NO. 46032-7-II

COURT OF APPEAL OF THE STATE OF WASHINGTON
DIVISION II

CECIL DUDGEON, PRO SE,

Appellant,
v.
STEVE BOYER, SHERIFF OF
KITSAP COUNTY,

Respondent.

APPELLANT'S BRIEF

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A. Introduction

Cecil Dudgeon, an 80 year old man, now asks this Court to review the decision by the Kitsap County Superior Court to dismiss, under CR 12(b)(6), Mr. Dudgeon's Petition for Writ of Certiorari, filed with that court in accordance with RCW 7.16.040 and established Washington State case law. CP 2,3.

Standard of Review

These proceedings require interpretation of the 1990 Community Protection Act and of RCW 7.16.040 as applied to risk level classification challenges. Interpretation of state statutes and of the Community Protection Act is a question of law. Questions of law are reviewed *de novo. State. V. Keller*, 143 Wn. 2d 267, 276, 19 P.3d 1030 (2001); *State v. Jacobs*, 154 Wn. 2d 596, 600, 115 P.3d 281 (2005) ("the court's objective is to determine the legislature's intent.").

B. Assignments of Errors

Assignments of Errors

1. The Superior Court erred when it dismissed Appellant Dudgeon's Petition For Writ of Certiorari pursuant to CR 12(b)(6).
2. The Superior Court erred in not considering whether the factual determination made by the Kitsap County Sheriff's representative in

classifying Mr. Dudgeon as a level III risk to offend was based on material fact justified as such by substantial evidence.

3. The Superior Court erred in not correcting the erroneous decision by the Sheriff's representative by rendering the judgment which should have been rendered by that inferior official in consideration of the substantial evidence supporting Mr. Dudgeon's classification as a level I risk potential.

4. The Superior Court's dismissal of Mr. Dudgeon's Petition makes possible the continuation of the egregious detriment to Mr. Dudgeon's fundamental right to the pursuit of happiness and to the protection of his life and property guaranteed under the 5th and 14th Amendments.

Issues Pertaining to Assignments of Errors

1. Mr. Dudgeon was released from the Washington State Special Commitment Center, SCC, on February 12, 2013 (CP 4, 19) following an evaluation by the State's expert, Dr. Amy Phenix, who concluded that Mr. Dudgeon did not meet commitment criteria and was a low risk to offend. CP 3, 4. Immediately upon his unconditional release from the SCC, Mr. Dudgeon met with the Kitsap County Sheriff's Community Sex Offender Registration Officer, Sheriff's Detective Doug Dillard, to register as one who had been convicted of a sex offense, as required by law. RCW 9A.44.130.

Mr. Dudgeon proffered considerable substantial evidence to Detective Dillard which supported Mr. Dudgeon's claim that he should be classified as a level I risk potential (CP 4, 9, 12, 23-55, 60-64), all of which Detective Dillard refused to review stating that the Department of Corrections End of Sentence Review Committee, ESRC, had already classified Mr. Dudgeon as a level III (CP 4, 6, 7, 74, 80, 81, RP 5, 6) and as far as he, Dillard, was concerned that would be Mr. Dudgeon's classification from then on. On subsequent meetings with Detective Dillard, Mr. Dudgeon again asked him to reconsider his arbitrary classification of Mr. Dudgeon as a level III and to review the information and documents Mr. Dudgeon proffered supporting Mr. Dudgeon's classification as a level I. Detective Dillard's response was the same as during their initial meeting, *supra.*

This failure by the Sheriff's representative to exercise any discerning discretion in making his stated decision to base his classification solely – and from that point on – on the stale information of questionable validity (*infra*) contained in the 8 plus year old ESRC classification evaluation and to not consider the substantial material facts (CP 4, 9, 12, 23-55, 60-64.) supporting Mr. Dudgeon's claim justifying his classification as level I risk, precludes Mr. Dudgeon from any hope of ever having his risk level

classification changed by that agency no matter the justification offered in support, and render that classification decision to be an erroneous decision.

As a result of Detective Dillard's arbitrary actions noted above, Mr. Dudgeon filed his Petition For Writ of Certiorari in the Kitsap County Superior Court in accordance with RCW 7.16.040 and the established case law.

Whether the Superior Court erred in dismissing Mr. Dudgeon's Petition For Writ of Certiorari pursuant to CR 12(b)(6)? (Assignments of Errors 1).

2. The initial classification of Mr. Dudgeon as a level III risk potential was made by the Washington State Department of Corrections End of Sentence Review Committee, ESRC, and was over 8 years old at the time of Mr. Dudgeon's first meeting with Detective Dillard on February 12, 2013. CP 4, 6, 7, 74, 80, 81, RP 5, 6. This stale and questionable evaluation was thoroughly examined in an in-depth forensic psychological evaluation conducted by Dr. Richard Wollert, an eminently qualified expert in the relevant scientific field, in January of 2013. Dr. Wollert assessed the opinions expressed by the state employee preparing the ESRC evaluation – a non psychologist – as well as the raw data upon which those opinions were

based. Dr. Wollert's findings completely discredited that evaluation and classification. CP 60-64.

Yet it was this stale and questionable evaluation that was the stated sole basis for Detective Dillard's arbitrary classification of Mr. Dudgeon as a level III risk potential, making possible the impairment of Mr. Dudgeon's fundamental right to the pursuit of happiness and to the protection of life and property as guaranteed under the 5th and 14th Amendments. CP 5, 6, 12, 13, 77-79.

Whether the Superior Court erred in not assuring that the determination of fact claimed by the Sheriff's representative in classifying Mr. Dudgeon as a level III risk potential was based on substantial evidence. (Assignments of Errors 1, 2, 3, 4).

3. RCW 7.16.040 and the relevant case law authorize the Superior Court to "...correct any erroneous or void proceeding.... and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.", to "...change the classification.", and includes "...rendering the judgment that should have been rendered by lower tribunal.".

The Sheriff's representative, Detective Dillard, had repeated opportunity to review the ample substantial current evidence proffered by

Mr. Dudgeon which supported Mr. Dudgeon's contention that he should be classified no higher than a level I risk potential. CP 4, 9, 12, 23-55, 60-64. Detective Dillard refused to review the material facts Mr. Dudgeon provided, instead stating he was adopting the classification assigned by the ESRC. This classification was based on neither current nor, in large part, even factual information. CP 60-64. This reliance on that sole questionable evaluation in classifying Mr. Dudgeon at the unjustified and grievously injurious highest possible risk level greatly impairs Mr. Dudgeon's rights to the pursuit of happiness and to the protection of his life and property as guaranteed under the 5th and 14th Amendments. CP 5, 6, 12, 13, 77-79.

Whether the Superior Court erred in not assuring that the determination of fact made by the inferior official in classifying Mr. Dudgeon as a level III risk potential was based on substantial evidence, and in not reviewing the overwhelming substantial evidence provided by Mr. Dudgeon in support of his being classified as level I and then rendering the decision that should have been rendered by the inferior official. (Assignments of Errors 1, 2, 3, 4).

C. Statement of the Case

Mr. Dudgeon, an 80 year old man, was released from the Washington State Special Commitment Center, SCC, on February 12, 2013 (CP 4, 19) following an evaluation by the State's expert, Dr. Amy Phenix, who concluded that Mr. Dudgeon did not meet commitment criteria and was considered to be a low risk to offend. CP 3, 4. Immediately upon his unconditional release from the SCC Mr. Dudgeon reported to local law enforcement, the Kitsap County Sheriff's Department, as required by law, RCW 9A.44.130, to register as one who had been convicted of a sex offense. Mr. Dudgeon met with the Community Sex Offender Registration Officer, Sheriff's Detective Doug Dillard, and proffered documents and information providing substantial evidence which supported Mr. Dudgeon's claim that he should be classified as a level I risk potential. CP 4, 9, 12, 23-55, 60-64. Detective Dillard refused to consider any of the material Mr. Dudgeon offered stating that Mr. Dudgeon had already been classified as a level III and as far as he, Dillard, was concerned Mr. Dudgeon would remain so from then on. CP 4, 6, 7, 74, 80, 81, RP 5, 6.

The ESRC classification of Mr. Dudgeon as a risk level III was made in early 2005, which classification is a *de facto* prerequisite to being considered for petitioning under RCW 71.09. That classification, as discussed earlier, was fraught

with issues and was based on the completion, by the chair person of the ESRC, of a Washington Sex Offender Risk Level document, the WA SORL[1], which document, as it applied to Mr. Dudgeon, was thoroughly discredited by Dr. Richard Wollert, both the distorted and in some parts totally false data the chairperson included in the form, and the opinions she expressed based on that concocted data. CP 7, 8, 60-64.

The intransigent insistence on the part of Detective Dillard to refuse to exercise any discerning discretion and review other evidence of a current substantial nature pertinent to Mr. Dudgeon's risk level classification and to rely solely, as Detective Dillard stated, on the 8 plus year old professionally discredited ESRC evaluation and classification, forced Mr. Dudgeon to make the Hobson's choice of living separately from his wife in order to protect Mrs. Dudgeon from the obloquy, harassment and potential physical – possible even deadly – assault that could ensue as a result of Mr. Dudgeon living at home while classified as a level III or a level II sex offender. CP 5, 6, 13, 76. The stark truth of this statement is borne out by the recent unprovoked murder of two individuals classified as level II sex offenders and who were living in the Sequim, WA area, the area of Mr. Dudgeon's home. CP 6, 76, 77.

[1] Use of the WA SORL form itself has been discontinued by the state.

Although living separately in the present circumstances inflicts significant financial and psychological burden on the Dudgeons, it is the lesser of two evils and can be mitigated only when Mr. Dudgeon is able to return home having been more appropriately classified as a risk level I.

Mr. Dudgeon has resided alone in Kitsap County for over a year, visiting his wife in Sequim as frequently as permitted under DOC guidelines and traveling to other parts of the state to visit other family members or on medical appointments.

In early March of this year the DOC Community Corrections Officer, CCO, who supervised Mr. Dudgeon's community placement in Kitsap County wrote a summary of Mr. Dudgeon's actions under her supervision, mailing it directly to the Superior Court. In it the CCO stated that Mr. Dudgeon was in compliance with all DOC supervision requirements, that he had passed all his testing, paid all his financial obligations and was rated as "LOW", which is the DOC categorization of minimal risk to offend. CP 65, 66. It should be noted that this rating by the CCO was based on a year's personal face-to-face evaluation of Mr. Dudgeon's performance made by a branch of the same agency, the DOC, where a different branch, the ESRC, rated Mr. Dudgeon at the highest category of risk to offend and renewed that same rating upon Mr. Dudgeon's release from the SCC last year, all without ever having met him or considering any substantial current evidence contra

to the opinion expressed by the ESRC chairperson in that committee's classification of Mr. Dudgeon over 8 years prior. CP 4, 6, 7, 74, 80, 81, RP 5, 6.

During this period, Dr. Mark Whitehill, a psychologist with decades of practiced and proven professional expertise, evaluated Mr. Dudgeon on repeated occasions and also evaluated Mrs. Dudgeon, the Dudgeon home environment, their relationship, plans for the future and other family relationships. Dr. Whitehill concluded that there were no treatment criteria needing attention and that Mr. Dudgeon should be considered to be a level I risk potential and if he were to be classified as a level I, which would facilitate his return home, his risk potential would be negligible under that home environment. CP 57, 58.

Mr. Dudgeon petitioned the lower court (CP 2, 3) to end the travesty of permitting the Sheriff's representative, Detective Dillard, from continuing the classification of Mr. Dudgeon as a level III risk in spite of the overwhelming substantial evidence Mr. Dudgeon presented supporting his being classified as a level I. CP 4, 9, 12, 23-55, 60-64. Detective Dillard had ample opportunity to review Mr. Dudgeon's proffered supporting evidence but refused to do so, instead choosing to classify Mr. Dudgeon at the highest possible risk to offend based on the stale and questionable information contained in the aforementioned ESRC

classification document, which was the stated sole criteria upon which Detective Dillard based his classification of Mr. Dudgeon. CP 4, 6, 7, 74, 80, 81, RP 5, 6.

The Superior Court had before it the lack of any substantial current evidence supporting Detective Dillard's arbitrary classification, and the overwhelming substantial current evidence supporting the classification of Mr. Dudgeon as a risk level I.

Appellant Dudgeon now comes before this Court seeking redress of the grievous harm being done to Mr. Dudgeon through the unjustified and arbitrary categorization of him as a risk level III with it's attendant egregious impact on his fundamental right to the pursuit of happiness and on the protection of life and property guaranteed by the 5th and 14th Amendments (CP 5, 6, 12, 13, 77-79), and of the lower court's unwarranted dismissal of Mr. Dudgeon's Petition For Writ of Certiorari addressing these issues. CP 90, 91.

D. Argument

1. THE RIGHT TO PETITION THE COURT TO CORRECT AN ERRONEOUS RISK LEVEL CLASSIFICATION IS A COGNIZABLE CLAIM UNDER WASHINGTON STATE STATUTORY AND ESTABLISHED CASE LAW.

RCW 7.16.040 authorizes a Writ of Review to "correct any erroneous or void proceeding" engaged in by "an inferior tribunal, board or officer exercising judicial functions." RCW 7.16.040.

"The assignment of a risk level classification to a sex offender under RCW 4.24.550 and RCW 72.09.345 is quasi-judicial function that is subject to judicial review by means of a writ of review under RCW 7.16.040.". *In re Det. Of Enright*, 131 WA.App. 706, 708 (2006).

"Because the act of classifying Mr. Enright as a level III offender resembles a court function, the ESRC and the law enforcement agency participated in a quasi-judicial function that may be challenged by a writ of certiorari under RCW 7.16.040.". *Id* at 716.

Clearly Mr. Dudgeon has the well established right to petition the court to correct his risk level classification as being an erroneous determination by an inferior official. In this case, and in accordance with RCW 4.24.550, that final determination was made by the Kitsap County Sheriff's Department in the person of Sheriff's Detective Dillard, the Community Sex Offender Registration Officer.

That the risk level III classification at issue is erroneous is made manifestly obvious by the overwhelming substantial current evidence supporting Mr. Dudgeon's claim that he should be classified as a risk level I. CP 4, 9, 12, 23-55, 60-64. Mr. Dudgeon attempted to get Detective Dillard to review this evidence at the time of his initial meeting with him as well as on subsequent occasions. On each occasion Detective Dillard reused to do so stating that Mr. Dudgeon had

already been classified by the ESRC as a risk level III and that as far as he, Dillard, was concerned Mr. Dudgeon would remain so from that point on (CP 4, 6, 7, 74, 80, 81, RP 5, 6), thus closing the door to Mr. Dudgeon for any possible future review of his classification by that agency.

This made necessary the filing of Mr. Dudgeon's Petition For Writ of Certiorari as the only avenue available by which to seek relief from the arbitrary decision by the inferior agency. "It is, of course, subject to review by writ of certiorari which, issued out of the Superior Court under RCW 7.16.040, authorizes such a writ to review illegal acts or to correct an erroneous proceeding not according to the course of common law where there is no adequate remedy by appeal or otherwise.". *City of Everett v. Unsworth*, 54 Wash. 2d 760, 765, 344 P.2d 728 (1959).

That Detective Dillard refused to exercise any discerning discretion and review evidence pertinent to the risk level classification of Mr. Dudgeon other than the tainted, stale ESRC classification of Mr. Dudgeon, prior to assigning a risk level to him, and insisted on considering only that single source of stale information of questionable probative value, is evidence enough that Detective Dillard's decision was arbitrary and capricious. However, the Superior Court is empowered to grant relief even if the court were to find that a decision was not

arbitrary and capricious. As *Hayes* instructs, the court may find that a decision-maker's action was so egregious as to be arbitrary and capricious but such a finding is not required for court to grant relief. *Hayes v. City of Seattle*, 131 Wash. 2d 706, 934 P.2d 1179 (1997).

"The Washington Supreme Court has held that 'a public agency must have some evidence of an offender's future dangerousness, likelihood of reoffense, or threat to the community, to justify disclosure to the public in a given case.' ". *Russell v. Gregoire*, 124 F.3d 1079, 1082 (9th CIR 1997). Risk level classification and disclosure to the public are controlled by RCW 72.09.345 and RCW 4.24.550. The assignment of risk level III to Mr. Dudgeon and the subsequent broadcast of the inflammatory and, in large part ,false information to the public was based on a sole source, the stale and questionable information and opinions contained in the aforementioned ESRC classification, which in turn was based on a professionally discredited document, the WA SORL (CP 7, 8, 60-64) completed on Mr. Dudgeon over 8 years prior to meeting with Detective Dillard. All of the current assessments of "future dangerousness, likelihood of reoffense or threat to the community" regarding Mr. Dudgeon are addressed in the information Detective Dillard refused to consider.

Mr. Dudgeon has undergone 6 recent in-depth psychological evaluations by credentialed psychologists recognized as eminently qualified by the relevant scientific community, including the State's own expert, all of whom conclude that Mr. Dudgeon is a low, or very low, risk to offend. CP 3, 4, 23-64. The issues addressed in these evaluations are the very ones referred to in *Russell*, *supra*, and as indicated, these evaluations were all presented to the Superior Court, and all but one, Dr. Whitehill's, were available to Detective Dillard at the initial meeting with Mr. Dudgeon.

The very limited single source information upon which Mr. Dudgeon's risk level was based is neither current nor substantial, thus rendering that determination to be erroneous, justifying Mr. Dudgeon's Petition For Writ of Certiorari.

2. THE INFORMATION UPON WHICH MR. DUDGEON'S RISK LEVEL CLASSIFICATION WAS BASED WAS NEITHER CURRENT NOR SUBSTANTIAL EVIDENCE.

The final determination authority for risk level classification of a sex offender released to the community is the local law enforcement agency. RCW 4.24.550. In the instant case it was the Respondent acting through the Community Sex Offender Registration Officer, Sheriff's Detective Dillard. The statute does not preclude local law enforcement from considering other pertinent information in making the

risk level classification, rather, it mandates only that the classifying official consider the prior classification made by the ESRC. RCW 4.24.550.

As stated by Respondent in open court, "...the Sheriff's office relied on the ESRC classification, which is exactly statutorily what it is supposed to do." RP 9. Sheriff's Detective Dillard was statutorily required to merely consider the ESRC's input not necessarily to rely on it, RCW 4.24.550. However, he not only relied on it, Detective Dillard relied on it exclusively, refusing to consider any other evidentiary input.

This assignment of risk level classification under RCW 4.24.550 is a subjective process without any statutory standards or methodology to be used as guidelines. It is therefore essential that sufficient pertinent evidentiary guidelines be made available to the classifying official in order to enable him/her to make a fair, objective evaluation.

"Beyond a referral to risk level classifications from other agencies, the sex offender classification statute at issue here does not provide any standards or methodology for making this determination. Instead, RCW 4.24.550(6) assigns the task of risk level assignments entirely to a local law enforcement agency.", and "...the sex offender classification statute does not provide any comparable guidance to a local law enforcement agency. At most, RCW 4.24.550(6) instructs a

local law enforcement agency to consider offender classifications made by other agencies; however, these prior classifications are not binding on the law enforcement agency. RCW 4.24.550(10). As noted, RCW 4.24.550 itself provides neither (*at 276*) standards nor definitions to guide law enforcement agencies in determining an offender's classification.". *State v. Ramos*, 149 Wash. App. 266, 202 P.3d 383. (Wash. App. Div. 2, 2009).

Mr. Dudgeon made every reasonable effort to have the Respondent classifying official, Detective Dillard, review the pertinent, substantial current evidence Mr. Dudgeon proffered in support of his being classified no higher than a risk level I. CP 4, 9, 12, 23-55, 60-64. However, Detective Dillard refused all attempts made by Mr. Dudgeon stating that the categorization made by the ESRC was all he needed upon which to base his classification of Mr. Dudgeon as a risk level III and to retain Mr. Dudgeon at that level from then on. CP 4, 6, 7, 74, 80, 81, RP 5, 6.

As addressed previously, the classification by the chairperson of the ESRC was based on the stale and questionable information and opinions contained in the aforementioned professionally discredited WA SORL concerning Mr. Dudgeon, completed over 8 years prior to Mr. Dudgeon meeting with Detective Dillard. CP 7, 8, 60, 64. The completion of that form and the resulting risk level III classification of Mr. Dudgeon were initiated at the time by a non-psychologist with

no recognized formal academic credentials qualifying her to reach the presumptive conclusion she did without ever having interviewed or even met Mr. Dudgeon, relying instead on the allegations and grossly exaggerated half truths contained in the above mentioned self generated WA SORL document. CP 7, 8, 60, 64.

In adopting this ill founded classification by the ESRC as sole support for his own classification of Mr. Dudgeon as a risk level III and indicating that as far as he, Dillard, was concerned, Mr. Dudgeon would remain level III from then on, Detective Dillard precluded Mr. Dudgeon from ever receiving a fair and objective hearing by Respondent agency regarding risk level classification regardless of what substantial evidence Mr. Dudgeon could proffer in his favor.

This runs blatantly contra to the well established basic tenets of the law requiring that a hearing be provided before a deprivation of liberty takes place, *Fuentes v. Shevin*, 407 U.S. 67, 81, 92 S.Ct. 1983-84 (1972), and that the determination of facts be based on substantial evidence. In certiorari proceedings, "issues of fact must be supported by substantial evidence. *St.v. Pierce County*, 65 Wash. App. at 619, 829 P.2d 217 (1992).". *North South Airpark Ass'n. v. Haagen*, 87 Wash. App. 765, 769, 942 P.2d 1068 (1997); "On appeal from an administrative decision reviewed by writ of certiorari, this court must determine *de novo* whether the Board's decision was supported by substantial evidence.". *Dillon v. Seattle*

Police Pension Bd., 82 Wash. App. 168, 170, 916 P.2d 956 (1996); "...a reviewing court must 'hold unlawful and set aside agency action, findings and conclusions found to be... unsupported by substantial evidence'.". *N.L.R.B.V. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 110 S.Ct. 1542 (U.S. 1990).

As previously stated, Detective Dillard adopted *in toto* the prior risk level classification made by another agency, the ESRC. This classification was based on the professionally discredited information and opinions contained in a WA SORL document prepared on Mr. Dudgeon over 8 years prior. CP 7, 8, 60, 64. Detective Dillard refused to consider any other evidence and indicated that as far as he was concerned – as the Community Sex Offender Registration Officer, the officer responsible for the risk level classification of sex offenders released into Kitsap County – Mr. Dudgeon would remain a level III from that point on. This was not a fair and objective consideration of all available pertinent evidence relevant to Mr. Dudgeon's risk level classification, and this sole source evidence upon which Detective Dillard based his classification of Mr. Dudgeon was neither current nor substantial. Therefore, Mr. Dudgeon's risk level III classification should be rescinded and the risk level commensurate with the overwhelming pertinent substantial evidence available, risk level I, should be assigned.

3. THE SUPERIOR COURT IS EMPOWERED TO RENDER THE JUDGMENT THAT SHOULD HAVE BEEN RENDERED BY THE INFERIOR AGENCY AND, IN CONSIDERATION OF MR. DUDGEON'S SUBSTANTIAL CURRENT EVIDENCE FAVORING GRANTING THE RELIEF REQUESTED IN HIS PETITION, THE COURT SHOULD HAVE SO RENDERED.

That the Superior Court is empowered to render the judgment that should have been rendered by an inferior agency has been firmly established in this State for well over a century. "... by virtue of a writ of review... the office of such writ is only to enter the judgment which should have been rendered by the lower tribunal.". and "But we think the undisputed rule of law is that the office of a writ of review is to enforce the judgment which should have been rendered by the lower tribunal.". *Bringgold v. Spokane*, 19 Wash. 333, 336, 53 P. 368 (1898); "A writ of review presupposes that, if an error has been made by an inferior tribunal, a reviewing court can adjudge its correction, and that the matter before it shall proceed to final determination according to law.". *State v. Mead*, 100 P. 1033 (1909).

There is, of course, much more recent case law that is on point. "Given the function of a writ of certiorari is to secure the rendition of 'the judgment which should have been rendered by the lower tribunal,' ...". *Punton v. City of Seattle Public Safety Com'n.,* 32 Wash. App. 959, 970, 650 P.2d 1138 (1982); "Special appellate function of superior court reviewing propriety of administrative action

necessarily limits the extent of the court's jurisdiction to extent of rendering the judgment that should have been rendered by lower tribunal.". *Chaussee v. Snohomish County Council*, 38 Wash. App. 630, 689 P.2d 1084 (1984).

Respondent has alleged that Mr. Dudgeon's petition should be treated as a petition for writ of mandamus "Because Plaintiff is seeking an order compelling the Kitsap County Sheriff's Office to make a certain classification". CP 68, 69. The Sheriff's representative, Detective Dillard, has already made the classification decision and, as previously discussed at length, that decision is an erroneous one. In actual fact, Mr. Dudgeon's Petition For Writ of Certiorari asked the Superior Court to correct that decision. CP 2, 3, 9, 14, RP 11. To "correct" means "to make or set right; to remove the faults or errors of; to amend; rectify...", Webster's New International Dictionary, Second Edition, Unabridged.

Respondent further states that the Superior Court "...simply cannot grant relief that he's requesting in this instance.". RP 6; "... there is no case out there with that type of petition coming before the court because that relief cannot be granted.". RP 8, and "...there is no relief that can be granted...". RP 10.

Respondent's apparent mind set throughout these proceedings seems to have been one of convincing the Superior Court that Mr. Dudgeon was asking the court to order the Sheriff's representative to perform a given duty in a specific manner,

as though that duty had been left unperformed. CP 68, 69, RP 6. As discussed above, that is clearly not the case. Mr. Dudgeon has not asked the Superior Court to tell the Sheriff's representative how he is to make a discretionary decision yet to be made, nor to interfere in the performance of his general duties. CP 72, 73. The risk level classification decision concerning Mr. Dudgeon has already been made, and it was an erroneous decision, which justifies Mr. Dudgeon's instant Petition For Writ of Certiorari asking the Superior Court to correct that erroneous decision.

To effect that correction – to secure the rendition that should have been rendered by the inferior official, the Sheriff's representative – is clearly within the jurisdiction of the Superior Court as the plain language interpretation of RCW 7.16.040 and the well established relevant case law make evident. The Superior Court is not only empowered to correct the inferior official's erroneous decision, it is obligated by the demands of justice to do so.

The Superior Court should have, upon reviewing the substantial evidence proffered by Mr. Dudgeon strongly supporting his claim to be classified as a risk level I, rendered the judgment to so classify Mr. Dudgeon based on the court's review, which is the judgment that should have been rendered by the lower agency. "Findings of superior court in certiorari proceedings to review determination of state superintendant of public instruction were based upon written record of

administrative proceedings, which was before reviewing court in its entirety, and hence such findings were not binding upon reviewing court which could disregard such findings and determine merits of questions raised in superior court. RCW 7.16.120, 28.88 020/030/070.". *Appeal of Black*, 47 Wash. 2d 42, 287 P.2d 96 (1955).

The Superior Court had before it the confirmation that the decision by Detective Dillard, the Community Sex Offender Registration Officer, to classify Mr. Dudgeon as a level III was based on the 8 plus year old information contained in the ESRC classification, which was the sole basis for Dillard's classification. CP 4, 6, 7, 74, 80, 81, RP 5, 6. The Superior Court also had before it the current overwhelming substantial current evidence presented by Mr. Dudgeon. CP 23-66. This was the sum total of the relevant evidence regarding what was, or should have been, considered in assigning Mr. Dudgeon a risk level, and it was before the Superior Court in its entirety. Clearly, the substantial evidence before the Superior Court warranted that Mr. Dudgeon's classification as a risk level I.

Therefore, the Superior Court was not only empowered to review the instant case in it s entirety, but also to effect the corrective action the substantial current evidence called for, which was clearly to classify Mr. Dudgeon no higher than a level I risk potential.

4. THE DISMISSAL OF MR. DUDGEON'S PETITION FOR WRIT OF CERTIORARI HAS DEPRIVED HIM OF HIS AVENUE OF APPEAL OF AN ERRONEOUS RISK LEVEL CLASSIFICATION AND MAKES POSSIBLE THE CONTINUATION OF GRIEVOUS IMPAIRMENT TO HIS FUNDAMENTAL RIGHT TO THE PURSUIT OF HAPPINESS AND TO THE PROTECTION OF LIFE AND PROPERTY AS GUARANTEED UNDER THE 5TH AND 14TH AMENDMENTS.

As opposed to the stale information of questionable probative value offered to the Superior Court as sole justification for Respondent classifying Mr. Dudgeon as a level III risk potential (CP 4, 6, 7, 74, 80, 81), Mr. Dudgeon presented to the court a long list of scientific evaluations, professional opinions and records of behavior – all current and substantial – supporting his being classified as a level I risk potential, CP 23-66.

The Superior Court's dismissal of Mr. Dudgeon's Petition For Writ Of Certiorari, unheard, forecloses access to the avenue of redress that the statutory and the settled case law provide and to which Mr. Dudgeon is entitled. As *Halvorson* confirms, the motion to dismiss, based on failure of complaint and opening statement to state a claim upon which relief can be granted, can be granted only where it is clear beyond a doubt from reading the complaint, hearing the opening statement, and considering offers of proof that plaintiff cannot prove facts which would entitle them to relief. *Halvorson v. Birchfield Boiler*, Inc., 76 Wash. 2d 759, 458 P.2d 897 (1969). See also: *Collins v. Lomas & Nettleton Co.*, 29 Wash. App.

415, 628 P.2d 855 (Div. I 1981). "Motions to dismiss pursuant to CR12(b)(6) are sparingly granted; it must appear beyond doubt that the plaintiff's can prove no set of facts consistent with the complaint which would entitle them to relief. *Halvorson v. Dahl*, 89 Wash. 2d 673, 574 P.2d 1190(1978)."; and *Fondren v. Klickitat County*, 79 Wash. App. 850, 905 P.2d 928, n.2, 3. (Div. III 1995). "The motion should be granted 'sparingly and with caution in order to make certain that plaintiff is not improperly denied a right to have his claim adjudicated on the merits'.".

As set forth in Mr. Dudgeon's petition, the classification as a level III risk potential and the attendant wide broadcast by all media, including the world wide inter-net, RCW 4.24.550, of inflammatory, prejudicial and unjustified information concerning Mr. Dudgeon has wreaked terrible damage to his pursuit of happiness and to his sense of well-being regarding life and property. CP 5, 6, 12, 13, 77-79. The repeated and widely reported incidents in this State of where individuals who, as level II or III risk potential registrants, have had their homes burned down or who have been the victims of unprovoked murder (CP 6, 76, 77) are sad but undeniable justification for Mr. Dudgeon's concern for the safety and welfare of his wife should he have to return home as a risk level III instead of the more appropriate and supportable level I.

It should be noted that Mr. Dudgeon is not claiming that these adverse impacts on the Dudgeons' life caused by the wide scale broadcast by the local law enforcement agency of the extremely inflammatory language associated with Mr. Dudgeon's classification as a risk level III, nor does he claim his age as the "... primary reason for asking..." the court to favorably consider his challenge to the risk level III assigned to him, as Respondent claimed in open court testimony. RP 6. Although these are the undeniable egregious impacts – up to and including the possible murder of the risk level II or III individual involved – and the rule of lenity certainly swings in Mr. Dudgeon's favor in considering them regarding any risk level classification concerning him, they are not the reason Mr. Dudgeon seeks redress in the Court, which is simply because his level III risk level classification is an erroneous – arbitrary, unfair and totally unjustified – decision unsupported by any current substantial evidence.

Conversely, information concerning the individual is not broadcast to the public for risk level I (RCW 4.24.550; CP 78, 79), thus giving Mr. Dudgeon and his wife a reasonable chance of putting their life back together for what little time Mr. Dudgeon may have remaining to do so, should he be classified at the appropriate risk level I.

The continued classification of Mr. Dudgeon above a risk level of I flies in the face of the overwhelming substantial current evidence that Mr. Dudgeon provided the classifying official and the Superior Court supporting his classification of level I. This forces continuation of the Hobson's choice Mr. Dudgeon had to make subjecting his wife and him to the financial and psychological burden of living separately in order to shield her from the aforementioned obloquy, harassment and threats – possibly physical, even deadly – associated with the broadcast of the inflammatory language by local law enforcement attendant with the unwarranted classification of Mr. Dudgeon above a level I risk potential. CP 5, 6, 13, 76, 77.

As shown throughout Mr. Dudgeon's pleadings, it is within the jurisdiction of a superior court to hear a petition for writ of certiorari challenging a risk level classification and to render the decision that should have been rendered by the inferior official. In this case, the overwhelming substantial current evidence warrants the finding that Mr. Dudgeon should be classified as a level I risk potential.

E. CONCLUSION

In consideration of the inadequacy of the single source, stale evidence of

questionable probative value presented as material fact by Respondent and relied upon as the sole criteria for classifying Mr. Dudgeon as a level III risk potential (CP 4, 6, 7, 74, 80, 81, RP 5, 6) and the overwhelming substantial current evidence in the form of multiple scientific psychological evaluations – including that made by the State's own experts – professional opinions and records of current behavioral information concerning Mr. Dudgeon (CP 23-66) that strongly support his being classified as a level I risk potential, the Superior Court should have heard Mr. Dudgeon's Petition For Writ Of Certiorari and corrected the inferior official's erroneous risk level classification by rendering the decision that should have been rendered by that official to classify Mr. Dudgeon at the appropriate level I risk potential.

Accordingly, in consideration of the pleadings, statutory and case law cited, and the overwhelming substantial supporting evidence presented, and in the interests of objectivity and fairness in the administration of justice, Mr. Dudgeon respectfully asks this Court to remand this case back to the Superior Court with instructions to render the judgment for Mr. Dudgeon that should have been rendered by the classifying official, which is to classify Mr. Dudgeon at the appropriate and supportable risk level I which the substantial current evidence justifies.

Sworn to and respectfully submitted this 9TH day of APRIL, 2014.

Cecil Dudgeon
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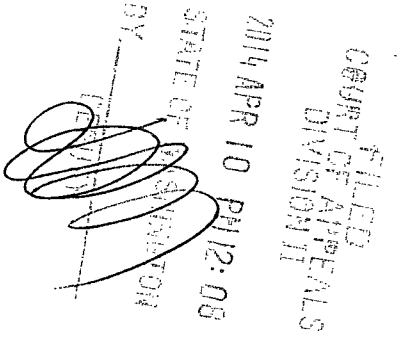
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

CECIL DUDGEON, Appellant, v. STEVE BOYER, SHERIFF OF KITSAP COUNTY, Respondent.	Case No.: 13-2-02714-5 Court of Appeals Cause No.: 46032-7-II DECLARATION OF SERVICE

The undersigned hereby declares, under penalty of perjury under the laws of Washington State, that he deposited the below noted documents in the United States Mail, First Class Postage prepaid on the 9th day of APRIL, 2014, to be sent to the following entities:

DEBORAH BOE, DEPUTY PROSECUTING ATTORNEY
KITSAP COUNTY PROSECUTOR'S OFFICE, CIVIL DIVISION
614 DIVISION STREET, MS 35A
PORT ORCHARD, WA 98366

COURT OF APPEALS
DIVISION II
950 BROADWAY STE 300
TACOMA, WA 98402



1) APPELLANT'S OPENING BRIEF
2) CERTIFICATE OF MAILING

Signed 9th day of APRIL, 2014 at Port Orchard Kitsap County

Dudgeon

CECIL DUDGEON, APPELLANT, PRO SE