

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 97246-0

SUPREME COURT OF THE STATE OF WASHINGTON

KING COUNTY, ET AL.,

Respondent,

v.

GENE ALFRED PALMER II,

Petitioner.

ANSWER OPPOSING PETITION FOR REVIEW

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A. INTRODUCTION

Appellant, Gene Palmer, submitted a public records request to the King County Prosecuting Attorney's Office (PAO) in 2013 for 911 recordings. The PAO conducted a thorough search for the recordings and determined no records existed.

Palmer filed this lawsuit in May 2015 and the trial court dismissed Palmer's case on summary judgment. CP 421-425. The trial court found that King County had conducted "adequate and reasonable searches to determine whether it possessed any records responsive to [Palmer's] public disclosure requests and having found none, [King County] has no legal obligation to produce a record the agency does not have or no longer exists." CP 424-425. That conclusion complies with the Washington State Supreme Court's ruling in Fisher Broadcasting v. City of Seattle, 180 Wn.2d 515, 522, 326 P.3d 688 (2014).

In September 2016 Palmer filed a second CR 60(b) motion. Palmer alleged that he had recently discovered new evidence that two King County prosecuting attorneys were under indictment in United States District Court. The PAO responded and presented evidence of search results of court dockets revealing that neither of the two King County attorneys were under indictment. The trial

court denied Palmer's second CR 60(b) motion on September 26, 2017.

Palmer filed an appeal of the denial of his second CR(60)(b) motion. The Court of Appeals found that Palmer's second motion to vacate was not filed within a reasonable time and that the trial court did not abuse its discretion in denying it.

B. IDENTITY OF RESPONDENT

Respondent, King County, by and through the King County Prosecuting Attorney's Office, respectfully requests that this Court deny the petition for review.

C. COURT OF APPEALS OPINION

The Court of Appeals decision at issue is Gene Alfred Palmer II v. King County, et. al., No. 77557-0-I, filed March 4, 2019 (unpublished).

D. STATEMENT OF THE CASE

1. Superior Court Proceedings

On May 12, 2015, the Petitioner, Gene Alfred Palmer II, filed a lawsuit against King County claiming violations of the Public

Records Act. CP 342-46. Palmer amended his complaint on May 15, 2015, and added the Seattle Police Department, a subdivision of the City of Seattle (Seattle), as defendant. CP 347-51. King County and Seattle filed summary judgment motions against Palmer. CP 352-419. The summary judgment motions were heard before King County Superior Court Judge Jean Rietschel on May 6, 2016. CP 420. The trial court granted summary judgment in favor of King County and Seattle. CP 421-25. Summary judgment was granted on the grounds that King County had conducted an adequate and reasonable search to determine whether any responsive records existed. Finding none, King County was under no obligation to produce records that did not have or no longer existed. CP 424-425. Additionally, the court determined that Palmer failed to raise any genuine issue of material fact. CP 424-425.

On June 6, 2016 Palmer filed his first CR 60(b) motion based on discovery of new evidence. The trial court denied his motion and Palmer did not appeal.

On June, 6, 2016, over a year after the dismissal of his lawsuit, Palmer also filed a notice of appeal of the trial court's summary judgment orders. CP 426-27. Review of his appeal was terminated

on May 5, 2017, for failure to prepare the record on review. CP 428-30.

On September 5, 2017, Palmer filed a second CR 60(b) motion with the trial court claiming newly discovered evidence that two King County prosecuting attorneys were under federal indictment. CP 282-314. Palmer provided no evidence to support his allegation and King County and Seattle filed responses disproving his allegations. CP 431-70. The motion was heard, without argument, and the trial court denied Palmer's motion on September 26, 2017. CP 315-16.

2. Court of Appeals Unpublished Decision

Palmer appealed to Division I of the Court of Appeals. CP 317-21. The scope of the appeal was "limited to the propriety of the trial court's September 2017 order denying Palmer's second CR 60(b) motion." Opinion at 4. In an unpublished opinion, the court unanimously affirmed the dismissal, concluding that his CR 60(b) motion was not timely filed.

Palmer sought reconsideration on March 4, 2019, and the Court of Appeals denied his motion on April 24, 2019.

E. ARGUMENT

1. The Court Should Deny the Petition for Review.

This Court should deny Palmer's petition for review. The Court of Appeal's decision is consistent with Washington law and does not present an issue of substantial public interest requiring determination by this Court. *See* RAP 13.4.

The Court of Appeals properly affirmed the trial court's ruling that Palmer's second CR 60(b) motion to vacate orders of summary judgment was untimely. The issues raised by Palmer have no basis in fact and his petition does not qualify for review under RAP 13.4.

Under RAP 13.4, a petition for review will be accepted by this Court *only* (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Palmer's petition does not meet any of those strict criteria, despite his conclusory assertions to the contrary.

2. Palmer has not shown that the decision of the Court of Appeals conflicts with any decision of this Court or with another published decision by the Court of Appeals.

The Court of Appeals properly concluded that Palmer's motion for relief from judgment was time-barred under CR 60. CR 60 authorizes a trial court to relieve a party from final judgment, order, or proceeding in specific instances. These include fraud, misrepresentation, misconduct, or "[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b)[.]" CR 60(b)(3)(4). The decision to grant or deny a motion to vacate an order under CR 60(b) is within the trial court's discretion. Jones v. City of Seattle, 179 Wn.2d 322, 360, 314 P.3d 380 (2013).

A CR 60(b) motion based on newly discovered evidence must be made within a reasonable time and "not more than 1 year after the judgment[.]" CR 60(b). Lockett v. Boeing, 98 Wn. App. 307, 310, 989, P.2d 1144 (1999). CR 6(b) prohibits enlargement of time under CR 60(b).

Here, the order for summary judgment was entered in favor of King County and Seattle on May 6, 2016. CP 421-425. Palmer filed his Motion for Relief on September 5, 2017. CP 282-314.

Given that over one year elapsed between the date of the judgment and date of filing, the court ruled that Palmer's motion was time barred under CR 60(b)(3) in accordance with long standing court rules and established case law; the Court of Appeals agreed.

Palmer's petition is based on mere allegations and speculation. There is no evidence or indication that summary judgment was entered as a result of fraud, misrepresentation, or misconduct. Mere allegations and speculation are not sufficient to relieve a party from final judgment under CR 60. See Vance v. Offices of Thurston Cty. Comm'rs, 117 Wn. App. 660, 71 P.3d 680 (2003) (A mere allegation of diligence is not sufficient to support a motion for relief from judgment based on newly discovered evidence; the moving party must state facts that explain why the evidence was not available for trial.)

Palmer has not shown that the decision of the Court of Appeals, in his case, conflicts with any decision of this Court or with another published decision by the Court of Appeals. He fails to demonstrate why this is a significant question of law that this Court needs to resolve.

3. There is no substantial public interest

Palmer makes conclusory pronouncements that his arguments involve an issue of substantial public interest. Palmer, however, fails to show how his inability to adhere to the long-established court rules and case law regarding the timeliness of motions, or the determination of facts by the trial court denying his motion, rises to such a level.

F. CONCLUSION


The Court should deny Palmer's petition.

The issues raised by Palmer do not meet any of the strict criteria required under RAP 13.4.

DATED this 10th day of July, 2019.

Respectfully submitted,

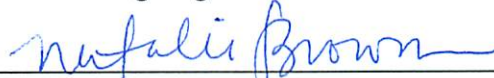
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Certificate of Service by Mail

Today I caused to be delivered via US Mail to Gene Palmer at 101 S. Pearl Street #103, Ellensburg, WA 98926, Plaintiff Pro Se, a copy of the Answer Opposing Petition for Review and Notice of Association of Counsel, in GENE ALFRED PALMER II V. KING COUNTY, Cause No. 97246-0, in the Washington Supreme Court.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name Natalie Brown
Done in Seattle, Washington

7/10/19
Date

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

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