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No. 98154-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JULIAN PIMENTEL, Petitioner,

v.

THE JUDGES OF THE KING COUNTY SUPERIOR COURT and
DAN SATTERBERG, KING COUNTY PROSECUTING ATTORNEY,
Respondents.

BRIEF OF AMICUS CURIAE
WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

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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 take an oath to uphold the Washington Constitution. WAPA’s deep concerns about the unintended consequences that can flow from expanding this Court’s original jurisdiction to executive branch prosecuting attorneys, including the squandering of limited judicial and prosecutorial resources, motivates the filing of this brief.

II. ISSUE PRESENTED

Whether this original action against Prosecutor Satterberg should be dismissed for lack of subject matter jurisdiction.

III. AMICUS CURIAE’S STATEMENT OF THE CASE

Dan Satterberg is the duly elected King County Prosecuting Attorney. The only members of the public who were eligible to vote for Prosecutor Satterberg were King County voters. Const. art. XI, sec. 5; RCW 36.16.030. His authority does not extend beyond the geographic boundaries of King County. *State v. Bryant*, 146 Wn.2d 90, 103, 42 P.3d 127 (2002).

On April 17, 2018, Julian Pimentel voluntarily submitted to a warrantless arrest upon probable cause that he sexually assaulted a 15-year-old child while she was intoxicated and unable to consent. AR 6, 39 ¶ 5. A first appearance following the warrantless arrest was conducted in the King

County District Court on April 18, 2018 in *State of Washington v. Julian Pimentel*, Case No. 218010696. AR 1-10, 13, 39 ¶ 7. The district court judge, after finding probable cause for the crime of indecent liberties, released Pimentel on conditions that would automatically expire if charges were not filed. CrRLJ 3.2.1(f); AR 13, 40 ¶ 8.

The next day a new criminal proceeding was begun against Pimentel in the King County Superior Court with the filing of an information. AR 16; RCW 10.73.010; CrR 2.1(a). The information, which charged Pimentel with one count of assault in the second degree with sexual motivation, was accompanied by a certificate of probable cause and a motion for issuance of an arrest warrant with a requested bail amount of \$50,000. AR 17-21, 23-24. In making this ex parte application, Prosecutor Satterberg disclosed that the district court at the pre-charging probable cause hearing denied the State's bail request and released Pimentel on his own recognizance. AR 17. The information and accompanying motion for an arrest warrant was filed electronically and transmitted to the superior court judge who found probable cause and ordered the issuance of an arrest warrant, setting bail for the warrant at \$ 50,000. AR 24-26, 41 ¶ 13.

On April 19, 2018, Pimentel's father posted the bail specified in the superior court warrant so as to avoid his son being arrested prior to arraignment. RP 32, 42 ¶ 16. There were other means to avoid an arrest on

the superior court warrant prior to arraignment, including bringing a motion seeking a reduction in the amount of bail and/or release on personal recognizance. *See* AR 42 ¶ 16. Pimentel, who concedes that his motion to reduce bail could be heard in as few as six days, Petitioner’s Reply Brief at 16, elected to not pursue such a hearing because of the effort involved. AR 42 ¶ 16. Even after posting bail, Pimentel had the ability to exonerate the bail and/or obtain a reduction of the bail which could have released the property pledged to secure the bond. *See* CrR 3.2(j) (defense motion to modify bail); RAP 2.3(b) (interlocutory appeal);¹ RAP 16.3-16.4 (personal restraint petitions). Pimentel did not pursue any of these options before entry of an order dismissing Pimentel’s matter in the interest of justice. AR 33, 36-37, 46 ¶ 37; 36-37.

On February 4, 2020, 389 days after the superior court proceedings were dismissed, Pimentel filed an application for writ of prohibition in this Court “against the Judges of the King County Superior Court and Dan Satterberg, King County Prosecuting Attorney.” Application for Writ of Prohibition (hereinafter “Application”), at 2. Pimentel claimed in his application that his original action is authorized by article IV, section 4 of the

¹*See, e.g., State v. Barton*, 181 Wn.2d 148, 152, 331 P.3d 50 (2014)(discretionary review of bail decision pursuant to RAP 2.3(b)(4)). Discretionary review is available from the district court pursuant to a statutory writ of certiorari. *See, e.g. Blomstrom v. Tripp*, 189 Wn.2d 379, 389, 402 P.3d 831 (2017) (statutory writ available to review a pre-trial condition of release); *Westernman v. Cary*, 125 Wn.2d 277, 282-83, 892 P.2d 1067 (1994) (statutory writ to review initial denial of bail).

Washington State Constitution. Application at 11, 16. Pimentel, however, cited to no cases supporting his claim of supreme court jurisdiction over an original action for a writ of prohibition directed to an executive branch officer whose position is created in article XI, section 5 of the Washington State Constitution.

Pimentel further conceded in his application that this Court can provide him with no relief in the instant action as the criminal charges were dismissed long before he filed his application for a writ of prohibition. Application at 11. Pimentel also provided no evidence as to how he, rather than his father who paid his bail, AR 42 ¶ 16, or his attorney who has attempted to end the ex parte consideration of motions for arrest for many years, AR 44 ¶¶ 23-32, continues to be harmed by the complained of actions or how he would be personally impacted by the granting of his requested relief as compared to the rest of the public.

IV. ARGUMENT

A. This Court’s Subject Matter Jurisdiction Does Not Extend to Pimentel’s Application for a Writ of Prohibition Against Prosecutor Satterberg.

1. This Court’s Subject Matter Jurisdiction is Defined in Article IV, Section 4 of the Washington State Constitution.

“Subject matter jurisdiction” refers to a court’s ability to entertain a type of case.” *Banowsky v. Backstrom*, 193 Wn.2d 724, 731, 445 P.3d 543

(2019). A tribunal lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority or power to adjudicate. *Marley v. Dep't of Labor & Industries*, 125 Wn.2d 533, 538-39, 886 P.2d 189 (1994).

This Court's subject matter jurisdiction is prescribed by the Washington Constitution. Article IV, section 4 states that

The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings [with specific exemptions]. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. . . .

The plain language of this provision establishes that this Court's original jurisdiction is limited to habeas corpus, mandamus, and quo warranto, while its appellate and revisory jurisdiction includes the power to issue a broader range of writs. When exercising its original jurisdiction, this Court is careful to avoid infringing on the historical and constitutional rights of the other branches of government. *See, e.g., Colvin v. Inslee*, 195 Wn.2d 879, 891-95, 467 P.3d 953 (2020); *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009).

Pimentel's assertion of jurisdiction in the instant matter is predicated solely upon this constitutional provision. *See generally* Application at 1, 11; Petitioner's Opening Brief (hereinafter "Petitioner's Brief") at 12, 17-20, 26-

28.

2. This Court’s Original Jurisdiction Does Not Extend to a Writ of Prohibition to A Non-Judicial Officer.

This Court made “a most comprehensive review of the function of the writ of prohibition”² in *Winsor v. Bridges*, 24 Wash. 540, 64 P. 780 (1901). *Winsor* involved an original proceeding in prohibition against the board of regents of the University of Washington that sought to prohibit the land commissioners from selling or attempting to sell a certain tract of land in the city of Seattle. This Court denied the requested relief for lack of original jurisdiction. *Id.* at 548-49.

The Court reached this result by first determining that the writ of prohibition mentioned in article IV, section 4 is the common law writ in effect when the constitution was adopted. *Winsor*, 24 Wash. at 542-44. The common law writ of prohibition, which had been codified at Code of 881, §§ 698-99, could only be invoked to restrain the exercise of unauthorized judicial or quasi judicial power. The writ could not issue to any body or person to prohibit any executive, administrative or legislative act. *Winsor*, 24 Wash. at 542-44.³ The selling or leasing of state lands is a purely

²*O’Brien v. Trousdale*, 167 P. 1007, 1009 (Nev. 1917) (McCarran, C.J., concurring) (surveying decisions regarding the scope of jurisdiction conferred upon a state supreme court by the word “prohibition” in the state constitution).

³The handful of original jurisdiction cases in which this Court enjoined an executive officer from acting have depended upon statutory grants of authority adopted by the legislature pursuant to sections of the constitution found outside of article IV. *See, e.g., State ex rel. Kurtz v. Pratt*, 45 Wn.2d 151, 156, 273 P.2d 516 (1954) (jurisdiction for issuance of

executive or administrative function. *Id.* at 546.

While the legislature has the power to expand or redefine the writ of prohibition by statute, it could not by doing so expand this Court's original jurisdiction. *Winsor*, 24 Wash. at 546-47 (citing to *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60, 1 Cranch 137 (1803)). Original jurisdiction over such a statutory writ of prohibition is vested solely in the superior court pursuant to Article IV, section 6 of the Washington Constitution. *Winsor*, 24 Wash. at 547-548 (superior courts have original jurisdiction over the expanded statutory writs of prohibition under the "such special cases and proceedings as are not otherwise provided for" clause of article IV, section 6). This Court can only exercise appellate jurisdiction over the superior court's order in a statutory writ of prohibition matter. *Id.* at 547.

Prosecutor Satterberg is an executive branch officer. *State v. Rice*, 174 Wn.2d 884, 900, 279 P.3d 849 (2012). His decisions⁴ to file charges, to seek an arrest warrant rather than a summons, and the amount of bail to recommend are executive, not judicial nor quasi-judicial decisions. *Rice*, 174 Wn.2d at 904 ("a prosecutor's broad charging discretion is part of the inherent authority granted to prosecuting attorneys as executive officers under

the writ of prohibition to the auditor based upon Rem. Rev. Stat., § 5202, not article IV, section 4).

⁴Prosecutor Satterberg is responsible for the acts of his deputies. *See* RCW 36.27.040 ("The prosecuting attorney shall be responsible for the acts of his or her deputies and may revoke appointments at will."). This brief, therefore, attributes the actions of his deputies to Prosecutor Satterberg.

the Washington State Constitution); *State v. Finch*, 137 Wn.2d 792, 809, 975 P.2d 967 (1999) (“the prosecutor's decision whether to file charges or to plea bargain is an executive, not adjudicatory, decision”). This Court, therefore, lacks original jurisdiction over Pimentel’s application for a writ of prohibition.

The construction given to article IV, section 4 in *Winsor* is consistent with that of the majority of jurisdictions with a similar constitutional framework. *See* 24 Wash. at 544-48.⁵ Pimentel does not argue that this construction is both wrong and harmful.⁶ Instead, Pimentel urges this Court to circumvent any subject matter jurisdictional issues by either treating this matter as an original action for a writ of mandamus, Petitioner’s Brief at 22-24, a declaratory judgment action, Petitioner’s Brief at 21-22 and Petitioner’s Reply Brief at 30, or by issuing a writ of prohibition to the prosecuting attorney pursuant to its appellate and revisory jurisdiction. Petitioner’s Brief at 18- 20. All three suggestions are foreclosed by binding precedent.

⁵*See also State ex rel. Swearingen v. Railroad Commissioners of Florida*, 84 So. 444 (Fla. 1920) (explaining the scope of the writ of prohibition authorized by constitutional provisions and collecting cases from other jurisdictions); *O’Brien v. Trousdale*, 167 P. 1007, 1009 (Nev. 1917) (McCarran, C.J., concurring) (surveying decisions regarding the scope of original jurisdiction conferred upon a state supreme court by reference to writs of prohibition in the state constitution).

⁶This Court will only overrule its own precedent if the precedent is both incorrect and harmful. *See, e.g., State v. Barber*, 170 Wn.2d 854, 864-65, 248 P.3d 494 (2011). Incorrectness and harmfulness are separate inquiries. *State v. Otton*, 185 Wn.2d 673, 687-88, 374 P.3d 1108 (2016).

a. A Common Law Action for Writ of Mandamus Does Not Allow for the Entry of an Order Restraining or Directing a General Course of Conduct.

Mandamus is a writ to compel and not to restrain action. *State ex rel. Pelton v. Ross*, 39 Wash. 399, 407, 81 P. 865 (1905). It is not available to correct the errors of inferior tribunals by annulling what they have done erroneously, nor to guide their discretion, nor to restrain them from exercising power in general. The writ is limited to directing the tribunal or person to whom it is directed to do some particular act pertaining to their public duty. *Id.* A writ of mandamus, like a writ of prohibition, is unavailable once the tribunal or person to whom it is directed has already acted. *Id.* (“Mandamus will not lie to undo what has already been done.”) (quoting 19 Am. & Eng. Ency. Law (2d ed.), 743).

A writ of mandamus “does not lie to correct the errors of inferior tribunals by annulling what they have done erroneously, nor to guide their discretion, nor to restrain them from exercising power not delegated to them; but it is emphatically a writ requiring the tribunal or person to whom it is directed to do some particular act appertaining to their public duty, and which the prosecutor has a legal right to have done.” *State ex rel. Pelton*, 39 Wash. at 408 (quoting *Dunklin County v. District County Court*, 23 Mo. 449, 454 (1856)).

Pimentel identifies four cases that he claims support the premise that a writ of mandamus may prohibit an action. Petitioner's Brief at 23. Two of the cases were directed at judges, not prosecutors. *See Seattle Times v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982), and *Seattle Times v. Serko*, 170 Wn.2d 581, 243 P.3d 919 (2010). Moreover when the writ was sought in these two cases, this Court possessed the ability to grant the petitioners the relief sought – access to specific court proceedings and to specific court documents. Pimentel has already conceded that at the time he filed his original action for a writ of prohibition, there was no relief this Court could provide to him. *See Application* at 11.

Two of the cases Pimentel cites were directed toward executive branch officers. *See Freeman v. Gregoire*, 171 Wn.2d 316, 256 P.3d 264 (2011) (governor and secretary of transportation); *State ex rel. O'Connell v. Yelle*, 51 Wn.2d 620, 320 P.2d 1086 (1958) (state auditor). Both cases, unlike the instant one, sought to avert the expenditure of funds that had not yet occurred. *Freeman v. Gregoire, supra* (expenditure of a specific appropriation to value two lanes of I-90); *Yelle*, 51 Wn.2d at 621 (issuance of certain warrants to a specific person under a specific chapter). Pimentel's failure to identify a single case in which this Court entertained an original writ of mandamus in an action against an executive officer for a past action is fatal to his case.

One reason why this Court has never entertained an original article IV, section 4 writ of mandamus in a moot action is because such a mandate must specify the precise thing to be done or prohibited. *Freeman*, 171 Wn.2d at 323. In this moot case, Pimentel is requesting entry of an order requiring Prosecutor Satterberg to comply with Pimentel's interpretation of the constitution with respect to requests for bail. *See, e.g.*, Petitioner's Reply Brief at 23-26 (compliance with various court rules in Pimentel's case was "unconstitutional"); 34-35 (request for relief that is divorced from the court rules). This Court has repeatedly stated that it will not issue such a writ. *Colvin*, 195 Wn.2d at 894 n. 6 (quoting *Walker v. Munro*, 124 Wn.2d 402, 408, 422, 879 P.2d 920 (1994)).

b. This Court's Appellate and Revisory Jurisdiction Regarding Writs of Prohibition is Limited to Actions and Proceedings of a Purely Judicial Nature.

The grant of appellate and revisory jurisdiction in this Court in article IV, section 4 of the constitution is not self-executing. *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 197 P.3d 1153 (2008). Rather, this Court's appellate and revisory jurisdiction requires a legislatively created right of appeal. *See, e.g., Robison v. LaForge*, 170 Wash. 678, 679, 17 P.2d 843 (1932) ("The provision of our constitution, Art. IV, § 4, conferring the right of appeal, is not self-executing, but receives its vitality from legislative enactment.").

Such a legislative grant of review by the Supreme Court is limited to actions and proceedings “of a purely judicial nature, which have been determined in some judicial court, which have been established by the constitution or in pursuance thereof.” *North Bend Stage Line, Inc. v. Department of Public Works*, 170 Wash. 217, 222, 16 P.2d 206 (1932) (statute that attempted to authorize direct review in the Supreme Court of an order of the Department of Public Works struck down as inadequate to trigger this Court’s jurisdiction under either this article IV, section 4’s original jurisdiction or appellate jurisdiction clauses).

Pimentel has neither identified a statute that authorizes this Court to exercise appellate review of a prosecuting attorney’s decision to seek an arrest warrant in order to secure the presence of a defendant to respond to charges filed in superior court, nor has he established that such a decision by the prosecuting attorney is of a judicial nature. Pimentel’s application for a writ of prohibition against Prosecutor Satterberg must be denied for lack of jurisdiction.

c. This Court’s Original Jurisdiction Does Not Extend to Declaratory Judgment Actions in Moot Actions.

This Court’s original jurisdiction does not extend to declaratory judgment actions. *Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994). The only instance in which this Court will grant declaratory relief is when it is incidental to a mandamus proceeding. *Id.* When, as here, this

Court's article IV, section 4 jurisdiction does not extend to a writ of mandamus against Prosecuting Attorney Satterberg, *see* III. A. 3. *infra*, declaratory relief is also unavailable.

This Court, moreover, will not exercise its original jurisdiction to hear a declaratory judgment action that does not present a justiciable controversy. A justiciable controversy requires “an actual, present and existing dispute. . . as distinguished from a . . . moot disagreement.” *Walker*, 124 Wn.2d at 411 (quoting *Nollette v. Christianson*, 115 Wn.2d 594, 599, 800 P.2d 359 (1990)). This Court declines to render a declaratory judgment in a moot action so as not to “step[] into the prohibited area of advisory opinions.” *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973).

The standing requirement for a declaratory judgment action overlaps the justiciable controversy requirement. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411 n. 5, 27 P.3d 1149 (2001). A person has standing to seek a declaratory judgment if s/he (1) falls within the zone of interests that the court rule, statute, or other document, in question protects or regulates and (2) has suffered an “injury in fact.” *American Legion Post No. 149 v. Dep’t of Health*, 164 Wn.2d 570, 593-94, 192 P.3d 306 (2008). This test requires the same special or specific interest in the outcome that is required to maintain an action for a writ of mandamus or prohibition. *See, e.g., Retired Pub.*

Employees Council of Wash. v. Charles, 148 Wn.2d 602, 616, 62 P.3d 470 (2003) (an “individual has standing to bring an action for mandamus, and is therefore considered to be beneficially interested, if he has an interest in the action beyond that shared in common with other citizens”); *To-Ro Trade Shows*, 144 Wn.2d at 411-12 (declaratory judgment action may only be maintained by a person who will be *directly* damaged in person or in property by the practice); *State ex rel. Pelton*, 39 Wash. at 408-09 (a writ of prohibition may not be maintained by a person whose interest is no greater than that of the general public).

Together, the standing and justiciable controversy requirements serve the same purposes as the federal case and controversy requirements. *See, e.g., To-Ro Trade Shows*, 144 Wn.2d at 411 (“Inherent in these four requirements are the traditional limiting doctrines of standing, mootness, and ripeness, as well as the federal case-or-controversy requirement.”). Federal case and controversy decisions establish that Pimentel has not satisfied either standing or justiciable controversy requirements. No matter how vehemently Pimentel continues to dispute the lawfulness of the superior court’s bail decision, there is no longer any actual controversy about his legal rights. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S. Ct. 721, 184 L. Ed. 2d 553 (2013). Pimentel, who only seeks prospective relief, cannot satisfy the injury-in-fact requirement because he has not alleged an intention to engage

in a course of conduct in King County that would result in a credible threat of a future prosecution. *See, e.g., Brown v. Buhman*, 822 F.3d 1151, 1165 (10th Cir. 2016). Pimentel's application for a writ of prohibition should be dismissed.

This Court also refuses to issue a declaratory judgment when further factual development is needed. *See, e.g. Walker*, 124 Wn.2d at 422 (declining relief in a mandamus action due to an inadequate record); *State v. Wheaton*, 121 Wn.2d 347, 850 P.2d 507 (1993) (this Court will not reach an issue when the record is inadequate for a reasoned decision). *Accord Neighbors & Friends v. Miller*, 87 Wn. App. 361, 383, 940 P.2d 286 (1997) (a claim is ripe for judicial determination by declaratory judgment only when the issues do not require further factual development).

Pimentel's argument presumes that the district court matter and the superior court matter are one and the same. They are not. The two are separate and independent, brought in two different courts for different purposes and present different levels of risk to the surety that posts the bail.

The district court proceeding is directed solely toward determining whether probable cause existed for the warrantless arrest and whether conditions of release were appropriate for a brief period of time (72 hours). *See CrRLJ 3.2.1(f)(1)*. A suspect in an investigative matter has less reason to abscond as he does not face the immediate prospect of either conviction or

prosecution.⁷ In addition, since the life-span of the investigatory action is short, the suspect's surety is only guaranteeing that the suspect will appear at one or two additional hearings over a 72 hour period.

The superior court proceeding, which is initiated by the filing of an information, confronts a defendant with notice of specific penalties. The superior court proceeding will last a prolonged period of time and will require the defendant to appear at multiple hearings. The funds posted as bail by the surety in the superior court are at much greater risk.

Pimentel's action presumes that bail posted on behalf of a suspect in connection with the district court's pre-charging preliminary appearance will automatically transfer to the separate superior court proceeding. The law is clear, however, that bail specifically posted for appearance in connection with a particular proceeding will not insure any other appearance by the principal unless the other obligation is clearly expressed in the record. *See, e.g., State v. Akers*, 156 Wash. 353, 664 P.2d 521 (1983) (bail bond to secure a defendant's presence in court exonerated upon signing of judgment and sentence); *State v. Lewis*, 35 Wash. 261, 77 P. 198 (1904) (bail posted at preliminary appearance does not secure presence for charges filed after the

⁷The non-binding legislative charging standards direct prosecuting attorneys to only file charges in crimes against persons when "sufficient evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder." *See* RCW 9.94A.401 and RCW 9.94A .411(2). This is a far higher standard than probable cause.

conditions of release expire pursuant to statute or the action is dismissed); *State v. French*, 88 Wn. App. 586, 945 P.2d 752 (1997) (bail bond exonerated after return of jury's guilty verdict as its plain language did not extend to ensuring the defendant's presence at sentencing).

3. This Court's Original Jurisdiction Does Not Extend to County Officers.

The grant of original jurisdiction in article IV, section 4 is limited to "state officers." *State ex rel. Hollenbeck v. Carr*, 43 Wn.2d 632, 635, 262 P.2d 966 (1953). An original action filed in this Court against a county officer must be dismissed for want of jurisdiction. *Id.* at 638.

Pimentel, relying upon a legislative finding adopted more than 100 years after ratification of the Washington State Constitution, and an appellate opinion construing chapter 4.92 RCW that was also issued more than 100 years after ratification, claims that the elected county prosecuting attorney is a state officer. *See* Petitioner's Brief at 26-28, citing Laws of 2008, ch. 309, § 1 and *Whatcom County v. State*, 99 Wn. App. 237, 993 P.2d 273 (2000). Pimentel's position ignores the canons applicable to the interpretation of the constitution, and binding precedent.

In determining the meaning of the phrase "state officer" in article IV, section 4, this Court looks to the intent of the framers, the history of the events and proceedings contemporaneous with its adoption. *Yelle v. Bishop*, 55 Wn.2d 286, 291, 347 P.2d 1081 (1959). The words of the text of the

constitution will be given their common and ordinary meaning, as determined at the time they were drafted. *Washington Water Jet Workers Association v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004). The meaning of a term in the Constitution does not prevent the legislature from using a different definition for the term in a statute. *See, e.g., Grant County Prosecuting Attorney v. Jasman*, 183 Wn.2d 633, 642, 354 P.3d 846 (2015) (construction of the term “public officer” in the constitutional context does not extend to the term “public officer” in the context of the forfeiture statute). Legislation alone, however, is insufficient to alter the constitution. *See, e.g., State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 182, 385 P.3d 769 (2016) (legislation insufficient to authorize a private attorney to perform the duties of the prosecuting attorney); *State ex rel. Hamilton v. Troy*, 190 Wash. 483, 486 P.2d 413, 110 A.L.R. 1211 (1937) (changing the name of “prosecuting attorney” to “district attorney” requires a constitutional amendment); Wash. Const. art. XXIII, sec. 1 (a constitutional amendment requires a two-thirds vote of both branches of the legislature, followed and confirmed by a vote of the people).

Review of the entire constitution establishes that the prosecuting attorney is a “county officer” rather than a “state officer.” The office of prosecuting attorney was created in article XI, section 5 of the Washington State Constitution. This article deals with “County, City, and Township

Organization,” while article III creates the positions that populate the executive department of the state. The selection of the prosecuting attorney is vested solely in the residents of the county, while the selection of the article III executive officers is vested in the residents of the state. *See* Art. III, § 1; Art. XI, § 5.

In *State ex rel. McMartin v. Whitney*, 9 Wash. 377, 37 P. 473 (1894), this Court examined the structure of the constitution and contemporaneous proceedings and reached the conclusion that the prosecuting attorney is a “county officer,” rather than a “state officer.” The question arose in an appeal from a quo warranto action involving two appointees to fill a vacancy in the office of prosecuting attorney. One person was appointed to the position by the governor pursuant to his article III, section 13 authority to fill vacant state offices. The other individual was appointed to the position by the board of county commissioners pursuant to its article XI, section 6 authority to fill vacant county offices. This Court held that the commissioners’ appointee was rightfully entitled to the office.

Pimentel neither acknowledges the existence of *State ex rel. McMartin*, nor provides any argument that the meaning of the term “state officer” in the constitution varies from section to section. Nor does Pimentel address the myriad of differences between superior court judges and prosecuting attorneys that further support the conclusion that prosecuting

attorneys are county officers. *Compare* RCW 36.27.010 (prosecuting attorney must be a qualified elector of county) *with* *Parker v. Wyman*, 176 Wn.2d 212, 289 P.3d 628 (2012) (a person does not need to reside in or be an elector of a county to be eligible for the office of superior court judge in that county); *compare* *Bryant*, 146 Wn.2d at 101-02 (a prosecutor's authority is limited to the county the prosecutor serves) *with* Const. art. IV, sec. 6 (superior court judge's authority extends throughout the state) and sec. 7 (any judge of the superior court may hold a superior court in any county). This Court must, therefore, deny Pimentel's request for the issuance of an original writ to Prosecutor Satterberg for lack of jurisdiction.

V. CONCLUSION

Pimentel's application for a writ of prohibition directed to Prosecutor Satterberg must be dismissed for lack of jurisdiction.

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PROOF OF SERVICE

I, Pamela B. Loginsky, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On the 8th day of March, 2020, an electronic copy the document to which this proof of service is attached was served upon the following individuals via the CM/ECF System and/or e-mail:

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Signed under the penalty of perjury under the laws of the state of

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