wn. App. 150, 155, 665 P.2d 918 (1983).

In State v. Kohles, 81 Wn. App. 678, 916 P.2d 440 (1996), the appellate court held that a local juvenile court rule was inconsistent with the state rule. The state rule provided that the hearing shall be held within 90 days of the written notice of the hearing date. The local rule required the juvenile to file a written objection to any hearing date, and it must be

filed and served within 10 days of the scheduling notice. These rules were inconsistent.

The local rule and practice of the Mason County District Court directly contradict and conflict with the state rule, CrRLJ 2.5. As such, they cannot stand. City of Spokane v. Ward, 122 Wn. App. 40, 44-45, 92 P.3d 787 (2004).

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Mason County Superior Court.

Respectfully submitted this 9th day of December, 2019.

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