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State of Washington  
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COA Case No. 362442

**COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III**

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JOHN L. CORRIGAN, SR.;

Plaintiff/Appellant,

vs.

GRANT COUNTY, et al.;

Defendants/Respondents,

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**GRANT COUNTY DEFENDANTS' ANSWERING BRIEF**

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## **I. ASSIGNMENTS OF ERROR**

1. The State failed to provide an adequate record to base the appeal on.
2. The trial court erred by conflating an initial state trial, a federal complaint, a state retrial, a removed *section 1983* state complaint, and a remanded *section 1983* federal complaint into a *CR 12* motion.
3. The trial court erred by finding absolute prosecutorial immunity for an abuse of process claim.
4. The trial court erred by finding there was no Grant County negligence.
5. The trial court erred by finding that judges have judicial immunity for declaratory actions.
6. The trial court erred by finding the statute of limitations precludes this action.
7. The trial court erred by finding that Defendant Kron's res judicata and service of claims precludes his being a party to this action.
8. The trial court erred by ruling on alleged material facts that Corrigan supported in his amended complaint.

## **II. STATEMENT OF THE CASE**

This case involves allegations involving events that began in 2011 with the arrest of Mr. Corrigan, a conviction, appeal, new trial, conviction and an appeal that upheld the conviction. (CP 317,304, 305, 324-325). In March 2013, Mr. Corrigan brought his first suit in United States District Court, Eastern District of Washington, under cause number 13-CV-116-TOR against Grant County, Sergeant Scott Ponozzo and Deputy Prosecutor, Douglas Mitchell (defendants originally named in the present case), among others, for deprivations of rights he claimed from the arrest, incarceration and conviction. (CP 138 – 172)

On December 10, 2013 the United States District Court, Eastern District of Washington summarily dismissed Mr. Corrigan's first lawsuit. (Id.) Mr. Corrigan appealed the Order Granting Defendants' Motions for Summary Judgment, but the Ninth Circuit Court of Appeals dismissed the appeal, writing that "Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed." (CP 174)

In September 2016, Mr. Corrigan again filed the present suit in Kittitas County Superior Court under the above cause number against Grant County, Deputy Prosecutor Douglas Mitchell, and Sergeant Scott Ponzoso, but also added Defendants D. Angus Lee, Patrick Shaff, Ryan J. Ellersick, Janis Whitener-Moberg, Brian D. Barlow, Tom Jones, and John A. Antosz. (CP 305 – 306) This lawsuit was based primarily upon the same facts as the previous lawsuit. Mr. Corrigan brought the following claims against Defendants: Violation of civil rights including due process, right to fair trial, first amendment, fifth amendment, abuse of process, negligent training, conspiracy. (CP 306) Essentially, the same claims he made in the first lawsuit, with the first amendment claim thrown in alleging retribution because of his filing of the lawsuit. The case was then removed to federal court. (CP 305)

On August 7<sup>th</sup>, 2017, the federal court granted Defendants' CR 12(b)(6) motion to dismiss, but allowed leave to amend. (CP 303 – 315)

The Court wrote,

*Plaintiff Corrigan may file an amended complaint but the Court reminds him that he must file cognizable and plausible claims.*

(CP 314) The Court also noted that Mr. Corrigan has had his claims heard by several courts, on appeal and in state and federal court and that a remedy at law has been available, hence, injunctive relief is inappropriate. (Id.)

*Current allegations.* Mr. Corrigan then filed the current, amended complaint, but it is based upon the same facts, just without reference to federal law, so it was remanded to state court. (CP 316 – 330) The claims at bar are essentially the same as previously filed: 1) Municipal negligence; 2) abuse of process; 3) retaliatory and malicious prosecution; 4) Lack of a Fair trial; 5) perfunctory Appellate Review. The Amended Complaint does not state a cause of action that could lead to relief.

### **III. ARGUMENT**

1. Appellants argument that a proper record for review of the appeal of his district court conviction is baseless.

Presumably, this refers to the claim that Judge Antosz review of the matter was “perfunctory.” As has been stated, judicial officers have

consistently been held absolutely immune from civil suits for damages when performing judicial acts within their jurisdiction. *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967); *Forrester v. White*, 484 U.S. 219 (1988). Mr. Corrigan complains that Judge Antosz decision was faulty. While the Defense is not certain that this is an actual cause of action, there is no question that a judge is immune from civil liability for making a ruling. There is nothing alleged that could overcome immunity and the claim should be dismissed. Further, as admitted by Appellant, the criminal matter was appealed to the court of appeals and upheld. The matter has been previously reviewed. The U.S. Supreme Court has held that a party suing for damages due to an unconstitutional or harmful conviction or imprisonment must show the conviction was declared invalid. *Heck v. Humphrey*, 512 U.S. 477, 486-87. (1994).

2. The trial court properly dismissed this matter.

Mr. Corrigan claims that the actions of the judges and prosecutors deprived him of a fair trial, based upon the Washington State Constitution. In paragraph 55 of the amended complaint, Mr. Corrigan provides a list of decisions made during the trial that he did not agree with. As he admits, however, he appealed the trial and lost.

Judicial officers have consistently been held absolutely immune from civil suits for damages when performing judicial acts within their jurisdiction. *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967); *Forrester v. White*, 484 U.S. 219 (1988). Prosecutors are likewise absolutely immune from suits for damages arising from the performance of traditional functions of an advocate. *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997); *Imbler v. Pachtman*, 424 U.S. 409, 424-425 (1976). Nothing is alleged that would overcome that immunity. Mr. Corrigan's blanket statements that actions were wrongful does not explain what the actual wrongful actions were and why they might be wrongful.

Furthermore, Washington courts have consistently rejected invitations to establish a cause of action for damages based upon state constitutional violations without the aid of augmentative legislation. *Blinka v. Wash. State Bar Ass'n*, 109 Wn.App. 575, 591, 36 P.3d 1094 (2001) (quoting *Svs. Amusement, Inc. v. State*, 7 Wn.App. 516, 517, 500 P.2d 1253 (1972)); *see also Reid v. Pierce County*, 136 Wn.2d 195, 213-14, 136 Wn.2d 195, 961 P.2d 333 (1998) Mr. Corrigan cites the state constitution as a basis of this claim but provides no mention of what legislation he might be relying upon.

Charges were refiled against Mr. Corrigan after his initial conviction was overturned. He claims that this act was retaliatory and malicious. First of all, Prosecutors are absolutely immune from suits for damages arising from the performance of traditional functions of an advocate. *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997); *Imbler v. Pachtman*, 424 U.S. 409, 424-425 (1976). Nothing is alleged that would overcome that immunity. The justification alleged in the complaint, paragraph 56, is that the arresting officer made untrue statements to justify the arrest. The arrest, as stated in the complaint, took place in 2011. The statute of limitations had passed when this complaint was filed in September of 2016.

Furthermore, In order to maintain an action for malicious prosecution, a plaintiff must prove that: (1) the defendant instituted or continued the alleged malicious prosecution; (2) a lack of probable cause for the institution or continuation of the prosecution; (3) the proceedings were instituted or continued through malice; (4) the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) the plaintiff suffered injury or damage as a result of the prosecution. *Hanson v. City of Snohomish*, 121 Wn.2d 552, 558, 852 P.2d 295 (1993). The proceedings were not terminated on the merits for Mr. Corrigan so he cannot prove element four.

3. The abuse of process claim was properly dismissed.

The abuse of process claim, according to the complaint, is based upon the fact that Grant County refiled criminal charges against Mr. Corrigan after the Superior Court overturned his first conviction. The claim has no merit and could be dismissed on the basis of a couple grounds.

To establish the tort of abuse of process, a claimant must prove (1) an ulterior purpose to accomplish an object not within the proper scope of the process, (2) an act not proper in the regular prosecution of proceedings, and (3) harm proximately caused by the abuse of process. *Bellevue Farm Owners Ass'n v. Stevens*, 198 Wn. App. 464, 477, 394 P.3d 1018, 1024 (2017). Actions for abuse of process also are not favored in Washington. *Batten v. Abrams*, 28 Wn.App. 737, 745–46, 626 P.2d 984, review denied, 95 Wash.2d 1033 (1981).

“The mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process.” *Fite v. Lee*, 11 Wn.App. 21, 27–28, 521 P.2d 964, 97 A.L.R.3d 678, review denied, 84 Wn.2d 1005 (1974). Why the case was refiled is not the issue. Mr. Corrigan complains that the criminal charge was refiled in retribution, however, the, “why,” it was filed is not important.

*An ulterior motive or a bad intention in using the process is not alone sufficient, the bad intent must have culminated in the abuse, for it is the latter which is the gist of the action. An action for abuse of process cannot be maintained where the process was employed to perform no other function than that intended by law. Thus the mere issuance of process is not actionable as an abuse of process; there must be use of the process, and that use must of itself be without the scope of the process, and hence improper. Or stated another way, the test as to whether there is an abuse of process is whether the process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be compelled to do. [citations omitted]*

*It is clear from these cases that regularity or irregularity of the initial process is irrelevant. The tort goes to use of the process once it has been issued for an end for which it was not designed. Thus, there must be an act after filing suit using legal process empowered by that suit to accomplish an end not within the purview of the suit.*

Batten v. Abrams, 28 Wn. App. 737, 745–49, 626 P.2d 984, 988–91 (1981). Mr. Corrigan’s claim should be dismissed. He make no allegations as to what occurred after the case was refiled that was not proper in the course of proceedings.

Furthermore, the charge was refiled in July of 2013, more than three years prior to the original complaint in this matter being filed. (See discussion below)

4. There was no basis for Mr. Corrigan’s claims against the judges.

As discussed above, there is no basis for a claim against any judges alleged in the amended complaint.

5. There was no basis for a negligence claim against Grant County.

To establish a common law negligence claim, a party must establish four elements: (1) the existence of a duty ...; (2) breach of that duty; (3) resulting injury; and (4) proximate cause between the breach and the injury. *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991). Mr. Corrigan alleges that the County should be held liable due to the acts of judges and prosecutors. He does not allege what legal duties were owed to him and how they were violated. He makes a series of vague references and argumentative assertions that his rights were violated but alleges nothing material. The Complaint alleges that he Prosecutors re-filed charges against him after he filed a civil suit. Filing charges is clearly within the scope of their duties.

It is well established that a prosecutor who acts within the scope of his or her duties in initiating and pursuing a criminal prosecution is absolutely immune from liability. *Imbler v. Pachtman*, 424 U.S. 409, 427, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). Prosecutors are immune from section 1983 federal claims as well as state common law claims. *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128. In

*Tanner v. City of Fed. Way*, 100 Wn. App. 1, 6, 997 P.2d 932, 935 (2000), the City and a City prosecutor were sued. The court held that “the City shares Wohl's absolute immunity from Tanner's state tort claims. *Id.* citing *Kentucky v. Graham*, 473 U.S. 159, 167–68, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985).

Mr. Corrigan’s allegations do not suggest any facts apart from prosecutors acting in their official capacity. As for the judges, they are absolutely immune as well. *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967); *Forrester v. White*, 484 U.S. 219 (1988).

There is no basis for the municipality to be held negligent and the ruling of the trial court should be upheld.

6. The statute of limitations did apply to Mr. Corrigan’s claims.

In addition to immunity and other issues raised above with Mr. Corrigan’s claims, the statute of limitations would bar much of it. The original complaint was filed on September 15th of 2016. The statute of limitations for the various claims are three years. (RCW 4.16.080, which includes injuries to persons, including negligence, abuse of process, malicious prosecution, civil rights violations, etc... See, *Nave v. Seattle*, 68 Wn.2d 721 (1966).) Under RCW 4.96.020, an extra sixty days can be added pursuant to the notice of claim tolling statute, therefore, claims

concerning events transpiring prior to July 15<sup>th</sup>, 2013 should be excluded due to the statute of limitations.

According to Mr. Corrigan, the criminal charges were refiled against him on July 3rd of 2013. (Amended Complaint para 45)

7. Officer Kron was dismissed by the Federal Court prior to the decision concerning the county and county defendants, and was not part of the “leave to amend” order.

Officer Kron is not an employee of Grant County, and is separately represented, however, the County believes he was dismissed with prejudice and should not be a part of the amended complaint.

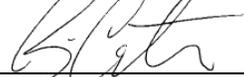
#### **IV. CONCLUSION**

The trial court properly followed the requirements of CR 12 (b)(6). Nothing alleged in appellants complaint would lead to relief. The claims were late, had already been appealed and upheld, and/or were contrary to law. Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove “any set of facts which would justify recovery.” *Id.* (citing *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988)). The court presumes all facts alleged in Plaintiff's complaint are true and may consider hypothetical facts supporting Plaintiff's claims. *Id.* A motion to dismiss is granted “ ‘sparingly and with care’ ” and, as a practical matter, “ ‘only in the unusual case in which plaintiff

includes allegations that show on the face of the complaint that there is some insuperable bar to relief.’ ” *Hoffer*, 110 Wn.2d at 420, 755 P.2d 781 (internal quotation marks omitted) (quoting *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984)) and (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 604 (1969)). In this case, there is no question that the claims lack any merit.

RESPECTFULLY SUBMITTED January 4, 2019.

JERRY MOBERG & ASSOCIATES, P.S.



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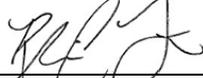
CERTIFICATE OF SERVICE

I certify that on this date I electronically filed the document to which this is affixed and an electronic copy of the document will be sent to:

John L. Corrigan  
[jcorrigan25@outlook.com](mailto:jcorrigan25@outlook.com)

DATED January 4, 2019 at Ephrata, Washington.

JERRY MOBERG & ASSOCIATES, P.S.



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RHANNON C. FRONSMAN, PARALEGAL

**JERRY MOBERG & ASSOCIATES, P.S.**

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