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STATE OF WASHINGTON
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No. 102061-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

STEPHEN PALMER DOWDNEY JR.,

Petitioner.

ANSWER TO
PETITION FOR REVIEW

JASON J. CUMMINGS
Prosecuting Attorney

AMANDA F. CAMPBELL
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

The facts are correctly set out in the Court of Appeals opinion.¹

In its opinion affirming the petitioner's convictions, the Court of Appeals made several key holdings:

First, the Court of Appeals held the petitioner had not shown he was a member of a clearly defined class. Slip Op. at *9–10 (“There is simply nothing in the record

¹ The State notes that the petitioner relies on documents not in the record. See, e.g., Petition for Review (PFR) at 15 (citing Br. of App., APP., and Reply Br., all of which rely on documentation the Court of Appeals struck from the record, Slip Op. at 11); 18 (citing Reply Br, relying on same stricken document). The petitioner makes no effort to add these documents to the record, merely arguing the Court of Appeals' Commissioner denied the State's motion to strike and, “That should have been the end of the matter.” PFR at 15. As the Court of Appeals held, the additional documents are not part of the appellate record. Slip Op. at 11.

to help us define the classes remotely precisely, either in terms of the charges they face, the reasons why they are charged in district court or in superior court, or how long they are detained in district or superior court before arraignment.”). The Court of Appeals further held that, even under equal protection scrutiny, the State’s practice of charging cases in district court was constitutionally sound under rational basis review because the State’s proffered reason for the practice, gathering information to make informed charging decisions, is an adequate reason for its practice. Slip Op. at *10–11.

The opinion notes the petitioner does not contest that the State’s charging process, which the State argued is helpful to examine complicated charges and “get charging decisions right,” is relevant, nor does he “seriously contest” that the “objective is legitimate.” Slip Op. at *10. The Court of Appeals explained the petitioner instead argues the State acts solely to delay the start of

the time for trial clock, but held the petitioner provides no evidence for this claim. Slip Op. at *11.

The Court of Appeals then addressed the petitioner's argument that the trial court violated his rights under CrR 3.3. Slip Op. at *11–12. Adopting a plain reading of CrR 3.3, which states the time for trial begins at arraignment, the Court of Appeals concluded the State acted consistently with the time for trial rules. Slip Op. at *13–14. The Court of Appeals further held that the petitioner's trial was set within 60 days of the date petitioner claims was the "correct" time for trial start date (March 18). Slip Op. at *14.

Finally, the Court of Appeals held that the two short continuances did not affect the State's compliance with CrR 3.3. Slip Op. at *15. Instead, petitioner's challenges to the eventual trial date are more properly challenges to the trial court's rulings granting those continuances, and

the petitioner did not argue he was prejudiced by those continuances. Slip Op. at *15.²

III. ARGUMENT

The petitioner argues this matter involves a significant constitutional question and an issue of substantial public interest.

A. THE PETITIONER HAS FAILED TO DEMONSTRATE THIS MATTER INVOLVES A SIGNIFICANT CONSTITUTIONAL QUESTION AS TO EQUAL PROTECTION AND DUE PROCESS RIGHTS BECAUSE HE IS NOT A MEMBER OF AN IDENTIFIABLE CLASS.

The Court of Appeals held the petitioner suffered no constitutional violation as he is not a member of a class subject to disparate treatment. The petitioner fails to address, substantively, this determinative holding in the Court of Appeals' opinion, merely contending in a footnote

² The petitioner characterizes this holding as requiring him to demonstrate prejudice to succeed on a claim under CrR 3.3. PFR at 24. The Court of Appeals opinion belies this assertion. Instead, the Court of Appeals held the petitioner's claim was *more properly* a claim alleging the

that a Supreme Court case about *indefinite* commitment following a finding of incompetence demonstrates the petitioner is also in a discrete class. PFR at 19, citing Jackson v. Indiana, 406 U.S. 715, 727, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972) (holding a defendant who would be held indefinitely under a state statute regarding competence to stand trial was deprived of his due process and equal protection rights). The Court in Jackson held the defendant was in a discrete class because he could be held indefinitely, while others who had been found incompetent were subject to release. Id.

The petitioner does not, therefore, provide this Court with reason to conclude this case raises a significant constitutional question. If a defendant fails to establish membership in a sufficiently identifiable class, a court need not reach the question of whether there was a

trial court erred in granting continuances, and that argument is subject to prejudice analysis.

rational basis for the differentiation. State v. Handley, 115 Wn.2d 275, 292, 796 P.2d 1266 (1990).

The petitioner here has not attempted to demonstrate he is a member of a discrete class, beyond citation to an inapposite case without argument. Thus, he has not raised a substantial constitutional question, as it is well-settled a defendant must establish membership in a sufficiently identifiable class to establish a due process violation and the petitioner has not addressed how the Court of Appeals erred in holding he has not done so.

B. THE PETITIONER HAS FAILED TO DEMONSTRATE THIS MATTER INVOLVES A SIGNIFICANT CONSTITUTIONAL QUESTION BECAUSE HE FAILS TO ESTABLISH THE SNOHOMISH COUNTY PROSECUTOR'S PRACTICE OF FILING CASES IN DISTRICT COURT IS NOT RATIONALLY RELATED TO ITS GOAL OF MAKING INFORMED CHARGING DECISIONS.

The petitioner focuses his petition for review on rehashing his contention in the Court of Appeals that the State's reason for its practice is delay and to disadvantage defendants. PFR at 14–23. The Court of

Appeals held the petitioner “provides no evidence at all (a) of such intentional dilatory misconduct by the prosecutor or anyone else, or (b) again that the practice in fact caused any inordinate delay in an arrestee’s process.” Slip Op. at 11.

While the petition for review contends the State’s primary goal is delay and to disadvantage defendants, once again petitioner provides no evidence the State’s reason for its practice is nefarious. He provides no statistical data showing defendants in Snohomish County spend more time in custody pretrial than defendants in other counties, nor any evidence that the outcomes of the defendants’ cases are impacted in any way by the County’s charging practices.

The State explained that its reason for charging cases in district court and setting a felony dismissal date two weeks in the future is to make informed charging decisions. Brief of Respondent, 55. The State further

explained that it receives police reports and other evidence, including forensic evidence, after the initial 72-hour period following a defendant's arrest. Brief of Respondent, 55. More information leads to better charging decisions, the opportunity for plea bargains prior to felony charges being filed in the superior court, and possible dismissal of the case prior to arraignment rather than a rush-filed decision resulting in a longer period of detention. Id.

The delayed charging decision in this matter led to fewer charges for the petitioner, as he was charged with three felonies initially and that number was reduced to one when filed in the superior court. Brief of Respondent, 56. Delaying a filing decision allows for more accurate decisions rather than repeated amendments and dismissals following arraignment.

The petitioner contends Snohomish County's practice has an insufficient relationship to the proffered

objective. PFR at 17. He applies what is, in essence, a strict scrutiny review, arguing a *better* method would be to hold preliminary hearings. PFR at 18. However, rational basis review does not require the State to act in the least restrictive manner.³ Rational basis review asks if the State's actions are rationally related to a legitimate purpose. State v. Osman, 157 Wn.2d 474, 486, 139 P.3d 334 (2006). Thus, while holding preliminary hearings also would be useful in allowing the State to make better charging decisions, it is irrelevant to a rational basis review that there are other methods the State does not employ.

The State has an interest in making better, more informed, charging decisions. To effect that interest, Snohomish County uses a charging system the court rules contemplate: filing charges in district court, then

³ The petitioner also argues the practice is not *necessary*. PFR at 18. Again, this is not the appropriate standard in a

filing charges in superior court prior to a preliminary hearing. See CrRLJ 3.2.1. The Court of Appeals held the State met its burden to provide a reason for its practice. The Court properly applied rational basis review. There is no significant constitutional question at issue.

Finally, if the sole purpose were to delay, the State would not have set a felony dismissal date only fifteen days after the charges were filed in district court. See Brief of Respondent, 4. The court rules allow for up to 30 days for the court to conduct a preliminary hearing. CrRLJ 3.2.1(g)(2). The State set the dismissal date at the time it filed charges in the district court, creating a self-imposed limit of fifteen days to file charges in superior court. Brief of Respondent, 4. In other words, the State used only half the possible time in this case, belying a claim that the State's sole purpose is delay.

rational basis review.

C. THE PETITION DOES NOT RAISE A MATTER OF SUBSTANTIAL PUBLIC INTEREST BECAUSE SNOHOMISH COUNTY FOLLOWS THE COURT RULES AND THE PETITIONER HAS FAILED TO SHOW DEFENDANTS IN SNOHOMISH COUNTY SUFFER HARM FROM THE COUNTY'S PRACTICES.

The petitioner argues he raises an issue of substantial public interest because Snohomish County's practice is unlike the practices in other counties and, "This disparately affects people arrested and prosecuted in Snohomish County." PFR at 25–26. He fails to support this claim with any evidence or authority and such an unsupported claim should not be grounds for discretionary review.

Furthermore, the Court of Appeals held the County acted consistently with CrR 3.3, the State rule that protects all defendants from time for trial violations. Slip Op. at 14. There is no substantial public interest in correcting a practice that comports with the court rules.

Next, the petitioner makes an unsupported claim about time for trial in Snohomish County: the petitioner

argues the County's practices "deprives detained persons who cannot make bail of their substantial right under CrR 3.3 to a timely trial within 60 days of arraignment." PFR at 20. However, the Court of Appeals noted that the petitioner's trial date *was* set within time for trial even under petitioner's theory that he should have been tried within 60 days of the initial dismissal date following his arrest.⁴

Thus, petitioner fails to address that *his own trial* was set within 60 days of the date on which he argues he should have been arraigned. In sum, his only example of the impact this practice has on defendants demonstrates his claim is false. Defendants are not deprived of their rights to a timely trial in Snohomish County.

⁴ Dowdney was arrested on March 15, meaning the dismissal date of 72 hours later, March 18, was the date Dowdney argued was when his time for trial clock started. Dowdney's trial was set for May 13. Slip Op. at 14.

Without demonstrating that defendants in Snohomish County have longer periods of pretrial detention, and failing to show he himself was harmed by the practice, he has not demonstrated this matter raises an issue of substantial public interest.⁵

Finally, the petitioner argues the “the reason felonies are permitted to be filed in district court is to hold preliminary hearings to determine probable cause.” PFR at 21. In support of this proposition, he cites part of the Revised Code of Washington, RCW 3.66.060(2), State v. Wright, 51 Wn. App. 408, 641 P.2d 646 (1958), and State v. Berry, 31 Wn. App. 408, 641 P.2d 1213 (1982). However, the court rule guiding what happens when a felony complaint is filed in district court says, “When a felony complaint is filed, the court may conduct a

⁵ The amicus brief similarly provides no evidence in support of its many claims, instead appearing to be comparable to an affidavit from one public defender.

preliminary hearing to determine whether there is probable cause to believe that the accused has committed a felony unless an information or indictment is filed in superior court prior to the time set for the preliminary hearing.” CrRLJ 3.2.1(g)(1). This permissive language demonstrates the district court need not hold a preliminary hearing in every case in which a felony complaint is filed. In fact, the rule contemplates exactly what Snohomish County does: file an information in superior court after filing a felony complaint in district court. None of the authorities the petitioner relies on contradict this plain reading of the rule.

Other citations the petitioner relies on relate to jurisdiction. RCW 3.66.060(2)-(3) indicates the district court has jurisdiction “(2) to sit as a committing magistrate and conduct preliminary hearings in cases provided by

These unsubstantiated claims are not a legitimate basis for further appellate review.

law; (3) concurrent with the superior court of a proceeding to keep the peace in their respective counties.” The petitioner does not appear to argue the district court lacks jurisdiction to act as it does in Snohomish County.

Similarly, Wright relates to the district court’s jurisdiction in a case involving the jurisdiction of “justice” courts and superior courts. Wright, 51 Wn.2d at 609. The petitioner did not analyze this case in his briefing, but a review of the case reveals the court addressed a wholly different issue solely related to jurisdiction. Again, the petitioner does not challenge the jurisdiction of the district court here. It is unclear how Wright is relevant other than in deciding jurisdiction.

Finally, the petitioner cites to Berry, a case in which the Court of Appeals held CrR 3.3 did not violate the equal protection clause. There, quoting the Supreme Court, the Court of Appeals held,

Accordingly, the question is not whether the statute is discriminatory in nature, nor is it of paramount concern if the classification results in some inequality. The crucial determination is whether there are reasonable and justifiable grounds giving rise to the classification. State v. Persinger,⁶ *supra*; State v. Kitsap County Bank, 10 Wn.2d 520, 117 P.2d 228 (1941). Finally, in making this determination, it is recognized that the legislature has a wide range of discretion in defining the classifications and that such enactments are presumptively valid.

Berry, 31 Wn. App. at 412.

The court held there were four ways to determine probable cause, *including filing an information in superior court*, and held “the sole function of the preliminary hearing in district court is to determine probable cause.” Id. The court did *not* hold that cases may only be filed in district court if there is a preliminary hearing.

Thus, the petitioner’s cited authority for his contention that felonies are permitted to be filed in district court to hold preliminary hearings—not to file a

⁶ State v. Persinger, 62 Wn.2d 362, 382 P.2d 497 (1963).

subsequent information prior to a preliminary hearing—has no support in legal authority. The petitioner cites to cases related to the district court’s jurisdiction, but mounts no challenge to the district court’s jurisdiction in this case. Moreover, the petitioner does not address CrRLJ 3.2.1(g), which explicitly allows for the exact practice used in Snohomish County. If the only legitimate purpose of filing complaints in district court were to hold a preliminary hearing, the court rule would not use explicitly permissive language. Instead, the rule allows the State to file felony charges in superior court prior to the hearings. The court rules plainly undermine the petitioner’s argument.

The petitioner also relies on State v. Chhom, 162 Wn.2d 451, 173 P.3d 234 (2007). In that case, this Court held the State’s argument that the phrased used in CrRLJ 3.3(g)(5), “outside the county,” referred to a foreign jurisdiction, not to geographical location. Id. at 459. The

Court held explained a plain reading of the rule demonstrated this was only rational interpretation.

The petitioner cannot extend the same logic in this case. As explained, the petitioner seeks to interpret a permissive word, “may,” as a mandatory directive. The rule states, “When a felony complaint is filed, the court may conduct a preliminary hearing” CrRLJ 3.2.1(g)(1). The State and Court of Appeals do not construe this in an absurd manner, but plainly.

Further, the petitioner appears to proffer a modification to CrR 3.3, arguing the time for trial clock should start when “it would have started if the prosecution had filed the matter in superior court.” PFR at 23–24. It is unclear if he is arguing CrR 3.3 as written is unconstitutional. In any case, a modification to the rule is unnecessary. As explained above, the petitioner’s trial was set within the time for trial that would have been in place had he been arraigned three days after his arrest.

The Court of Appeals' decision followed established precedent and included a plain reading of the time for trial rules. Moreover, it included a correct understanding of the procedural history of this matter, which demonstrates the petitioner suffered no harm from the constitutional violations he alleges. There is no need for further review.

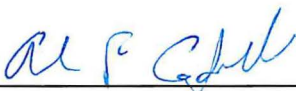
IV. CONCLUSION

The Petition for Review should be denied.

This brief contains 2928 words (exclusive of appendices, title sheet, table of contents, table of authorities, certificate of service, signature blocks, and pictorial images).

Respectfully submitted on October 5, 2023.

JASON J. CUMMINGS
Snohomish County Prosecuting Attorney

By: 
AMANDA F. CAMPBELL, WSBA #57216
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE SUPREME COURT
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THE STATE OF WASHINGTON,

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No. 102061-9

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DIANE K. KREMENICH
APPELLATE LEGAL ASSISTANT

SNOHOMISH COUNTY PROSECUTOR'S OFFICE

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