

NO. 83277-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FILED
SUPREME COURT
STATE OF WASHINGTON
2010 MAR 24 P 2:58
BY RONALD R. CARPENTER
CLERK

CITY OF SEATTLE,

Respondent,

v.

SEATTLE MUNICIPAL COURT, The Hon. GEORGE W.
HOLIFIELD,

and

MATTHEW JACOB, JOHN WRIGHT, and JACOB CULLEY,

Petitioners.

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STATE OF WASHINGTON
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BRIEF OF AMICUS CURIAE
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I. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys ("WAPA") represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes.

WAPA is interested in cases which have wide-ranging impact on the ability to prosecute drunk-driving cases. Blanket pretrial orders suppressing breath-test results are common in lower-court DUI litigation. Adoption of petitioner's argument would remove this Court's ability to review the orders in such cases.

II. SUMMARY

A superior court may review district and municipal court interlocutory orders in criminal proceedings by statutory writ of review if the inferior tribunal has exceeded its jurisdiction or acted illegally, and the aggrieved party has neither right of appeal nor a plain, speedy and adequate remedy at law.

A writ of review is an extraordinary remedy. Statutory limitations on access are rigorous. But petitioners seek to drastically limit access further, arguing that a writ of review is available only when a lower court exceeds its jurisdiction. They

assert a writ of review can never, or almost never, address an error of law. They hope thereby to insulate lower-court suppression orders in DUI cases from review in the future.

Statutory language and decisions of this Court and the Court of Appeals show petitioners are wrong. In the past, courts have permitted prosecuting authorities access to remedy by statutory writ in DUI litigation when inferior tribunals have suppressed breath test results in blanket pretrial orders that impacted hundreds of like cases. Discretionary access to such relief should remain.

III. ISSUE PRESENTED

1. May discretionary review by statutory writ be had for certain recurring errors of law, when there is no appeal or other adequate remedy at law?

IV. AMICUS CURIAE'S STATEMENT OF THE CASE

A. PROCEDURAL POSTURE.

On March 11, 2008, Seattle Municipal Court, the Hon. George Holifield, issued a blanket breath-test suppression ruling that extended to numerous similarly-situated defendants charged with DUI, including the three defendants here. BOA (under COA #61679-0) 1-2; BOR (under COA 61679-0) 1; Petition/Motion for Review 2-3; Answer to Motion 1-2 and Appendix 2 thereto; City of

Seattle v. the Hon. George W. Holifield, Seattle Municipal Court and Jacob, Wright, and Cully, 150 Wn. App. 213, 216, 221-23, 208 P.3d 24 (2009). The City sought a writ of review in superior court. On April 25, 2008, the Hon. Cheryl B. Carey denied the petition for writ. Id.; see also Appendix 1 to Answer to Motion (decision denying writ). The City sought discretionary review in Division One of the Court of Appeals. Review was granted on July 14, 2008. The matter then proceeded on the merits with full briefing and oral argument. Id. On May 26, 2009, the Court of Appeals reversed, finding inter alia that a writ of review can be available to correct errors of law. Holifield, 150 Wn. App. at 225-26.

B. FACTS UNDERLYING SUPPRESSION ORDER.

The “Datamaster” breath-test instrument used in Washington measures alcohol concentration in a sample of breath by calculating how a beam of infrared energy passes through the breath sample compared to how it passes through ambient room air. If alcohol is present in the breath sample, some energy will be absorbed, and this loss of energy can be correlated to alcohol concentration. In re Sleigh ex Rel. Unnamed Motorists Accused of DWI, 178 Vt. 547, 548, 872 A.2d 363, 365 (Vt. 2005).

A glass external simulator is mounted on the back of the Datamaster. It heats a premixed solution of alcohol and water to a 34° C to create a vapor that simulates human breath at the intoxication level of .08. City of Seattle v. Allison, 148 Wn.2d 75, 87-88, 59 P.3d 85 (2002); Letourneau v. Dep't of Licensing, 131 Wn. App. 657, 662-63, 128 P.3d 647 (2006); City of Bellevue v. Ohlson, 60 Wn. App. 485, 491-92, 803 P.2d 1346 (1991). During each test this heated vapor is pumped into the sample chamber and the infrared beam passed through it. The Datamaster must read this simulator vapor sample within $\pm 10\%$ of .08 in order for its separate measurement of a suspect's breath to be considered reliable and admissible. RCW 46.61.506(4)(a)(vii); former WAC 448-13-070.

Because the simulator solutions degrade over time, the State Toxicology Laboratory continually prepares new "batches" to replace them. Their alcohol concentration is tested for accuracy before being shipped to the field for use. Bellevue v. Ohlson, 60 Wn. App., at 492; Appendix 2, p. 2-3. While lab protocols only required three analysts test these new batches, the practice was to have all analysts (12 or more) do so. Holifield, 150 Wn. App. at

222-23; Appendix 2, p. 3. All analysts signed worksheets indicating the results of their batch tests. Appendix 2, p. 3.

Analysts who tested new simulator solution batches also signed “certifications” under CrRLJ 6.13, attesting they had each tested samples of the batch and found them within acceptable parameters. Appendix 2, p. 3. CrRLJ 6.13 permits the use of such publicly-filed affidavits in lieu of live testimony, but only when the defense does not demand live testimony. State v. Walker, 83 Wn. App. 89, 94, 920 P.2d 605 (1996); Appendix 2, p. 3; CrRLJ 6.13.

The lab manager, Ann Marie Gordon, was also an analyst. Appendix 2, p. 3. Her supervisory duties began to impede her completing her share of testing, delaying the sending of new batches to the field. A colleague began running some of her tests and entering the results for her. However, Ms. Gordon continued to sign CrRLJ 6.13 affidavits attesting she had personally run all tests ascribed to her. This was not true. Appendix 2, p. 4. When this came to light based on a hotline tip, the State Patrol publicly disclosed her deception and Ms. Gordon resigned. Appendix 2, pp. 5, 7; Seattle Post-Intelligencer, “Allegations May Cast Cloud Over DUI Cases,” 7/31/07. In pretrial motions, Seattle Municipal Court found the entire lab not credible and suppressed all breath tests run

on machines utilizing any simulator batch (and there were many) that Ms. Gordon had signed as having personally tested. Appendix 2, p. 10.

C. COURT OF APPEALS' RESOLUTION OF THE MERITS.

The Court of Appeals reviewed these facts and concluded they did not support a finding of noncompliance with the statutory prima facie foundational requirements for admission of a breath test at RCW 46.61.506(4). It also concluded defendants did not establish prejudice: The trial court "did not find that fewer than [the requisite] three analysts actually tested and certified the solution, only that Gordon and certain other employees had falsified simulator solution certifications." Holifield, 150 Wn. App. at 221-23.

V. ARGUMENT OF AMICUS

A. TYPES OF WRITS; WRITS OF REVIEW OR CERTIORARI IN GENERAL.

Writs in Washington are of two categories: the common law writ and the statutory writ. Bridle Trails Community Club v. City of Bellevue, 45 Wn. App. 248, 252, 724 P.2d 1110 (1986). Common law writs, referenced at WASH. CONST. art. IV, §§ 4 and 6, are not at issue here, because the writs here were not sought from, nor issued by, this Court in the first instance (§ 4) nor sought by prisoners in custody (§ 6). The writ at issue here is statutory.

Three types of writs are authorized by statute. RCW 7.16.010-~.360 These are writs of certiorari or review,¹ writs of mandamus, and writs of prohibition. Id. Each is separately defined with its own prerequisites. Compare RCW 7.16.030 and ~.040 (writ of review available when inferior tribunal acts outside its jurisdiction or illegally) with RCW 7.16.290, ~.300 (writ of prohibition limited to arrest proceedings taken in excess of lower court's jurisdiction) and RCW 7.16.150, ~.160 (writ of mandamus limited to compelling performance of mandatory duty, or compelling admission of party to enjoyment of unlawfully-deprived right). While petitioners make light of them, these distinctions are critical, because cases analyzing the latter two necessarily define access more narrowly. City of Seattle v. Keene, 108 Wn. App. 630, 632, 31 P.3d 1234 (2001); see n.5 below (examples of writ-of-prohibition cases).

A superior court can grant a writ of review of a district or municipal court interlocutory order only if: (1) the district court a) exceeded its jurisdiction *or* b) acted "illegally," and (2) there is a) no appeal, nor b) "plain, speedy or adequate remedy at law." RCW

¹ The phrase "writ of certiorari" or "writ of review" is used interchangeably. State v. Cascade Dist. Court, 24 Wn. App. 522, 525, 603 P.2d 1264 (1979).

7.16.040.² Unless one of the factors in (1) and both of the factors in (2) are present, the writ cannot issue. RCW 7.16.040; City of Seattle v. Keene, 108 Wn. App. at 636; see City of Seattle v. Williams, 101 Wn.2d 445, 454, 680 P.2d 1051 (1984).

A writ of review is an extraordinary remedy, to be granted sparingly. City of Seattle v. Williams, 101 Wn.2d at 454-55; Kirkland v. Ellis, 82 Wn. App. 819, 827, 920 P.2d 206 (1996). Petitioner asserts, and amicus does not dispute, that a litigant has no *right* to interlocutory review. The issue here is not *right*, however, but *access*. Here, the City sought review of pretrial decisions suppressing breath test results that impacted both the specific cases involved and hundreds of similarly situated cases. The only avenue for such interlocutory relief was the statutory writ of review at issue here. RCW 7.16.040.

B. THE RALJ RULES DO NOT CONTROL.

Appellate review of limited-jurisdiction court decisions is governed by the RALJ rules. These rules do not grant interlocutory review, and indeed mostly foreclose it. Appeals are limited to “final

² “A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct an erroneous or void proceeding, or a proceeding not according the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.”

decisions” (although a pretrial ruling may be part of an appeal after conviction). RALJ 2.2(a). A prosecuting authority may not appeal a pretrial suppression ruling that does not result in dismissal. RALJ 2.2(c)(2). To cover situations where the RALJ rules afford no relief, access to writ proceedings remains. RALJ 1.1(b).

C. THE CITY HAD NO RIGHT OF APPEAL.

The government’s right to appeal in a criminal case is much narrower than a defendant’s. Compare RALJ 2.2(a) (right of appeal generally) with RALJ 2.2(c) (when prosecution may appeal). An adverse pretrial suppression ruling can be appealed by the State or City only if “the practical effect of the order is to terminate the case.” RALJ 2.2(c)(2). An order suppressing breath-test results in a DUI prosecution will rarely have this effect, since there will usually be some other evidence suggesting intoxication that could be presented under the DUI statute’s alternative “affected by” prong. Compare RCW 46.61.502(1)(a) (“per se” prong, proscribing driving with breath test result over .08 within two hours after driving) with RCW 46.61.501(1)(b) (“affected by” prong, proscribing driving if “affected by” intoxicants). Except in the rare case where the *only* evidence of intoxication is a breath test, direct appeal of a pretrial ruling suppressing test results will *never* be available under the

RALJ rules.³ City of Mt. Vernon v. Mt. Vernon Mun. Court, 93 Wn. App. 501, 509, 973 P.2d 3 (1998); see RALJ 2.2(c)(2). Where a suppression order, as here, merely “makes a prosecution difficult or unfeasible,” but does not terminate the case, the State or City may still seek a writ of review; indeed, such a writ will be the “sole remedy” available, since direct appeal is foreclosed. State v. Campbell, 85 Wn.2d 199, 201-02, 532 P.2d 618 (1975).

D. THE CITY HAD NO OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY AT LAW.

Petitioners argue the prosecuting authority still retains an adequate “remedy” even with appeal foreclosed, namely, going forward on a truncated case under the DUI statute’s remaining “affected by” prong. But this is not a *remedy* for an erroneous suppression ruling; it is merely a *consequence* thereof. If the result of a trial with evidence excluded is an acquittal, no further review is permissible. RALJ 2.2(c)(1). If the result is a conviction, the prosecuting authority may lodge a cross appeal, but this is contingent not only on securing the conviction but also on the government’s being able to establish that it remains an “aggrieved party.” RAP 3.1; Madison v. State, 161 Wn.2d 85, 109, 163 P.3d

³Compare drug cases where suppression leads to dismissal and appeal is readily available. E.g., State v. LaTourette, 49 Wn. App. 119, 741 P.2d 1033 (1987).

757 (2007) (no standing unless “aggrieved”). And access to cross appeal is dependent on the defendant’s willingness to appeal in the first instance. A defendant might be willing to forego appeal in order to shield an erroneous pretrial suppression ruling from review, especially if his or her punishment had been lessened thereby.⁴ An avenue of review contingent not only on securing a conviction *despite* the pretrial ruling, but also available only at the opposing party’s pleasure, is not a “plain, speedy and adequate remedy at law.”

E. A WRIT OF REVIEW IS AVAILABLE FOR “ERRORS OF LAW.”

There is no dispute that a writ is available to review an extra-jurisdictional act. The question here is whether the phrase “acting illegally” in the statute at RCW 7.16.040 means anything additional or different, or is mere surplusage.

Petitioners argue that the language of RCW 7.16.040 restricts review solely to extra-jurisdictional acts of the lower court. They rely on cases interpreting the more restrictive statutory language for writs of mandamus or prohibition, but these do not

⁴ For example, punishment for DUI without a breath-test result (provided the defendant did not refuse the test) is less than that imposed if conviction was pursuant to a test result of .15 or higher. Compare RCW 46.61.505(1)(a) with ~(1)(b).

answer the question. Seattle v. Keene, 108 Wn. App. at 632 (cases discussing requirements for writ of prohibition not helpful, as writ of prohibition “has a different purpose and character, a different statute, and a different history”).⁵

The statutory language for a writ of review is what governs. Division Two of the Court of Appeals examined “acting illegally” in RCW 7.16.040, found the phrase was subject to multiple meanings, and therefore resorted to statutory construction. WPEA v. Personnel Resources Bd., 91 Wn. App. 640, 652-54, 959 P.2d 143 (1997). The WPEA court concluded that the purposes of a statutory writ of review – to provide a means for courts to review judicial actions where there is no statutory right of appeal nor an adequate remedy at law – would be ill-served by a narrow construction of the phrase. Moreover, a narrow construction would make the phrase superfluous. Consequently, the WPEA court held that “acting illegally” included “errors of law.” WPEA, 91 Wn. App. at 651-53.

[W]e are not to interpret statutes so as to render any language superfluous. Thus, we assume that the

⁵ E.g., Kreidler v. Eikenberry, 111 Wn.2d 828, 838, 766 P.2d 438 (1989) (act outside or in excess of lower court’s jurisdiction a precondition for issuance of writ of prohibition); Alaska Airlines v. Molitor, 43 Wn.2d 657, 664 263 P.2d 276 (1953) (same); State v. Superior Court, 12 Wn.2d 430, 121 P.2d 960 (1942) (writs of prohibition or mandamus not available for mere error of law, where lower court has not exceeded its jurisdiction); see RCW 7.16.290, ~.300 (writ of prohibition) and RCW 7.16.150, ~.160 (writ of mandamus); neither statute contains the “acting illegally” language of writs of review.

Legislature intended the phrase “acting illegally” to include acts in addition to those already encompassed in “exceeded jurisdiction” or “erroneous or void proceedings.” Wright v. Engum, 124 Wn.2d 343, 352, 878 P.2d 1198 (1994); see also State ex rel Meyer v. Clifford, 78 Wash. 555, 559-60, 139 P. 650 (1914) (court will not issue writ of prohibition to review error of law where tribunal has jurisdiction; *such matters are reviewable by certiorari* where there is no appeal).

Id. at 653 (emphasis in original; footnote omitted). In so holding, the WPEA court distinguished common-law writs under the state constitution, concluding that “illegality” in that context was limited to a tribunal’s jurisdiction or authority to perform. Id. at 657-58.

Petitioners ignore WPEA in their briefing and instead posit that while an error of law may be addressed once a writ is *granted*, it cannot be a basis for *granting* in the first instance. Petition at 8. This argument is meritless: it would render the phrase “acting illegally” superfluous, and would rewrite the statute.

Alternatively, petitioners concede that a writ of review *can* address an error of law, but only if “patently erroneous” and recurring. Petition at 6-8, citing State v. Whitney, 69 Wn.2d 256, 260-61, 418 P.2d 143 (1966) (writ permissible to review erroneous suppression of fingerprint evidence). Whitney involved the common law writ at art. IV, § 4, addressed to this Court in the first

instance, triggering a stricter standard, not the statutory writ at RCW 7.16.040, addressed to the superior courts. Even if Whitney's stricter standard were applicable, it is met here: For the reasons argued by the City, the trial court's conclusion that CrRLJ 8.3(b) includes suppression as a remedy is indeed "patently erroneous." So is its conclusion that one lab analyst's false statements completely negates the City's ability to lay a prima facie foundation under RCW 46.61.506(4), when the batches were tested by *more than three* other analysts and there was no evidence test results themselves were falsified.⁶ And the error is most certainly recurring – indeed, it recurred here in hundreds of similarly-situated cases.

As early as 1914, this Court recognized that errors of law could be addressed by writ of review. State ex rel Meyer v. Clifford, 78 Wash. 555, 559-60, 139 P. 650 (1914) (writ of prohibition cannot address errors of law, but writ of certiorari can). In Campbell, this Court held that the government has a right of direct appeal of a suppression order only when the order has the practical effect of terminating the prosecution. Campbell, 85 Wn.2d at 201-03 (drug

⁶ This is not to condone what Ms. Gordon did, or in any way diminish a defendant's ability to impeach the reliability of a breath-test instrument by presenting evidence of Ms. Gordon's misconduct to a jury. But the error, however regrettable and serious, was not *foundational*.

case; see n. 3 above). On the other hand, suppression that merely made “a prosecution difficult or unfeasible,” this Court explained, triggers no right of direct appeal, but can only be reviewed by writ of certiorari. Id. This statement makes no sense if the remedy is limited to acts in excess of jurisdiction, as petitioners claim. Whitney, to the extent its reasoning carries over to statutory writs, is in accord. Whitney, 69 Wn.2d at 260-61 (fingerprint evidence). Division II in WPEA unequivocally held that a writ of review could examine, and be premised on, an error of law. WPEA, 91 Wn. App. at 652-54. Division One, on three occasions, has now held the same. Mt. Vernon, 93 Wn. App. at 508-09; Keene, 108 Wn. App. at 639-40; Holifield, 150 Wn. App. at 225-26. These holdings accord with this Court’s opinions in Clifford, Campbell and Whitney.

Petitioner disagrees, citing two cases where *defendants* had improperly sought writs of review, because, unlike the government, they *still retained a right of direct appeal*. In State v. Epler, a DUI defendant facing retrial after a “hung” jury sought dismissal under CrRLJ 8.3(b), alleging prosecutorial vindictiveness, and when that failed, sought a writ of review. Division Three properly held a writ of review was not available because the right of appeal upon conviction afforded an adequate remedy at law, since, *for*

defendants, “an interlocutory order is reviewable on appeal from the ultimate judgment.” State v. Epler, 93 Wn. App. 520, 525, 969 P.2d 498 (1999). But the Epler court also noted that a writ is granted not based on “whether the district court committed error of law, but whether the court had jurisdiction to decide the motion” at all. Epler, 93 Wn. App. at 524-25. This was unnecessary for its holding and completely ignored Division Two’s prior holding in WPEA. Division One examined this in light of WPEA and its own prior decision in Mt. Vernon and concluded Epler was wrongly decided:

We have closely examined the statute and the writ cases to discern which analysis is correct. We conclude that Epler is inconsistent with longstanding Supreme Court case law. In addition, Epler relies exclusively upon cases discussing the writ of prohibition, which has a different purpose and character, a different statute, and a different history.

Seattle v. Keene, 108 Wn. App. at 632 (after discussing WPEA).

This Court should conclude the same.

In Commanda v. Cary, a defendant obtained an interlocutory writ to review a constitutional equal-protection challenge to Spokane’s DUI penalty enhancement for defendants with breath-alcohol levels greater than .15. Commanda v. Cary, 143 Wn.2d 651, 23 P.3d 1086 (2001). This Court held the superior court had granted the writ in error, because the defendant “has not even been

convicted, much less exercised her right to appeal to the superior court for any conviction entered,” and still had “an adequate remedy by appeal” under the RALJ rules. Commanda, 143 Wn.2d at 656-57. In its description of the government’s argument against a writ, the Commanda court also cited Epler’s language limiting review to when a lower court has exceeded its jurisdiction. Commanda at 656. But this discussion was dicta, describing a party’s argument, rather than part of the holding: Reviewability by writ of “errors of law” was not before this Court in that case. Keene, 108 Wn. App. at 643; Holifield, 150 Wn. App. at 226. Petitioner’s argument to the contrary ignores the basis of Commanda’s holding.

The petitioner wants this court to overrule Mt. Vernon, Keene, and WPEA on the slim authority of Epler. As discussed above, this does not comport with this Courts prior opinions. And it is bad policy.

Both this Court and the Court of Appeals have repeatedly had the opportunity to review substantive “errors of law” brought from the limited-jurisdiction courts *only because* of writs of review. City of Seattle v. Clark-Munoz, 152 Wn.2d 39, 43, 93 P.3d 141 (2004) (upholding pretrial suppression based on simulator-solution thermometers not shown to be “traceable;” initially raised by writ);

City of Kent v. Beigh, 145 Wn.2d 33, 32 P.3d 258 (2001) (pretrial suppression of blood test, raised by writ; held proper when officer lacked statutory authority to request); State v. Wittenbarger, 124 Wn.2d 467, 475-77, 880 P.2d 517 (1994) (reversing pretrial suppression orders, based on State's not preserving BAC machine repair records; Snohomish County consolidated cases initially raised by writ); City of Seattle v. Williams, 101 Wn.2d at 454-56 (pretrial ruling that defendants had waived jury held erroneous on review by writ); State v. Straka, 116 Wn.2d 859, 876, 881, 810 P.2d 888 (1991) (reversing blanket suppression based on not preserving error codes; Snohomish County cases raised by writ); State v. Oakley, 117 Wn. App. 730, 72 P.3d 1114 (2003) (State's right to demand jury trial in limited-jurisdiction courts upheld on writ); State v. MacKenzie, 114 Wn. App. 687, 60 P.3d 607 (2002) (reversing pretrial suppression orders based on whether changes made to BAC machine required "recalibration" initially raised by writ); Keene, 108 Wn. App. at 634-37 (reversing suppression of breath tests after private software supplier had not furnished proprietary code and was held in contempt; raised by writ); Mt. Vernon, 93 Wn. App. at 508-09 (writ to review erroneous pretrial breath-test ruling suppressing result for "stuck tickets"). Restricting

writs of review to extra-jurisdictional acts, as petitioner urges, not only ignores statutory language, but would have deprived the higher courts the opportunity to resolve these significant questions for the benefit of the bench and bar.

Moreover, blanket pretrial suppression orders are a frequent occurrence in lower-court DUI litigation. E.g., Clark-Munoz, 152 Wn.2d at 43 (suppression based on whether simulator-solution thermometers are “traceable”); Allison, 148 Wn.2d at 82-83 (based on whether actual temperature of solution must be measured); Wittenbarger, 124 Wn.2d at 475-77 (based on State not preserving BAC machine repair records); State v. Straka, 116 Wn.2d at 874-86, (based on not preserving error codes, and on whether breath-test equipment properly certified and maintained); MacKenzie, 114 Wn. App. at 697-98, 701 (based on when “recalibration” is required) Keene, 108 Wn. App. at 634-37 (based on private software supplier not supplying proprietary code); Mt. Vernon, 93 Wn. App. at 508-09 (based on “stuck tickets”). In all these cases but one (Clark-Munoz) reviewing courts reversed the lower courts’ suppression orders. Not having fared well on review in the past, petitioners are now hoping to insulate such blanket suppression motions from higher review in the future.

Petitioners' argument represents both bad law and bad policy. Rejecting it does not open the floodgates of interlocutory review. A superior court's grant or denial of a writ of certiorari already is reviewed subject to RAP 2.3(d). Williams, 101 Wn.2d at 456; Mt. Vernon, 93 Wn. App. at 508-09. RAP 2.3(d) would thus also afford a workable and appropriate standard for the superior court's issuance or denial of a writ of review in the first instance. Prior cases and practice are consistent therewith. The current cases fall within its ambit, too. Issuance of writs of review pursuant to RAP 2.3(d) would provide a clear standard while ensuring the remedy remained discretionary and "extraordinary."

VI. CONCLUSION

WAPA urges this Court find that a statutory writ of review may examine "errors of law."

Respectfully submitted on March 9, 2010.



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