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STATE OF WASHINGTON
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No. 97277-0

IN THE SUPREME COURT OF WASHINGTON

RICHARD KING and RICHARD JACKSON, individually and
representing a class of similarly situated individuals,

Plaintiffs,

DEREK GRONQUIST,

Intervenor-Plaintiff,

v.

CHASE RIVELAND and JANET BARBOUR in their official capacities;
the DEPARTMENT OF CORRECTIONS OF THE STATE OF
WASHINGTON; the INDETERMINATE SENTENCING REVIEW
BOARD; and KEN EIKENBERRY in his official capacity as Attorney
General of the State of Washington,

Defendants.

KING COUNTY PROSECUTOR DANIEL T. SATTERBERG,

Intervenor-Defendant.

INTERVENOR-PLAINTIFF GRONQUIST'S ANSWER TO
INTERVENOR-DEFENDANT SATTERBERG'S PETITION FOR
DISCRETIONARY REVIEW

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I. INTRODUCTION

Defendant-Intervenor Satterberg asks this Court to accept review of the Court of Appeals' unpublished decision reversing the dismissal of Mr. Gronquist's case as moot and remanding to the trial court, on the claimed ground that it runs afoul of this Court's analysis in *State v. Sims*. Petition for Review (hereafter "Pet.") at 12. But Satterberg's argument is untenable. *Sims* is irrelevant, and the Court of Appeals properly applied its own binding precedent, *In re Rapid Settlements, Ltd.*, review of which this Court previously denied. *See* 189 Wn. App. 584, 359 P.3d 823 (2015), *review denied*, 185 Wn.2d 1020 (2016).

In his Petition, Satterberg argues that the Court should grant discretionary review under RAP 13.4(b)(1) and (4), on two grounds: (1) "the Court of Appeals construed RCW 7.21.030 contrary to this Court's very recent decision in *Sims* and the plain language of the statute"; and (2) because "the scope of the Superior Court's contempt powers and the proper interpretation of RCW 7.21.030 are matters of substantial public interest that should be decided by this Court." Pet. at 3–4.

But since the Court of Appeals' unpublished opinion is not contrary to this Court's ruling in *Sims* and does not raise a matter of substantial public interest, this Court should deny the petition for review.

II. FACTS

In 1994, this Court affirmed a permanent injunction against the Washington Department of Corrections (DOC), enjoining it from releasing certain highly confidential treatment “SOTP” files of a class of sex offenders. *See King v. Riveland*, 125 Wn.2d 500, 886 P.2d 160, 162–64 (1994). The injunction also enjoined non-parties from violating its terms. *Id.* “Although not a named party in *King*, Gronquist fell within the class of persons protected by the *King* injunction.” *Gronquist v. Dep’t. of Corr.*, No. 49392-6-II, slip op. at 2 (Wash. Ct. App. April 30, 2019). “In July 2015, Gronquist intervened in the 1991 case that resulted in the *King* injunction. He alleged that DOC violated the *King* injunction by sharing his SOTP file with [Defendant-intervenor King County Prosecutor] KCP. Gronquist filed a motion for an order to show cause why DOC and KCP should not be held in contempt.” *Id.* “After Gronquist filed his motion, KCP intervened as a defendant in the case.” *Id.*, n. 1.

More than three years ago, “the trial court entered a written order vacating the injunction as to Gronquist,” on the ground that since the injunction was entered, subsequent legislation ““unequivocally requires disclosure to the prosecuting attorney of all records, including complete SOTP files, in connection with Sexually Violent Predator proceedings.”” *Id.* at 3. “The court concluded that the vacation of the injunction as to

Gronquist, would ‘not directly affect the current contempt action’” since its ruling was “‘prospective only, and [did] not resolve allegations of contempt in the past.’” *Id.* After the injunction had been vacated and the Court of Appeals declined review, “DOC provided KCP with Gronquist’s complete SOTP file.” *Id.*¹

Subsequently, without deciding whether DOC and KCP violated the injunction, the trial court dismissed the remainder of Mr. Gronquist’s motion for contempt as moot. *Id.* at 8.

Gronquist appealed, and the Court of Appeals reversed and remanded for the trial court to rule on the merits of Gronquist’s motion for contempt, holding: “If Gronquist can prove DOC and KCP are in contempt, then he can recover losses that he proves resulted from the disclosure of his SOTP file. The court can award him compensatory relief. Therefore, Gronquist’s motion for contempt is not moot.” *Id.* at 8–

¹ The merits of Mr. Gronquist’s motion—whether the KCP and DOC committed contempt—are not at issue on appeal. So this Court should ignore Satterberg’s attempts to justify his conduct and distract from the issues by impugning Mr. Gronquist. *See* Pet. at 6 (“It remains Prosecutor Satterberg’s understanding that the documents sent by DOC in 2013 followed the 1993 injunction and omitted documents that were covered by the 1993 injunction,” and “to remove any doubt about the propriety of Gronquist’s DOC records and to prevent Gronquist’s continuing manipulation of the SVP process, Prosecutor Satterberg brought a motion to vacate the 1993 Injunction as to Gronquist....”). Below, Mr. Gronquist presented ample evidence that DOC and the Prosecutor violated the *King* injunction as to him; it is for the trial court to evaluate and rule on that evidence in the first instance.

9. In reaching this conclusion, the Court of Appeals interpreted the contempt statute, RCW 7.21.030(3), in accordance with its published precedent: “This provision ‘allows the court to order a contemnor to pay losses suffered as a result of the contempt and costs incurred in the contempt proceedings for any ‘person found in contempt of court’ without regard to whether it is possible to craft a coercive sanction.’” *Id.* at 7 (quoting *Rapid Settlements*, 189 Wn. App. at 601 (quoting RCW 7.21.030(3))).

In its ruling, the Court of Appeals rejected the argument that KCP now relies upon as the basis for its petition, which was argued by the DOC below: “DOC contends that this ‘in addition to’ language implies that a court may only order a contemnor to pay losses, costs, and attorney fees if it *additionally* orders one of the remedial sanctions laid out in RCW 7.21.030(2). This argument is inconsistent with *Rapid Settlements*, discussed below.” *Id.*, n. 5. The Court explained: “Compensatory fines have been imposed in Washington contempt proceedings to address many types of loss and damage caused by a party’s contumacious acts.” *Id.* at 8 (quoting *Rapid Settlements*, 189 Wn. App. at 610). “In *Rapid Settlements*, the court awarded attorney fees and costs incurred in the contempt proceedings, losses incurred as a result of the contemptuous conduct, and a onetime \$1,000 sanction.” *Id.* (citing *Rapid Settlements*, 189 Wn. App. at 606, 610–11). Since “[a] court has authority to order DOC and KCP to

compensate Gronquist for any losses he suffered as a result of their alleged contempt,” the Court held that Mr. Gronquist’s case is not moot, and reversed and remanded for the trial court to rule on the merits of Mr. Gronquist’s motion for contempt. *Id.* at 8.

III. Counter-Statement of Issue

Whether Petitioner has met the requirements for Discretionary Review under RAP 13.4 or 13.5?

IV. Reasons to Deny Petition

The petitioner bears the burden of establishing that the Court should accept review. *In re Coats*, 173 Wn.2d 123, 267 P.3d 324, 329 (2011) (“Thus, the petitioner must persuade us that either the decision below conflicts with a decision of this court or another division of the Court of Appeals; that it presents a significant question of constitutional interest; or that it presents an issue of substantial public interest that should be decided by this court”) (citing RAP 13.5A(a)(1), (b); RAP 13.4(b)).

A. There is No Conflict with a Decision of this Court.

There is no conflict between the Court of Appeals opinion in *Gronquist* and this Court’s decision in *Sims*. Indeed, far from rejecting the precedent on which the Court of Appeals opinion relied—*In re Rapid Settlements, Ltd.*—in *Sims*, this Court cited that precedent with approval

for another point of law. *See State v. Sims*, 193 Wn.2d 86, 441 P.3d 262, 267 (2019) (“DSHS is correct that the statute requires findings, *see* RCW 7.21.030(2) (*see also* RCW 7.21.050(2)), and purge conditions, *In re Rapid Settlements, Ltd.*, 189 Wn. App. 584, 613, 359 P.3d 823 (2015), as amended on denial of reh’g, 185 Wn.2d 1020, 369 P.3d 500 (2016).”).

The lack of any conflict with *Sims* explains why Satterberg instead focuses on his (untenable) assertion that the Court of Appeals opinion is “contrary” to “the plain language of the statute” (RCW 7.21.030). Pet. at 4. Although the heading to his main argument for why this Court should accept review asserts that “[t]he Decision of the Court of Appeals Conflicts with the Decision of this Court,” Pet. at 9, the body of Satterberg’s argument focuses exclusively on an alleged conflict with the plain language of the statute. Satterberg does not even raise the purported conflict with a decision of this Court—namely, *Sims*—for four pages, halfway through his argument. And that purported “conflict” amounts to merely asserting that *Sims* “notes several times that RCW 7.21.030 is a ‘plain language’ statute, meaning that it is not subject to construction.” Pet. at 12. As Gronquist explains below, Satterberg is wrong in his arguments. But more importantly for this motion, his assertion that the Court of Appeals has misread the statute is not a basis for review under RAP 13.4.

B. There is No Issue of Substantial Public Interest.

Satterberg properly does not seek review on the other specified grounds of the rule, namely a conflict among divisions' published opinions or a significant question of Constitutional law, since neither applies.

So what aspect of this case satisfies the catchall provision allowing review of an "issue of substantial public interest"? Satterberg claims generically that "[t]he proper scope of a court's statutory civil contempt power and the continued viability of Washington's general contempt statute under Due Process is a matter of substantial public interest." Pet. at 15–16. Such issues *can be* a matter of substantial public interest. But exercising discretion consistent with the RAP to accept review is required for contempt actions just like all other petitions. Petitioner has failed to show how the issue presented here—mootness, rather the merits of contempt allegations—warrant this Court's review.

Satterberg's one-page argument in which he makes vague assertions that the Court of Appeals opinion "blurs the distinction between civil and criminal remedies" and "implicates the proper separation of powers," Pet. at 15–16, are simply insufficient.

To support reviewing contempt issues in general, Satterberg cites *In re Dependency of A.K.*, 162 Wn.2d 632, 174 P.3d 11 (2007). Pet. at

15–16. But this Court’s explanation of the substantial public interest at issue in *A.K.*, in which dependent juveniles were held in contempt several times for running away from court-ordered placement in foster homes, reveals what is lacking here: “This case alone involved four such exercises of inherent contempt power in less than two months. The fact that we have been presented with a number of amicus curiae briefs speaks to the substantial public interest. Thus, we consider it appropriate to review this case.” *Id.* And notably, the Court of Appeals opinion in *A.K.* was published precedent. *See In re Dependency of A.K.*, 130 Wn. App. 862, 125 P.3d 220 (2005), rev’d, 162 Wn.2d 632, 174 P.3d 11 (2007).

In contrast to *A.K.*, the Court of Appeals opinion here is unpublished. An opinion that lacks precedential value tends to have less impact on the public interest. And, here, unlike in *A.K.*, which involved multiple juvenile runaways, there is little prospect of Satterberg again engaging in contempt by wrongfully obtaining Gronquist’s confidential records, because (as Satterberg points out) the legislature has since changed the law and Satterberg later received the records, so Plaintiff’s request for injunctive relief is moot. *See Pet.* at 2, 7.

Finally, another indicator that the issue is not of substantial public interest is that in 2016 the Court denied review of the published opinion

on which it was based, *In re Rapid Settlements, Ltd.*, 189 Wn. App. 584, 359 P.3d 823 (2015), as amended on denial of reh'g (Oct. 29, 2015).

In sum, Petitioner has not shown how review of the unpublished Court of Appeals opinion is of substantial public interest.

C. RAP 13.5 Governs the Petition.

Since the Court of Appeals reversed and remanded to the trial court for a decision on the merits, the petition for review is actually interlocutory in nature. So, it is subject to the standards of RAP 13.5, not 13.4.

Under RAP 13.5(b), the petitioner would have to meet the heightened standards of showing: (1) obvious error rendering remand useless; (2) probable error substantially altering the status quo or substantially limiting the freedom of the petitioner to act; or (3) that the Court of Appeals has so far departed from the accepted and usual course as to call for the exercise of revisory jurisdiction.

Satterberg cannot meet any of these standards. He cannot show obvious or probable error since the Court of Appeals opinion (Division II) does not conflict with *Sims*, and in reaching its opinion, the Court of Appeals carefully followed its own published precedent, *In re Rapid Settlements*. 189 Wn. App. at 823. This Court denied review of the published opinion rendered in *Rapid Settlements*, lending no support for

the idea that it was obvious or probable error. *See* 185 Wn.2d 1020 (2016).

The lack of obvious or probable error is also evident by the fact that Division I has also relied on *Rapid Settlements* for the very same proposition as the Court in *Gronquist*. In *Matter of Marriage of Galando*, Division I held:

RCW 7.21.030(3) allows the court to order a contemnor to pay losses suffered as a result of the contempt and costs incurred in the contempt proceedings for any person found in contempt of court “without regard to whether it is possible to craft a coercive sanction.” *In re Application by Rapid Settlements, Ltd., for Approval of Transfer of Structured Settlement Payment Rights*, 189 Wn. App. 584, 601, 359 P.3d 823 (2015).

200 Wn. App. 1030 (2017); *see also Matter of Det. of Faga*, 437 P.3d 741, 744 (Wn. Ct. App. 2019) (citing *In re Rapid Settlements, Ltd.* 189 Wn. App. at 823, for other principles of contempt law). Division III has likewise cited *Rapid Settlements* with approval for a different legal proposition. *See Hanna v. Margitan*, 193 Wn. App. 596, 373 P.3d 300, 308 (2016).

Moreover, even if he could show probable error, Satterberg would have to show that the Court of Appeals opinion substantially alters the status quo or substantially limits his freedom to act. *See* RAP 13.5(b)(2). He cannot show either. The opinion merely reverses dismissal of

Gronquist’s case for a ruling on the merits, and for an award of damages as appropriate. It does not award injunctive relief. Probable error is not shown where the alteration is merely to the status of the litigation. *See State v. Howland*, 180 Wn. App. 196, 321 P.3d 303, 308 (2014).

D. The Court of Appeals Opinion Was Correct.

Satterberg contends that the Court of Appeals “decision to broadly treat RCW 7.21.030(3) as an independent avenue for ‘compensatory relief’ cannot be squared with the plain language of the statute or this Court’s analysis in *Sims*.” Pet. at 13 (emphasis added). But *Sims* did nothing more than address “whether the State has waived its sovereign immunity under RCW 7.21.030 as regards the imposition of interest concerning contempt sanctions.” *Sims*, 193 Wn.2d at 88. In Gronquist’s case, no Court has decided issues of immunity or waiver under the statute, so Satterberg must establish that *Sims* is not only dispositive on the different issues present in this appeal, but also that any purportedly relevant language is not merely *dicta*. He shows neither.

Satterberg asserts that this Court in *Sims* “notes” that RCW 7.21.030 is a “‘plain language’ statute.” Pet. at 12. This is a mischaracterization of *Sims*. This Court did not hold the entire statute has a plain meaning, let alone that it has the meaning Satterberg urges. The Court held merely that the statute does not explicitly provide for awarding

interest, and that the Court would not add provisions that the legislature did not include.

Sims is also distinguishable because this Court ruled that when the legislature has intended to waive sovereign immunity it has said so expressly. *Sims*, 193 Wn.2d at 93–94. Under that standard, the Supreme Court held only that “the statute’s plain language does not support the view that finding an implied waiver of sovereign immunity as to payment of interest is warranted here.” *Id.* at 95–96. Since sovereign immunity waiver is not at issue in this case, the analysis and holding of *Sims* are not helpful let alone dispositive.

Satterberg tries to read *Sims* as holding that the plain language of RCW 7.21.030 affords no damages, costs, or attorney fees relief under subsection .030(3) except where the trial court has already granted relief under subsection .030(2) to remedy a continuing contempt. Pet. at 13. But *Sims* says nothing about this subject one way or the other. *Sims* merely quotes the Statute itself. 193 Wn.2d at 93. And Satterberg seizes on a small portion of the statutory language quoted to imply that the Court expressed an opinion about the meaning of that language. But the Court did not. Compare Pet. at 12 (asserting “[t]his Court notes that relief under .030(2) wholly depends on the ability to remedy a continuing contempt” and “[t]his Court further emphasizes that relief is available under .030(3)

only if the party first obtains relief under .030(2)”) with *Sims*, 193 Wn.2d at 93 (just quoting the statute). Since *Sims* did not interpret the “in addition to” language, or state that relief under .030(3) is dependent on relief being granted under .030(2), there is no conflict with the Court of Appeals opinion here.

In other words, despite petitioning for review on the ground that the Court of Appeals opinion conflicts with “Decisions” (plural) of this Court, Satterberg ends up complaining only that the Court of Appeals misread the Statute: “The Court of Appeals’ failure to adhere to the plain language of the statute violates this Court’s rules of statutory construction.” Pet. at 9. He does not, and cannot, contend that *Sims* interpreted the statute differently than he does, because this Court simply did not construe the statute in any way relevant to this case.

Instead, the Court of Appeals faithfully adhered to its own precedent, which this Court declined to review: “DOC contends that this ‘in addition to’ language implies that a court may only order a contemnor to pay losses, costs, and attorney fees if it *additionally* orders one of the remedial sanctions laid out in RCW 7.21.030(2). This argument is inconsistent with *Rapid Settlements....*” *Gronquist v. Dep’t. of Corr.*, No. 49392-6-II, slip op. at 7, n. 5.

As the Court of Appeals properly held, *Rapid Settlements* governs Mr. Gronquist’s case: RCW 71.21.030(3) “‘allows the court to order a contemnor to pay losses suffered as a result of the contempt and costs incurred in the contempt proceedings for any ‘person found in contempt of court’ *without regard to whether it is possible to craft a coercive sanction.*’” *Id.* at 7 (quoting *Rapid Settlements*, 189 Wn. App. at 601 (quoting RCW 7.21.030(3)) (emphasis added)). Accordingly, “a court may find a person in contempt whether or not it is possible to coerce future compliance” and “[i]n such a case, *the court may ‘order a contemnor to pay losses suffered as a result of the contempt and costs incurred in the contempt proceedings for any ‘person found in contempt of court’ without regard to whether it is possible to craft a coercive sanction.*’” *Id.* at 5–6. (quoting *Rapid Settlements*, 189 Wn. App. at 601) (quoting RCW 7.21.030(3)) (emphasis added)).

The opinion in *Rapid Settlements* undermines Satterberg’s argument entirely. And that ruling is entirely consistent with the purpose of the contempt statute because in a motion “for civil contempt the punishment is remedial, and *for the benefit of the complainant....*” *Id.* at 5 (quoting *Rapid Settlements*, 189 Wn. App. at 608). So, “[a]s a result of this statute, ‘a defendant may be “punished”’ even in a civil contempt

proceeding if the purpose is to compensate the complainant.” *Id.* at 7–8 (quoting *Rapid Settlements*, 189 Wn. App. at 608).

Finally, Satterberg’s argument cites no precedent for giving the statutory phrase “in addition to” in subsection .030(3) the conditional meaning that he asserts. The statutory language states: “The court may, in addition to the remedial sanctions set forth [above]...”

RCW 7.21.030(3). Satterberg wants this Court to instead read this provision as if the legislature had actually written, “If, but only if, the court has granted remedial sanctions set forth above in subsection .030(2), then...” But those are not the words of the statute. Satterberg’s argument runs afoul of the very principle applied in *State v. Sims*—that courts are not to add language to statutes, just interpret them—which the Court of Appeals correctly did in *Rapid Settlements*.

Satterberg asks this Court to read the statute anew to strip trial courts of authority to provide remedial relief to the harmed party when the court can no longer compel future compliance. This would abandon the harmed party entirely, leaving him with no relief. And, it would free the party who has committed contempt from all accountability. Such an interpretation would undermine the purpose of the statute—to encourage compliance with court orders. It would instead reward—and thereby encourage—contumacious behavior by affording a class of contemnors a

safe harbor to violate court orders with impunity, knowing that at the last minute they could purge their contempt with compliance and thereby undermine remedial relief to the party they have harmed. The Court should avoid reading such a harmful escape hatch into this statute.

Satterberg’s arguments also ignore the Court of Appeals’ sound basis for its opinion in *Rapid Settlements*, which is grounded in the precedent of this Court and others. In *Rapid Settlements*, the Court of Appeals cited this Court’s opinion in *State ex rel. Lemon v. Coffin*, 52 Wn.2d 894, 327 P.2d 741 (1958), which instructs that the purpose of compensatory damages in a contempt action is to “provide *complete relief*” for the “specific items of damage occasioned by the adversary’s refusal to obey a prior judgment or decree in the same cause.” *Id.* at 896 (emphasis added). In the same paragraph, the opinion acknowledges that “[f]ederal courts and a clear majority of state courts allow compensatory damages or fines payable to the injured party as relief in a civil contempt proceeding.” *Rapid Settlements*, 189 Wn. App. at 609. The court then cites to an A.L.R. annotation titled “Right of Injured Party to Award of Compensatory Damages or Fine in Contempt Proceedings,” 85 A.L.R. 3d 895, §2[a] (1978), which in turn cites to multiple court opinions awarding compensatory damages in contempt actions. *See, e.g., Sebastian v. Texas Dep’t of Corrections*, 558 F. Supp. 507, 509–11 (S.D. Tex. 1983) (in Title

VII case, quoting *McComb v. Jacksonville*, 336 U.S. 187, 193 (1949)); *Powell v. Ward*, 487 F. Supp. 917, 935–36 (S.D.N.Y. 1980) (concerning the procedures for placing inmates in solitary confinement); *In re Reno*, 299 B.R. 823, 828–830 (N.D. Tex. 2003) (bankruptcy proceeding). The rationale for awarding damages in these cases aligns with Washington state law in other contexts. *See, e.g., Birchler v. Castello Land Co., Inc.*, 133 Wn.2d 106, 942 P.2d 968, 972–74 (1997) (allowing recovery of full range of compensatory damages in timber trespass action). In short, damages *are* available, consistent with the plain language of the statute, federal authority, the remedial nature of civil contempt, and the liberal construction of compensation damages under Washington law for causes of action sounding in tort.

V. CONCLUSION

This Court should deny the petition for review. Petitioner has not met any of the requirements of the RAP for review, the Court of Appeals followed its own binding precedent, which this Court declined to review, and which is correct because compensatory damages are available as a remedy for civil contempt.

DATED this 28th day of June, 2019.

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CERTIFICATE OF SERVICE

That on June 28th, 2019 I arranged for filing of the foregoing INTERVENOR-PLAINTIFF GRONQUIST'S ANSWER TO INTERVENOR-DEFENDANT SATTERBERG'S PETITION FOR DISCRETIONARY REVIEW with the Supreme Court of the State of Washington, and arranged for service of a copy of the same on the parties to this action as follows:

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DATED this 28th day of June 2019, at Seattle, Washington.

/s/Chris Bascom
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