Supreme Court No. 99664-4
No. 80267-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

CHARLES REISERT,
Petitioner.

PETITION FOR REVIEW

King County Department of Public Defense

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I. INTRODUCTION

Charles L. Reisert, Petitioner, seeks review of the Court of Appeals' opinion that bars individuals arrested pursuant to a warrant—issued *ex parte* with a bail amount based only on information provided by the prosecutor—the right to a preliminary appearance opportunity to provide evidence relevant to Criminal Rule 3.2 release considerations. Petitioner seeks review because the decision of the Court of Appeals conflicts with rights and guarantees provided by Criminal Rules 3.2.1(d)(1) and 3.2(a) and the due process protections of the Washington and United States Constitutions. Review should be granted because the Court of Appeals' decision conflicts with Supreme Court decisions and court rule-based directives; involves questions regarding the scope of due process protections afforded to individuals arrested pursuant to a warrant; and resolving these questions is a matter of substantial public interest as "the issues are of a public nature, are reoccurring, are likely to evade review, and an authoritative determination will provide future guidance." Appx. A at 2.

The facts of Petitioner's case highlight the critical interests at issue and the impact the misapplication of Criminal Rule 3.2.1 has on the fundamental liberty interests of accused persons. When the State sought a warrant *ex parte* it presented no evidence favorable to Petitioner under Criminal Rule 3.2 and Petitioner had no opportunity to provide the trial

court with any information relevant to Criminal Rule 3.2's release factors. Appx. A at 1. Instead, the trial court was presented simply with the prosecution's arguments and statement of facts. Appx. A at 1. In this one-sided setting of conditions of release, Petitioner Reisert's bail was set at $200,000. Appx. A at 1. When he was finally able to address the Court and provide information relevant to the release decision, the trial court reduced his bail by *nearly 90 percent*, and set it to $25,000. Appx. A at 2.

II. ISSUES PRESENTED IN THIS PETITION

1. Does the lower court's opinion conflict with Supreme Court precedent where it fails to recognize and follow the Court's bar on construing the titles of statutes and court rules to limit the plain language protections?

2. Does the lower court's opinion raise significant questions of constitutional law where it failed to address whether King County Superior Court's practice of barring access to preliminary appearances—to individuals arrested pursuant to a warrant—violates due process guarantees?

3. Does the lower court's affirmance of King County Superior Court's practice of denying individuals—arrested pursuant to a warrant—the opportunity to argue for changes to conditions of release at a preliminary appearance constitute a matter of substantial public interest?

III. ISSUES PRESENTED FOR REVIEW

1. Does Criminal Rule 3.2.1 guarantee all individuals—including those arrested pursuant to a warrant—the opportunity to argue for favorable changes to their conditions of release at a preliminary appearance before close of business the next court day after they have been detained in jail or subjected to court-authorized conditions of release?

2. Does denying preliminary appearances to individuals arrested pursuant to a warrant violate the presumption of release and protections guaranteed by Criminal Rule 3.2?

3. Does King County's practice of denying individuals arrested pursuant to a warrant the opportunity to argue for favorable changes to their conditions of release at a preliminary appearance violate due process?

IV. STATEMENT OF THE CASE

Petitioner Charles L. Reisert, was arrested and booked for a criminal offense on July 11, 2019. Appx. A at 1. At his arraignment Petitioner was released on $500 bail and ordered to participate in home detention. *Id.* While he was still in custody, the State filed additional felony charges regarding separate alleged criminal conduct. *Id.* The court issued an order directing the issuance of a warrant, fixing bail at $200,000. *Id.* Petitioner moved for an immediate release hearing pursuant to Criminal Rule 3.2.1. *Id.* The trial court denied his motion.

On July 30, 2019, Petitioner Reisert filed a notice of discretionary review with the Court. *Id.* Discretionary review was granted on December 30, 2019. *Id.* The parties briefed and argued the matter, and the Court issued an order ruling against Petitioner after misapplying canons of statutory construction and failing to address questions regarding the scope of due process protections afforded to individuals subjected to arrest pursuant to a

warrant. *Id.* Petitioner moved for reconsideration. Appx. B at 7. Petitioner's request was denied. *Id.*

V. ARGUMENT

"A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review" must show at least one of the following four factors: (1) the decision "is in conflict with a decision of the Supreme Court;" or (2) the decision "is in conflict with a published decision of the Court of Appeals;" or (3) the decision raises "a significant question of law under the Constitution of the State of Washington or the United States[;]" or (4) the decision implicates "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b).

Here, review should be granted because the Court of Appeals' decision conflicts with Supreme Court precedents by failing to adhere to the Court's guidance regarding interpretation of court rules; raises significant constitutional questions regarding whether due process requires that individuals arrested pursuant to a warrant be provided a preliminary appearance; and there is substantial public interest in the Supreme Court determining whether Criminal Rule 3.2.1 and due process requires courts to provide individuals arrested pursuant to a warrant with a preliminary hearing within one court day of their arrest.

A. Review Should Be Granted Because the Lower Court's Opinion Conflicts with Supreme Court Decisions

The lower court narrowly construed Criminal Rule 3.2.1's timely preliminary appearance protections as applying only to individuals subjected to warrantless arrests. The lower court's ruling is in conflict with—and renders meaningless—the Court's rule-based protections afforded to all detained individuals. *See* CrR 3.2.1 (guaranteeing "any defendant" the right to a preliminary hearing to present Criminal Rule 3.2 arguments for release conditions). Further, the Court of Appeals' holding is in conflict with two clear directives from the Court—unless a rule is ambiguous the plain language shall apply and the title of a rule should not limit its plain language protections.

1. The Court of Appeals' decision conflicts with the Court's decisions requiring rules to be interpreted according to their plain language

The Court of Appeals narrowly construed Criminal Rule 3.2.1 to deny its right to a preliminary appearance to individuals arrested pursuant to a warrant. It did so even though the plain language of the rule provides the right to a preliminary appearance to "any individual" within one court day of their pretrial incarceration. *See* CrR 3.2.1(d)(1). This ruling is in conflict with the Court's directives regarding the interpretation of court rules and warrants review under Rule of Appellate Procedure 13.4(b)(1).

The rules of statutory construction apply to the interpretation of court rules. *City of Seattle v. Guay*, 150 Wn.2d 288, 300, 76 P.3d 231 (2003) (citing *State v. Greenwood*, 120 Wn.2d 585, 592, 845 P.2d 971 (1993)). This means that "[w]here the language of a rule is plain and unambiguous, the language will be given its full effect." *Id.* (citing *State v. Smith*, 117 Wn.2d 263, 270-71, 814 P.2d 652 (1991)). "Language in a court rule is unambiguous unless it is susceptible to more than one reasonable meaning." *Id.* (citing *State v. Johnson*, 119 Wn.2d 167, 172, 829 P.2d 1082 (1992)). Review of a lower court's interpretation of a court rule is *de novo*. *See Spokane County v. Specialty Auto and Truck Painting, Inc.*, 153 Wn.2d 238, 244, 103 P.3d 792 (2004).

Criminal Rule 3.2.1 requires that "any defendant whether detained in jail or subjected to court-authorized conditions of release" be brought before a judge for a preliminary appearance "before the close of business on the next court day" after their initial incarceration. CrR 3.2.1. The text of the rule is mandatory, directing that any detained individual "shall be" brought before a judge for a preliminary appearance. There is no discretion and no exemption to this obligation. There is also no ambiguity in the mandatory requirement. Indeed, the plain and clear obligations and rights created by Criminal Rule 3.2.1 have been affirmed. *See State v. Stevens Cty. Dist. Court Judge*, 194 Wn.2d 898, 905, 453 P.3d 984, 988 (2019) (district

courts shall conduct preliminary appearance hearings—but not if the superior court in their respective counties will be conducting these hearings); *Khandelwal v. Seattle Municipal Court*, 6 Wn. App. 323, 335, 431 P.3d 506 (2018) (affirming CrRLJ's 3.2.1 next-court-day deadline and distinguishing between bail determinations and preliminary appearance hearings).

Even though Criminal Rule 3.2.1's plain language guarantees every individual detained in jail the right to a preliminary appearance, the lower court still limited the rule's plain language protections by engaging in statutory construction that ignored the plain text of the rule and emphasized a punctuation ambiguity in the title. Appx. A at 3-4. It did so even though it failed to identify any language in Criminal Rule 3.2.1 that is ambiguous. Appx. A at 3. Instead, the lower court simply found that "[t]he State argues that the language in CrR 3.2.1 is ambiguous." *Id.* And in the next sentence simply states the rule is ambiguous—without identifying what it considered ambiguous. *Id.*

The Court's failure—and inability—to identify any ambiguity in the text of the rule makes clear that the Court should have left its analysis to the plain language of the rule—which requires all detained individuals to be brought before a court "before the close of business on the next court day." CrR 3.2.1. It did not do so. The Court of Appeals' decision conflicts with

the protections provided by the Court through Criminal Rule 3.2.1, the Court's cases interpreting same, and the Court's directive to rely on the plain language of a rule *unless* there is identifiable ambiguity that requires the lower court to look beyond the plain language of the rule. Review should be granted under Rule of Appellate Procedure 13.4(b)(1) to revolve this conflict.

2. The Court of Appeals' decision conflicts with the Court's affirmance that courts cannot use the title of a statute or court rule to limit plain language protections

The Court of Appeals' holding that "the title of the rule [3.2.1] is substantive" and, as such, "limit[s] the scope of the rule" is in conflict with the Court's decisions for three reasons.[1] Appx. A at 4. *First*, the lower court dismissed Petitioner's reliance on a United States Supreme Court case that directs that "the title of a statute . . . cannot limit the plain meaning of the text." Appx. A at 5 n.1 (citing *Bhd. Of R.R. Trainmen v. Balt. & R.R. Co.*, 331 U.S. 519, 528-29, 67 S. Ct. 1387, 91 L. Ed. 1646 (1947)). In reaching this decision the Court of Appeals erroneously asserted that "Washington courts are not bound by federal applications of rules of construction, and have moved in a different direction." Appx. A at 5 (citing *Plese-Graham,*

[1] The title of Criminal Rule 3.2.1 is "Procedure Following Warrantless Arrest – Preliminary Appearance." CrR 3.2.1.

LLC v. Loshbaugh, 164 Wn. App. 530, 538, 269 P.3d 1038 (2011)). However, the Court—in 2020—affirmed that also in Washington courts "[t]he title of a statute . . . cannot limit the plain meaning of the text" and relied upon the same United States Supreme Court case for this proposition that the lower court rejected. *See State v. Wolvelaere*, 195 Wn.2d 597, 603 n.8, 461 P.3d 1173 (2020) (citing *Bhd. Of R.R. Trainmen*, 331 U.S. at 528-29). *Second*, the Court of Appeals cited no law for the proposition that a title of a rule is substantive and therefore can limit the plain language of the rule—and certainly nothing that supersedes the Court's recent affirmation to the opposite. Appx. A at 4. *Third*, the lower court's holding that "[n]othing in the rules [that] suggests that titles are not part of the rules" and its unfounded claim that there isn't "case authority indicating that as a general rule the titles of rules are not substantive[,]" Appx. A at 5, is in direct conflict with the Court's recent affirmation that courts should not use titles to limit the plain language protections of court rules and statutes. *See Wolvelaere*, 195 Wn.2d at 603 n.8. The lower court's decision to ignore the plain language of Criminal Rule 3.2.1, and instead limit protections afforded by the Court to pretrial detainees based on a purported ambiguity in the title of the rule, is in conflict with the principles of statutory construction recently affirmed in *Wolvelaere*. *Id.*

Further, the lower court's reliance on the legislature's processes for developing section headings for Washington statutes and codes does nothing to ameliorate the conflict with the Court's decisions. Appx. A at 4. This is because it is clear that the titles of court rules do not have the same origins as Washington's statutes and codes. As such, construing court rules on the basis of how statutes and code titles are developed is illogical and in direct conflict with the statutory construction principle affirmed in *Wolvelaere*. The Court of Appeals' reliance on a Court of Appeals case that insinuates titles can be used to assist with statutory construction to justify its holding that the title of Criminal Rule 3.2.1 is a substantive limitation does nothing to remedy the lower court's opinion's conflict with the construction principles recently affirmed by the Court. *See Wolvelaere*, 195 Wn.2d at 603 n.8. This is especially true as *Lundell* cites no law for the proposition on which the lower court relied. Appx. A at 4 (citing *State v. Lundell*, 7 Wn. App. 779, 782 n.1, 503 P.2d 774 (1972) (citing no law for the aforementioned proposition)).

Of note, even if the title of the Criminal Rule 3.2.1 were relevant to determining its plain language protections, the title of Rule 3.2.1 "Procedure Following Warrantless Arrest – Preliminary Appearance" clearly indicates that the rule covers two separate topics. This is supported by the text of Criminal Rule 3.2.1 which is divided into two sections: (1) one that

addresses probable cause determinations (subsections a-c); and (2) one that addresses preliminary appearances (subsections d-f). Further, in 3.2.1's title the two topics are separated by a hyphen or dash setting them off as two separate topics covered in the rule. This together compels a disjunctive reading of the title as including two distinct topics. *See State v. Kozey*, 183 Wn. App. 692, 699, 334 P.3d 1170 (2014) (interpreting the word 'and' as a disjunctive because reading it as conjunctive would rob the statutory scheme of meaning and protections); *Bullseye Distributing, LLC v. State Gambling Com'n*, 127 Wn. App. 231, 238-39, 110 P.3d 1162 (2005) (holding that "[i]n certain circumstances, the conjunctive 'and' and the disjunctive 'or' may be substituted for each other if it is clear from the plain language of the statute that it is appropriate to do so"). As such, even if the lower court had appropriately looked to the title for guidance in interpreting the plain language of the text, the title itself—and the plain language of the rule—compels a finding that the preliminary appearance portion of the rule applies to all who are detained, not just those who are subjected to a warrantless arrest.

Review should be granted—pursuant to Rule of Appellate Procedure 13.4(b)(1)—to address the Court of Appeals' construction of Criminal Rule 3.2.1 in a manner that conflicts with the Court's directives regarding construction and the express purpose and language of the

protections the Court provided to individuals detained pretrial when it implemented Criminal Rule 3.2.1.

3. The Court of Appeals' decision conflicts with the protections created by the Supreme Court in Criminal Rule 3.2 which guarantee any incarcerated individual the opportunity to argue conditions of release within one court day of incarceration

The Court of Appeals' opinion not only conflicts with the protections the Court provided to individuals subjected to pretrial detention through Criminal Rule 3.2.1, it also conflicts with and voids protections ensconced in Criminal Rule 3.2.

Criminal Rule 3.2 requires that "[a]ny person . . . shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released" depending on information presented on a number of factors. In a court rule, the word "shall" creates a mandatory obligation on courts to comply with the directive. *Khandelwal*, 6 Wn. App. at 337-38 (affirming that "shall" imposes a mandatory duty). Here, the mandatory directive is for courts to consider Rule 3.2's release factors at a preliminary appearance and at a reappearance. *See* CrR 3.2(a). This mandatory directive that requires argument and consideration of release factors at preliminary appearances and reappearances applies to every individual detained—except those who are charged with a capital offense. *See* CrR 3.2(a) (guaranteeing "any person" shall be released unless the court determines

that the release factors are not met). This blanket requirement makes it clear that "any person" who is detained has the right to a first appearance—not just those subjected to a warrantless arrest—and a subsequent reappearance.[2] It is also important to note that consideration of release factors at a reappearance would be impossible if an individual had not been provided the opportunity to first appear at a preliminary appearance hearing to argue for their release.

The lower court's decision is also in conflict with Criminal Rule 3.2(j)'s protections which provide that "any time after the preliminary appearance" detained individuals "may move for reconsideration of bail." The Court of Appeals' narrow construction of Rule 3.2.1—which bars individuals arrested pursuant to a warrant from having a preliminary appearance—would limit the protections of Criminal Rule 3.2(j). This is because—under the express language of Criminal Rule 3.2(j)—a preliminary appearance is a condition precedent required to have occurred before a person may move for reconsideration of bail.

Further, the Court of Appeals' narrow reading of Criminal Rule 3.2.1 runs counter to the Court's Criminal Rule 1.2 directive requiring

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[2] Reappearance is defined as "the act of appearing again or returning after a period of time." Cambridge Dictionary available at https://dictionary.cambridge.org/us/dictionary/english/reappearance.

courts to construe the criminal rules to "secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay." CrR 1.2. The Court of Appeals' limitation of Rule 3.2.1 undermines these court rule-based protections by delaying an individual's ability to provide the court with necessary information needed to tailor conditions of release to the individual's actual circumstances as required by Rule 3.2.

B. Review Should Be Granted Because the Lower Court's Opinion Raises Significant Questions Regarding Due Protections Afforded to Individuals Arrested Pursuant to a Warrant

The Court of Appeals' narrow construction of Criminal Rule 3.2.1 results in a denial of preliminary appearances for individuals arrested pursuant to a warrant and violates due process protections and principles. The Court should grant review to resolve these outstanding constitutional questions regarding the lawfulness of barring an individual from timely challenging the conditions of release—including bail amounts—that were set *ex parte* when a warrant issued.

1. There is a clear liberty interest in being free from pretrial incarceration

Personal liberty is of course one of our nation's founding, fundamental ideals, and subjection to total confinement absent a finding of guilt is among the greatest encroachments thereupon. *See* Declaration of Independence (U.S. 1776); U.S. Const., pmbl. "In our society liberty is the

norm, and detention prior to trial . . . is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). Due to this "[t]he Supreme Court has long recognized that individuals have a fundamental liberty interest in being free from incarceration absent a criminal conviction, and that there are corresponding constitutional limits on pretrial detention." *Trueblood v. Washington State Dept. of Social and Health Services*, 73 F.Supp.3d 1311, 1314 (W.D. WA 2014). In addition to clearly recognized constitutional liberty interests—like being free from pretrial incarceration—liberty interests may also "arise…from an expectation or interest created by state laws or policies." *In re Lain*, 179 Wn.2d 1, 14, 315 P.3d 455 (2013) (citing *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005) (additional internal citations omitted)). Criminal Rule 3.2(a) creates a protectable liberty interest as it creates a right to release unless one or more of the following two factors are present: (1) the court determines that recognizance will not reasonably assure the accused's appearance, when required; or (2) there is shown a likely danger that the accused will commit a violent crime or seek to intimidate witnesses or interfere with the administration of

justice.[3] Because Criminal Rule 3.2 creates a right to release when certain substantive predicates are met—in this instance absence of the two factors—Criminal Rule 3.2 creates a court rule-based cognizable liberty interest independent of the general liberty interest in freedom from pretrial incarceration. If the state seeks to deprive a person of that right due process attaches.

2. Subjecting an individual to incarceration pursuant to a warrant and denying them Criminal Rule 3.2.1's preliminary appearance hearing violates due process protections and requirements

Once it is established that a cognizable liberty interest exists, "due process applies [and] the question remains what process is due." *Morrissey*, 408 U.S. at 481. *See generally Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). In order to determine whether procedures provided by the government meet the standard of procedural due process, the Court must weigh the individual interest against the governmental interest. *Id.* at 334-35. In the pretrial detention context, an individual's

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[3] The general test for whether state law gives rise to a cognizable liberty interest is whether the law "contain[s] 'substantive predicates' to the exercise of discretion and 'specific directives to the decisionmaker that if the…substantive predicates are present, a particular outcome must follow.'" *In re Cashaw*, 123 Wn.2d 138, 146, 866 P.2d 8 (1994). *See also In re McCarthy*, 161 Wn.2d 234, 240-41, 164 P.3d 1283 (2007) (holding that state statutes may create liberty interests where none otherwise exist); *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) (holding that once it is established that a cognizable liberty interest exists, "due process applies [and] the question remains what process is due").

interest is a fundamental right to freedom from physical constraint and any government action in this contest must "be narrowly tailored to serve a compelling state interest." *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 779-80 (9th Cir. 2014). And "the quantum and quality of the process due in a particular situation depend upon the need to serve the purpose of minimizing the risk of error." *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 13, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979) (citing *Mathews*, 424 U.S. at 335).

Here, the process for protecting an individual's liberty interest—either naturally arising from the Constitution or from court rule guarantees—has been identified by the Court and detailed in the preliminary appearance requirements in Criminal Rule 3.2.1. *See* CrR 3.2(a) (requiring consideration of release factors at "the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1"). Criminal Rule 3.2.1 requires a preliminary appearance to be held for all detained individuals "before the close of business on the next court day." CrR 3.2.1(d)(1). The rule contains no exceptions, exemptions or exclusions and by the use of the word "shall" creates a mandatory obligation upon courts and a right of all detained individuals to have the ability to argue for their conditions of release within a court day of their initial detention. The Court of Appeals' exclusion of people arrested pursuant to a warrant from Criminal Rule

3.2.1's preliminary appearance protections denies them due process and unduly infringes on their liberty interests—ones arising directly from the Constitution and ones derived from court rule guarantees—and subjects them to prolonged detention of up to 14 days without the opportunity to argue for a change in the conditions of their release.

The Court of Appeals failed to address Petitioner's constitutional due process arguments, and review should be granted—pursuant to Rule of Appellate Procedure 13.4(b)(3)—to resolve the outstanding constitutional questions arising from the denial of a timely preliminary appearance and opportunity to argue for changes to the conditions of their release—including bail amounts—that were set *ex parte* through the warrant application. *See* Appx. B.

C. Review Should Be Granted Because There Is Substantial Public Interest in Protecting Community Members from Unlawful and Extended Pretrial Incarceration

The questions raised by Petitioner implicate substantial public interest. The public interest in the questions at issue here were noted by the Court of Appeals when it accepted Petitioner's Motion for Discretionary Review after noting that "the issues are of a public nature, are reoccurring, are likely to evade review, and an authoritative determination will provide future guidance." Appx. A at 2.

It is impossible to tell with any certainty how frequent bail is reduced based on evidence proffered at preliminary appearance or the range of bail reductions that occur after an individual who is arrested pursuant to a warrant is able to argue for changes in their conditions of release. But changes to conditions of release favorable to an incarcerated individual—based on information they provide to the court—is expected and contemplated by the court rules. *See* CrR 3.2; CrR 3.2.1.

Further, denial of the opportunity to present mitigating information regarding conditions of release—including bail amounts—falls particularly heavily on the shoulders of low-income individuals involved in the criminal legal system. This is because higher amounts of bail make it impossible for low-income people to buy their way to freedom. Of further concern, research clearly shows that prolonged pretrial detention leads to worse outcomes for those detained—including increased likelihood of conviction, being sentenced to incarceration, job loss, and housing insecurity. *See Justice Denied: the Harmful and Lasting Effects of Pretrial Detention*, Vera Institute of Justice, available at https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf (Apr. 2019).

The Court should grant review—pursuant to Rule of Appellate Procedure 13.4(b)(4)—because questions regarding the scope of protections

afforded by Criminal Rules 3.2.1 and 3.2 and the constitutional protections that apply for individuals arrested pursuant to a warrant are ones that impact a large number of individuals involved in Washington's criminal legal system and—as the Court of Appeals noted—are reoccurring and likely to escape review.

VI. CONCLUSION

For the foregoing reasons the Court should grant Petitioner's request for review.

DATED this 14th day of April, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2021, I served one copy of the foregoing document by email via the Washington Courts E-Portal on the following:

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2/16/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. CHARLES L. REISERT Appellant.	No. 80267-4-I DIVISION ONE PUBLISHED OPINION

APPELWICK, J. — Reisert requests reversal of the superior court's order denying his motion for a release hearing under CrR 3.2.1. That rule is entitled "Procedure Following Warrantless Arrest - Preliminary Appearance." He was in custody on a warrant. We affirm.

FACTS

On July 11, 2019, Reisert was arrested and booked for a domestic violence offense. At his arraignment, he was released on $500 bail and ordered to participate in electronic home detention. While he was still in custody, the State filed additional felony domestic violence charges for a separate act. The court issued an order directing the issuance of summons or warrant, fixing bail at $200,000.

Reisert moved for an immediate release hearing pursuant to CrR 3.2.1. The State opposed his motion, arguing CrR 3.2.1 applies to only warrantless arrests. The court denied his motion.

Appx. A

On July 30, 2019, Reisert filed a notice of discretionary review in this court. One week later, Reisert's bail was lowered to $25,000 at an arraignment hearing. On November 5, 2019, Reisert pleaded guilty.

On November 18, 2019, a commissioner of the Court of Appeals issued a ruling denying discretionary review, noting Reisert had an appeal available as of right. Reisert filed a motion to modify the ruling, explaining that appealing his sentence would violate his plea agreement, but seeking discretionary review would not. RAP 17.7.

On December 30, 2019, the commissioner granted discretionary review. The commissioner concluded discretionary review was warranted because the issues are of a public nature, are recurring, are likely to evade review, and an authoritative determination will provide future guidance.

DISCUSSION

Reisert argues King County Superior Court erred when it denied his motion for an immediate preliminary appearance hearing after his second arrest pursuant to CrR 3.2.1(d)(1). He argues the plain language of CrR 3.2.1 mandates that all defendants must be brought before a judicial officer for a preliminary appearance hearing the next court day following their arrest.

CrR 3.2.1(d)(1) provides,

> Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a) [("Probable Cause Determination")], any defendant whether detained in jail or subjected to court-authorized conditions of release shall be brought before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of

> business on the next court day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.

At the preliminary appearance, if the court denies the accused's request for release, it must also determine whether probable cause exists to believe the accused committed the crime and set bail. Khandelwal v. Seattle Mun. Court, 6 Wn. App. 2d 323, 326-27, 431 P.3d 506 (2018); CrR 3.2.1(e)(2). The probable cause and bail decision must be made no later than 48 hours after arrest. Khandelwal, 6 Wn. App. 2d at 327; CrR 3.2.1(a). CrR 3.2.1 is a mandatory rule. See Khandelwal, 6 Wn. App. 2d at 336-38 (holding CrRLJ 3.2.1, which mirrors CrR 3.2.1, as a mandatory rule). A "mandatory provision" in a rule, if not followed, renders the proceeding to which it relates illegal and void. See Khandelwal, 6 Wn. App. 2d at 336.

Reisert argues the plain language of CrR 3.2.1(d)(1) and CrRLJ 3.2.1(d)(1) afford the right to a prompt preliminary appearance hearing to "any defendant" or "any accused." He asserts this language "does not distinguish between individuals arrested pursuant to a warrant and individuals arrested without a warrant." Therefore, the trial court erred when it denied his request for a hearing under the rule.

The State argues that the language in CrR 3.2.1 is ambiguous. Because it is ambiguous, we look to the title of the rule, which makes it clear that it applies to only warrantless arrests. Thus, the trial court did not err in denying the hearing, because Reisert was arrested pursuant to a warrant.

The meaning of a court rule, like a statute, is a question of law subject to de novo review. See Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). When interpreting court rules, the court approaches the rules as though they have been drafted by the legislature. Plein v. USAA Cas. Ins. Co., 195 Wn.2d 677, 685, 463 P.3d 728 (2020). "Plain meaning is discerned from the language, the statute's context, related provisions, and the statutory scheme as a whole." Wrigley v. State, 195 Wn.2d 65, 71, 455 P.3d 1138 (2020). Where the meaning of a rule is ambiguous, the court may resort to statutory construction, legislative history, and relevant case law to discern the drafter's intent. State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010).

If the title of the rule is substantive, its plain meaning would limit the scope of the rule. Without knowing if the title is a substantive part of the rule, there is ambiguity as to whether the rule applies to any defendant or only those detained under a warrantless arrest. To apply plain meaning or ambiguity, it is necessary to resolve whether the title is a substantive statement of the scope.

Section headings which appear in Washington statutes and codes have three derivations: (1) they are placed there by the another office, such as the code reviser, (2) they are placed there by the drafter but there is a specific provision in the statute that section headings do not become a part of the act, or (3) they are placed in the original act by the drafter without any limiting provisions. State v. Lundell, 7 Wn. App. 779, 782 n.1, 503 P.2d 774 (1972). It is only in the third

instance that section headings become an integral part of the law and are useful in statutory interpretation.[1] Id.

The Supreme Court repealed former rules CrR 3.2A and 3.2B. In re Adoption of the Amendments to CrR 3.2A, CrR 3.2B, CrR 3.2(a), New CrR 3.2.1, CrR 3.4(d)(1) & CrR 4.3A, No. 25700-A-701 (Wash. March 8, 2001). They were replaced by new CrR 3.2.1. Id. The new rule was titled "Procedure Following Warrantless Arrest - Preliminary Appearance." CrR 3.2.1. Nothing in the rules suggest that the titles are not part of the rules. Nor is there any case authority indicating that as a general rule the titles of rules are not substantive. As the title was drafted as part of the rule and adopted by the drafter without any limiting provisions, we conclude it is an integral part of the rule and is useful in statutory interpretation.

The title and restructuring of CrR 3.2.1 indicate the court intended to provide a right to a prompt preliminary appearance hearing to any defendant or accused detained following a warrantless arrest.

[1] Reisert argues that the title of CrR 3.2.1 should not limit the plain language of CrR 3.2.1(d) providing its application to any defendant or accused person. He cites to Brotherhood of Railroad Trainmen v. Baltimore & Ohio Railroad Company, 331 U.S. 519, 528-29, 67 S. Ct. 1387, 91 L. Ed 1646 (1947), which provides "the title of statute and the heading of section cannot limit the plain meaning of the text." Washington courts are not bound by federal applications of rules of construction, and have moved in a different direction. See Plese-Graham, LLC v. Loshbaugh, 164 Wn. App. 530, 538, 269 P.3d 1038 (2011) (noting Washington cases recognize federal cases as persuasive authority for interpreting state rule); Lundell, 7 Wn. App. at 782 n.1 (laying out the three derivations of RCW section headings).

We conclude that CrR 3.2.1 applies to only defendants arrested without a warrant.

We affirm.

Leach, J.

WE CONCUR:

Dwyer, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

THE STATE OF WASHINGTON,

Respondent,

v.

CHARLES L. REISERT

Appellant.

No. 80267-4-I

ORDER DENYING MOTION
FOR RECONSIDERATION

The appellant, Charles Reisert, filed a motion for reconsideration. The panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Appelwick, J.
Judge

KING COUNTY DEPARTMENT OF PUBLIC DEFENSE

April 14, 2021 - 2:55 PM

Filing Petition for Review

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