

FILED
Court of Appeals
Division II
State of Washington
5/5/2020 4:40 PM
No. 54035-5-II.

THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

BENJAMIN ASAELI,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

BRIEF OF APPELLANT

GREGORY C. LINK
Attorney for Appellant

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

TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR..... 1

B. ISSUES PRESENTED 1

C. STATEMENT OF THE CASE..... 1

D. ARGUMENT 1

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

F. CONCLUSION 4

TABLE OF AUTHORITIES

Washington Supreme Court

<i>In re the Personal Restraint of Gentry</i> , 137 Wn.2d 378, 972 P.2d 1250 (1999)	2, 3
<i>State v. Blilie</i> , 132 Wn.2d 484, 939 P.2d 691 (1997)	2
<i>State v. Delgado</i> , 148 Wn.2d 723, 63 P.3d 792 (2003).....	2
<i>State v. Greiff</i> , 141 Wn.2d 910, 10 P.3d 390 (2000).....	2
<i>State v. J.P.</i> , 149 Wn.2d 444, 69 P.3d 318 (2003).....	2
<i>State v. Mullen</i> , 171 Wn.2d 881, 259 P.3d 158 (2011).....	2, 3
<i>State v. Wilson</i> , 125 Wn.2d 212, 883 P.2d 320 (1994)	2

Washington Court of Appeals

<i>State v. Woodward</i> , 51178-9-II, 2019 WL 2515927, <i>review denied</i> , 194 Wn.2d 1016 (2020).....	2, 4
---	------

Court Rules

CrR 4.7	1, 2, 3
---------------	---------

A. ASSIGNMENT OF ERROR

The trial court erred in denying Benjamin Asaeli's motion for release of the discovery in his case.

B. ISSUES PRESENTED

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 after trial as well as before. Nonetheless, the trial court denied his motion solely on the basis that it was made after trial.

C. 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.

D. ARGUMENT

The provisions of CrR 4.7 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 (2003) (citing *Delgado*, 148 Wn.2d at 727).

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).

The trial court's conclusion that CrR 4.7 does not apply post trial relies on a single unpublished case. CP 7 (citing *State v. Woodward*, 51178-9-II, 2019 WL 2515927, review denied, 194 Wn.2d 1016 (2020)). *Woodward* in turn purports to rely on two Supreme Court decisions, *In re the Personal Restraint of Gentry*, 137 Wn.2d 378, 972 P.2d 1250 (1999) and *State v. Mullen*, 171 Wn2d 881, 259 P.3d 158 (2011).

Neither *Gentry* nor *Mullen* addressed CrR.4.7 or held the rule did not apply after trial.

Gentry did not conclude that CrR 4.7 does not apply post trial. In fact, the Court never mentioned CrR.4.7. Instead, the Court simply recognized that there was no rule addressing the provision of discovery in appellate courts. 137 Wn.2d at 391. But Mr. Asaeli is not seeking discovery in an appellate proceeding. Instead, Mr. Asaeli filed his motion in the superior court, where CrR 4.7 does apply. *Gentry* never addressed that circumstance.

Similarly, *Mullen* does not address CrR 4.7 or its application to post trial proceedings. Instead, the Court simply held the State's obligation under *Brady* did not necessarily apply to all documents discovered post trial. 171 Wn2d at 902.

In fact, *Woodward* itself recognized CrR. 4.7 does apply post trial. The court found the limitations on defense counsel's ability to share discovery with a defendant found in CrR 4.7(h) applied even after the trial was complete. 2019

WL 2515927, at *2. Yet *Woodward* makes no effort to explain why some provisions of the same rule apply post trial while others do not. Indeed, no such limitation or differentiation exists in the plain language of the rule.

The trial court erred in denying Mr. Asaeli's motion.

F. CONCLUSION

Because the trial court erroneously denied Mr. Aseali's motion for discovery, this Court should remand the matter with direction to the court to grant the motion.

Respectfully submitted this 4th day of May, 2020.



Gregory C. Link – 25228
Attorney for Appellant
Washington Appellate Project
greg@washapp.org

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 54035-5-II
)	
BENJAMIN ASaelI,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 5TH DAY OF MAY, 2020, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE COURT OF APPEALS - DIVISION TWO AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KRISTIE BARHAM, DPA [PCpatcecf@co.pierce.wa.us] [kristie.barham@piercecountywa.gov] PIERCE COUNTY PROSECUTOR'S OFFICE 930 TACOMA AVENUE S, ROOM 946 TACOMA, WA 98402-2171	() () (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
<input checked="" type="checkbox"/> BENJAMIN ASaelI 898293 STAFFORD CREEK CORRECTIONS CENTER 191 CONSTANTINE WY ABERDEEN, WA 98520-9504	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 5TH DAY OF MAY, 2020.



X _____

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

May 05, 2020 - 4:40 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 54035-5
Appellate Court Case Title: State of Washington, Respondent v. Benjamin Salofi Asaeli, Appellant
Superior Court Case Number: 04-1-05087-3

The following documents have been uploaded:

- 540355_Briefs_20200505164023D2539676_6731.pdf
This File Contains:
Briefs - Appellants
The Original File Name was washapp.050520-07.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@piercecountywa.gov
- kristie.barham@piercecountywa.gov
- wapofficemail@washapp.org

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Gregory Charles Link - Email: greg@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20200505164023D2539676