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State of Washington
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STATE OF WASHINGTON
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SUPREME COURT
OF THE STATE OF WASHINGTON
COA NO. 53923-3-II

THOMAS STOUT,

Petitioner

and

GEENE FELIX,

Respondent.

AMENDED PETITION FOR DISCRETIONARY REVIEW
OF THOMAS STOUT

**Treated as motion for discretionary review.*

GARY A. PREBLE, WSB #14758
Attorney for Appellant,
Thomas Stout

PREBLE LAW FIRM, P.S.
2120 State Avenue NE, Suite 101
Olympia, WA 98506
(360) 943-6960
Fax: (360) 943-2603
gary@preblelaw.com

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A. IDENTITY OF PETITIONER

The petitioner herein, Thomas Stout, is the complaining citizen in the underlying Citizen's Complaint in Mason County District Court, which was denied, as was his appeal to superior court.

B. COURT OF APPEALS DECISION

The petitioner seeks review of the Order Denying Motion to Modify issued by Division II of the Court of Appeals on May 1, 2020. Appendix A. The underlying Commissioner's ruling sought to be modified, entitled Ruling Denying Motion for Discretionary Review, was entered February 20, 2020. Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. Whether this petition dealing with construction of a court rule involves an issue of substantial public interest that should be determined by the Supreme Court?
2. Whether for the purpose of the statute of limitation a citizen's affidavit under CrRLJ 2.1(c) initiates a criminal proceeding?

D. STATEMENT OF THE CASE

The issue on discretionary review is only procedural and concerns the construction of a court rule, CrRLJ 2.1(c) Citizen Complaints. See, Appendix C. Specifically, if a citizen appears before a judge within the statute of limitation and swears to an affidavit before the judge, has the criminal proceeding been initiated notwithstanding that the court determines probable

cause exists after the running of the statute of limitation? The factual and procedural background are only set forth below to provide context to that question in this case.

FACTUAL BACKGROUND

On October 4, 2016, Defendant Geene Felix signed dependency petitions, as Petitioner, under penalty of perjury in Mason County Juvenile Court alleging Thomas Stout's two children were dependent. CP 65–75, 44–54. The Petitions were on mandatory form WPF JU 03.0100 entitled Dependency Petition (DPP), CP 101–103, as required by RCW 13.34.035(1) and as supplemented as authorized in subsection (2) thereof. At the same time, Defendant Felix signed, also under penalty of perjury, as required by RCW 13.34.050(1)(b), two corresponding mandatory forms WPF JU 02.0100, CP 104–106, entitled Motion for Order to Take Child Into Custody (MT), in which she incorporated by reference the “facts” in the Dependency Petitions RCW 13.34.035(1). CP 85, 64.

In the Petitions (incorporated in the Motions by reference), Defendant Felix made the following unqualified statements of fact under penalty of perjury: On September 30, 2016, four days earlier, CP 69, 48: (1) “[Mr. Stout] then blocked the driveway so the SWs could not leave the property,” CP 69, 48: and (2) “Mr. Stout came out of his house walking towards the

SW's on the neighbor's property, talking on his cell phone and holding a gun in the other hand.”

The foregoing statements of Defendant Felix were false because Mr. Stout did not block the social workers or prevent them from leaving the property and because he had a lock—and at no time had a gun—in his hand. A surveillance video captured the entire event.

Social worker Felix sat in her car and refused to move it off Mr. Stout's property after Mr. Stout can be seen asking Ms. Felix several times to get off his property. CP 39, 40. When Ms. Felix refused, Mr. Stout got a chain, pulled behind her car, hooked the chain to his truck and her car and attempted to pull Ms. Felix off his property. Because the car was either in park or Ms. Felix had her foot on the brake, the dragging of her car made a rut in the gravel. After Mr. Stout dragged the car a short way, he removed the chain from the vehicles and moved his vehicle so Ms. Felix could exit the property. Under the circumstances of Mr. Stout asking her to leave his property, Ms. Felix' statement was not only untrue but intentionally false because Ms. Felix specifically chose to not leave Mr. Stout's property. See, surveillance video.

Following Felix' removing her vehicle from Mr. Stout's property, Mr. Stout then went back to his house to retrieve a lock in order to lock his gate. He came out of the house with the padlock in his hand. CP 41–43. On the

way, he stopped to speak to his next-door neighbor who was a few feet away across the fence and saw Mr. Stout had a padlock in his hand. CP 93–94.

Ms. Felix made the same false statements to law enforcement who arrested Mr. Stout and he was charged with five felonies: three of unlawful imprisonment and two intimidating a public servant. CP 72, 50. When the police saw the surveillance video, however, all charges against Mr. Stout were dropped and the cases dismissed. CP 106. See generally, CP 32–35.

PROCEDURAL FACTS

Mr. Stout began the Citizen Complaint process in August, 2018, well before the statute of limitations ran, but as a non-lawyer he did not know the procedure. He went to the Superior Court Clerk who sent him to the Court Commissioner who said it was a District Court matter. He then went the prosecutor's office which suggested he go see the sheriff. He then left a message at the sheriff's office but received no call back. It was only after leaving several more phone messages that the Sheriff's office called him back and said they weren't going to file charges. By that time it was mid-September. CP 130–131.

On October 3, 2018, Mr. Stout instituted a criminal action in District Court against Ms. Felix alleging a gross misdemeanor, through the Citizen Complaint process as authorized by CrRLJ 2.1(c), by filing an Affidavit of Complaining Witness on October 3, 2018. CP 32–86, sworn to before Judge

Victoria Meadows. CP 4, CrRLJ 2.1(c). The Affidavit was filed within the two-year statute of limitations for a gross misdemeanor. RCW 9A:04.080(1)(j). Mr. Stout alleged Ms. Felix had committed the crime of false swearing, CP 107, defined in RCW 9A.72.040 as follows:

- (1) A person is guilty of false swearing if he or she makes a false statement, which he or she knows to be false, under an oath required or authorized by law.
- (2) False swearing is a gross misdemeanor.

Knowledge of falsity is defined in RCW 9A.72.080, entitled “Statement of what one does not know to be true”:

Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false.

Upon Mr. Stout’s statement under oath on the record, signed by Judge Meadows, CP 32–35, the court assigned a case number and followed the procedure set forth in CrRLJ 2.1(c). Judge Meadows issued a Summons/Subpoena Notice to “Defendant” Geene Felix, setting a probable cause hearing 16 days later, CP 87, and, as authorized by CrRLJ 2.1(c), granted the prosecutor, Ms. Felix and her attorney, law enforcement and other potential witnesses to be heard prior to a determination of probable cause. CP 86.

The hearing began on Friday October 19, 2018; and though Mr. Stout was able to testify and there were declarations of witnesses, the defendant requested and the court agreed that the entire surveillance video of the

incident be shown, taking an inordinate amount of time. The hearing was thus not completed that day and was continued to December 14, 2018. CP 133. Judge Meadow had requested briefing for the parties and there were several intervening motions not relevant here.

On December 14, rather than completing the probable cause hearing begun October 19, 2018, Judge Meadows, who was due to retire 17 days later at the end of the month, ruled that Mr. Stout had failed to file the complaint within the statute of limitations and dismissed his Citizen Complaint. CP 133–135. Mr. Stout moved for Reconsideration, CP 132, but it was denied and the Judge entered Findings of Fact Conclusions of Law and Order on December 21, 2018. CP 133.

The essential issue on appeal is Judge Meadows ruled, CP 134, that Mr. Stout did not file a criminal complaint within two years of the alleged criminal acts:

[T]his attempt to file a criminal action is time barred as filing an affidavit to begin the process of seeking permission to file a criminal complaint does not commence a criminal action.

Mr. Stout appealed the District Court ruling to Mason County Superior Court pursuant to RALJ 2.4, and the District Court ruling was affirmed. C 184–186. Petitioner timely sought review in the Court of Appeals, the Commissioner denying discretionary review. On May 1, 2020, The Court of Appeals denied modification of the Commissioner's ruling.

E. ARGUMENT

I. THE COURT SHOULD ACCEPT DISCRETIONARY REVIEW.

A statute of limitation should provide a bright line and court rules should clearly set forth procedure. In the case of CrRLJ 2.1(c) which grants any citizen, most likely one who lacks legal training, the right to institute a criminal action, it is particularly important that the procedure be clear. The courts below have read CrRLJ 2.1(c) in such a way as to imply the following additional requirement:

“The citizen must appear before the judge and present his or her affidavit well before the running of the statute of limitation because the judge can delay the matter (and the citizen does not know how long that will be) until the statute of limitation is past and the citizen is just out of luck.”

Such requirement is not imposed on the prosecutor under CrRLJ 2.1(a), who can initiate criminal proceedings without court approval right up until just before the statute runs. And while it is unlikely a statute of limitation issue would arise for a law enforcement officer under CrRLJ 2.1(b), there is also no requirement for court approval for the officer.

Mr. Stout has no objection for the need for court approval prior to filing a complaint. His objection is that the citizen is held to a higher standard than the prosecutor or law enforcement as to the statute of limitation.

The Citizen Complaint rule is meant to allow the citizen to bring a criminal matter to court when the prosecutor does not.

Discretionary review of a superior court decision entered in a proceeding to review a decision of a court of limited jurisdiction will be accepted only: . . . (3) If the decision involves an issue of public interest which should be determined by an appellate court;

RAP 2.3(d)(3).

A. Knowing when the statute of limitations is applied in a Citizen Complaint is an issue of public interest.

A citizen's access to the court for pursuing criminal prosecution is "of public interest" almost by definition, for it is the general public, not the government, who is given the right to file a Citizen Complaint. Rules of procedure for courts of limited jurisdiction are adopted by the Washington Supreme Court. RCW 3.30.080. Having been established by the Supreme Court, the Citizen Complaint rule cannot be disregarded. A clear understanding of the application of the rule is therefore necessary and important—that is, it is of public interest.

B. A case of first impression on an issue of public interest is one for which discretionary review should be accepted.

Discretionary review is appropriate in cases of first impression. *J & J Drilling, Inc. v. Miller*, 78 Wn. App. 683, 688, 898 P.2d 364 (1995). No other case has addressed the meaning of CrRLJ 2.1(c) in light of commencing prosecution within the statutes of limitation.

C. From the beginning, Washington State has valued and approved the involvement of its citizens in the operation of government.

Article 1 § 4 of the Washington Constitution states that the right of

petition and of the people peaceably to assemble for the common good shall never be abridged. This right addresses the people's right to participate in the executive functions of the state.

As to where the legislative powers of the state are vested, Article 2, § 1(a) and (b) of the Washington Constitution explicitly state that the first two powers reserved by the people are the initiative and referendum.

Similarly, the Washington Supreme Court has by rule established the means by which a citizen may access the courts regarding misdemeanors and gross misdemeanors. CrRLJ 2.1(c). It is therefore of public interest that the question raised herein be addressed by the court.

II. THE STATUTE AND COURT RULE HAVE NOT BEEN CORRECTLY CONSTRUED

The recent case of *State v. Waller*, ___ Wn. App. ___, 458 P.3d 817, 823 (2020) (cases citations omitted), has set forth the standard regarding construing a court rule:

Interpretation of a rule is a question of law we review de novo. We use the principles of statutory construction to interpret a court rule. Our fundamental goal is to ascertain and carry out the intent of the rule. We begin with the plain language of the rule. It is the duty of the court to construe rules in a manner that best fulfills intent.

In determining the plain meaning of a rule, we look at the context of the rule, related provisions, and the statutory scheme as a whole. We must interpret and construe a rule to give effect to the language used in the rule with no portion rendered meaningless or superfluous. When engaging in rule interpretation, we avoid

constructions that yield unlikely, absurd, or strained consequences. If the plain meaning of a rule is unambiguous, our inquiry is at an end.

A. Commencement of prosecution—not filing of the complaint—is the issue before the court.

This case involves a statute of limitation, RCW 9A.04.010(1)(j), and a court rule, CrRLJ 2.1. The statute states:

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(j) No gross misdemeanor may be prosecuted more than two years after its commission.

CrRLJ 2.1 states in relevant part:

(a) Complaint

(1) Initiation. Except as otherwise provided in this rule, all criminal proceedings shall be initiated by a complaint.

...

(c) Citizen Complaints. Any person wishing to institute a criminal action alleging a misdemeanor or gross misdemeanor shall appear before a judge empowered to commit persons charged with offenses against the State, other than a judge pro tem. The judge may require the appearance to be made on the record, and under oath. The judge may consider any allegations on the basis of an affidavit sworn to before the judge.

... The affidavit may be in substantially the following form: ... I elect to use this method [of signing an affidavit] to start criminal proceedings.

The distinction between statute and rule in this regard is set forth in *Nearing v. Golden State Foods Corp.*, 114 Wn.2d 817, 821, 792 P.2d 500 (1990) as follows:

[T]he statute controls the tolling of the period of limitations while the rule governs the commencement of actions. Thus it is possible to turn to the statute standing alone to ascertain that the period of limitations has not run and to the rule to ascertain whether the action has been commenced.

The issue then becomes when “prosecution”/“criminal proceeding”/“criminal action” “commence”/“is initiated”/“is instituted”?¹

B. The appellate rulings below beg the question.

Both written rulings—the Superior Court RALJ decision, CP 184–186, and the ruling of the Court of Appeals commissioner denying motion for discretionary review, Appendix B—begged the question as to whether a complaint begins a criminal action in a Citizen Complaint under CrRLJ

2.1(c). The Superior Court judge stated only:

In each of the three CrRLJ [2.1] alternatives a criminal action is initiated by the filing of the complaint, not on the initiation of the process that results in the eventual filing of a complaint.

CP 186. Similarly, the COA commissioner stated at page 5 of its ruling:

And other parts of CrRLJ 2.1 support that an affidavit alone does not initiate the criminal action. . . . It is only after a judge determines “probable cause exists [that] the judge may authorize the citizen to sign and file a complaint” [which alone] properly commence[s] the criminal action.

(Indented quotation reformatted.) Each of the foregoing begs the question.

That is, they each *presume* a criminal action in district court is only

¹ These different terms for commencement appear to be interchangeable between the statute and the rule provisions, as do the terms for proceedings.

commenced by a complaint; and based on that presumption, they each *conclude* that a criminal action in district court is only commenced by a complaint. While a criminal prosecution will have a complaint under all parts of CrRLJ 2.1, it is not always the complaint that vitiates the criminal proceeding. The appellate rulings below confuse the necessary *existence* of a complaint in a criminal proceeding with the *commencement* of the proceedings.

C. There is no general requirement as to when criminal proceedings are initiated.

It is clear when criminal proceedings are initiated by the prosecutor (and except as otherwise provided in CrRLJ 2.1(a). They “shall be initiated by a complaint.” In fact, the title of CrRLJ 2.1(a) is “Complaint.”

The first exception is when a law enforcement officer files a citation and notice. The filed citation, though not a complaint, is deemed a complaint for the purpose of initiating prosecution. But it is not the deeming that starts the prosecution but the filing of the citation and notice.

Unfortunately, by begging the question, the appellate courts below disregard the exception clause at the very beginning of CrRLJ 2.1(a)(1): “Except as otherwise provided in this rule . . .”

The second exception is the Citizen Complaint. That is initiated by the citizen appearing before the judge. The COA Commissioner stated that

because the form affidavit in CrRLJ 2.1(c) says the affidavit must be in “substantially the following form”, that the language “I elect to use this method [of signing an affidavit] to start criminal proceedings” is optional because of the word “may”. Appendix B at 5. However, “substantially does not mean optionally. Rather it means it must meet the substance. And the citizen should not be misled by language that is construed with nice distinctions. The COA ruling does not offer what language should be used in place of the “optional” language. The fact that the drafters used the specific language indicates the intent to have criminal actions instituted by criminal complaint be done by affidavit.

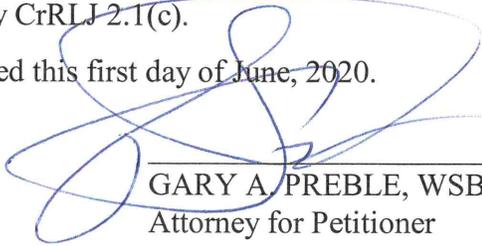
D. There is no issue of notice to the defendant.

CrRLJ 2.2(j) says that a prosecutor’s complaint need not be served for 90 days. Thus, the fact of not finding probable cause until after the hearing allowed under CrRLJ 2.1(c) does not harm the defendant’s right to notice any more than a prosecutor’s complaint filed the day before the statute runs and served just before 90 days later.

F. CONCLUSION

Based upon the foregoing, Mr. Stout requests the court to reverse the finding of the Superior Court that affirmed the District Court’s finding that his Citizen Complaint was time-barred and remand the case to the District Court for completion of the probable cause hearing and such further proceedings as allowed by CrRLJ 2.1(c).

Respectfully submitted this first day of June, 2020.



GARY A. PREBLE, WSB# 14758
Attorney for Petitioner

FILED
Court of Appeals
Division II
State of Washington
6/2/2020 8:00 AM

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

In re Citizen Complaint by:

THOMAS W.M. STOUT,
Plaintiff/Petitioner

vs.

GEENE D. FELIX,
Defendant/Respondent.

NO. 53923-3

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that on the first day of June, 2020, he caused a copy of the below identified documents to be served on the parties listed below by the method(s) indicated:

Petition for Discretionary Review of Thomas Stout
Motion to Accept Amended Petition for Discretionary Review
Amended Petition for Discretionary Review of Thomas Stout
This Certificate

Counsel/Party	Additional Information	Method of Service
Marty Wyckoff Office of the Attorney General Division of Social & Health Services PO Box 40124 Olympia, WA 98504-0124	Counsel for Felix WSB #18353 (360) 586-6496 martinw@atg.wa.gov	COA Portal
Courtney Lyon Office of the Attorney General Division of Social & Health Services PO Box 40124 Olympia, WA 98504-0124	Counsel for Felix WSB #43226 (360) 586-6516 CourtneyL@atg.wa.gov	COA Portal

/s/

GARY PREBLE, WSB# 14758

May 1, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re Citizen Complaint by:

THOMAS W. STOUT,

Petitioner,

vs.

GEENE D. FELIX.

Respondent.

No. 53923-3-II

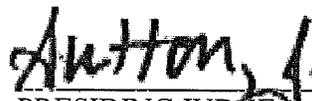
**ORDER DENYING
MOTION TO MODIFY**

Petitioner moves to modify a Commissioner's ruling dated February 20, 2020, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. SUTTON, GLASGOW, CRUSER

FOR THE COURT:



PRESIDING JUDGE

FILED
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DIVISION II

2020 FEB 20 PM 1:59

STATE OF WASHINGTON

BY CRD
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re Citizen Complaint by:

No. 53923-3-II

THOMAS W. STOUT,

Petitioner,

RULING DENYING MOTION
FOR DISCRETIONARY
REVIEW

v.

GEENE D. FELIX,

Respondent.

Thomas Stout moves for discretionary review of the Mason County Superior Court's affirmance of a limited jurisdiction court's dismissal of his citizen complaint action as time barred. RAP 2.3(d). This court denies the motion.

BACKGROUND

On October 4, 2016, a social worker for the Department of Social and Health Services, Geene Felix, signed a dependency petition under penalty of perjury. The petition alleged that while Felix was trying to leave Stout's property after a visit, Stout

blocked his driveway and approached Felix while holding a firearm. Law enforcement arrested Stout and he was charged with multiple felonies. But the charges were later dropped.

On October 3, 2018, Stout filed an affidavit of a complaining witness, a prerequisite to filing a citizen complaint for the gross misdemeanor of false swearing under CrRLJ 2.1(c).¹ See RCW 9A.72.040. The statute of limitations for this offense is two years. Former RCW 9A.04.080(1)(j) (2017).

The trial court docketed the matter. It was captioned *State v. Felix*, with a criminal cause number, although the court's orders used *In re Citizen Complaint by Stout v. Felix*. Under CrRLJ 2.1(c), the court set a hearing to determine whether probable cause supported the complaint and issued a notice to Felix of the probable cause hearing. The

¹ CrRLJ 2.1(c) provides:

Any person wishing to institute a criminal action alleging a misdemeanor or gross misdemeanor shall appear before a judge empowered to commit persons charged with offenses against the State, other than a judge pro tem. The judge may require the appearance to be made on the record, and under oath. The judge may consider any allegations on the basis of an affidavit sworn to before the judge. The court may also grant an opportunity at said hearing for evidence to be given by the county prosecuting attorney or deputy, the potential defendant or attorney of record, law enforcement or other potential witnesses. The court may also require the presence of other potential witnesses.

In addition to probable cause, the court may consider:

. . . . [listing factors]

If the judge is satisfied that probable cause exists, and factors (1) through (7) justify filing charges, and that the complaining witness is aware of the gravity of initiating a criminal complaint, of the necessity of a court appearance or appearances for himself or herself and witnesses, of the possible liability for false arrest and of the consequences of perjury, the judge may authorize the citizen to sign and file a complaint in the form prescribed in CrRLJ 2.1(a).

hearing started on October 19, 2018. It was continued to December 14, 2018. But before the court made a probable cause determination, it dismissed the action as time barred because the two-year statute of limitations for the offense expired before Stout's complaint was filed. Stout moved for reconsideration, which was denied.

Stout appealed the dismissal to the superior court. The court affirmed. It concluded that under CrRLJ 2.1(a),² any criminal proceeding “shall be” commenced by filing a complaint. Mot. for Disc. Rev., Appendix A at 3. And CrRLJ 2.1(c) requires a citizen complainant to obtain judicial permission before filing a criminal complaint. But no court rule supports that simply “filing the affidavit to request a citizen complaint” can commence a criminal action. Clerk's Papers (CP) at 186.

In the superior court, Felix also moved to change the caption from a criminal caption to a civil one because Stout never initiated a criminal action under CrRLJ 2.1(a). She asserts that she was harmed by having a criminal matter pending against her because it affects employment background checks. Stout opposed the motion because it was tied to the merits of his appeal—whether he properly initiated a criminal prosecution—and the district court captioned the matter as *State v. Felix*. The superior court granted Felix's motion.

Stout moves for discretionary review.

² CrRLJ 2.1(a) provides, “[e]xcept as otherwise provided in this rule, all criminal proceedings shall be initiated by a complaint.”

ANALYSIS

Stout moves under RAP 2.3(d)(3). He contends the superior court's decision "involves an issue of public interest which should be determined by an appellate court." RAP 2.3(d)(3).

This motion involves interpretation of a court rule.

In interpreting a court rule, we "must 'give[] effect to the plain language of a court rule, as discerned by reading the rule *in its entirety* and harmonizing *all of its provisions.*' " *State v. Otton*, 185 Wn.2d 673, 683, 374 P.3d 1108 (2016) (alteration in original) (quoting *State v. George*, 160 Wn.2d 727, 735, 158 P.3d 1169 (2007).) " 'Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion.' " *In re Parentage of T.W.J.*, 193 Wn. App. 1, 6, 367 P.3d 607 (2016) (quoting *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

In re Matter of Ware, 5 Wn. App. 2d 658, 675, 420 P.3d 1083 (2018).

Commencement of Action

Stout first argues that although CrRLJ 2.1(a) states that criminal proceedings are generally started by the filing of a complaint, the rule also provides for two other ways to start a criminal prosecution because the language of CrRLJ 2.1(a) recognizes exceptions to the general rule: "*Except as otherwise provided in this rule*, all criminal proceedings shall be initiated by complaint." (Emphasis added.)

He believes the two exceptions are (1) the citation procedure set out in CrRLJ 2.1(b), whereby a law enforcement officer signs a citation and files it and the citation becomes the complaint, and (2) the citizen complaint procedure in CrRLJ 2.1(c), which allows a citizen to file an affidavit in support of a complaint.

But Stout's argument misses that CrRLJ 2.1(b) contains an explicit statement allowing a law enforcement citation to take the place of a criminal complaint. CrRLJ 2.1(b)(5) provides:

(5) *Initiation.* When signed by the citing officer and filed with a court of competent jurisdiction, *the citation and notice shall be deemed a lawful complaint for the purpose of initiating prosecution* of the offense charged therein.

(Emphasis added.) RAP 2.1(c), in comparison, does not explicitly provide that the filing of a citizen complaint affidavit stands in for a criminal complaint for the purpose of initiating a prosecution. Stout, however, relies on the form affidavit language in CrRLJ 2.1(c), which has the affiant acknowledge "I, the undersigned complainant, understand that I have the choice of complaining to a prosecuting authority rather than signing this affidavit. *I elect to use this method to start criminal proceedings.*" (Emphasis added.)

But this form only sets out optional language that an affiant "may" use. CrRLJ 2.1(c) ("The affidavit may be in substantially the following form . . ."). And other parts of CrRLJ 2.1 support that an affidavit alone does not initiate the criminal action. For example, CrRLJ 2.1(c) sets out the procedure for a citizen who "wish[es] to institute a criminal action." They "shall appear before a judge empowered to commit persons charged with offenses against the State." CrRLJ 2.1(c). And it is only after a judge determines:

probable cause exists, and factors (1) through (7) justify filing charges, and *that the complaining witness is aware of the gravity of initiating a criminal complaint*, of the necessity of a court appearance or appearances for himself or herself and witnesses, of the possible liability for false arrest and of the consequences of perjury, *the judge may authorize the citizen to sign and file a complaint* in the form prescribed in CrRLJ 2.1(a).

CrRLJ 2.1(c) (emphases added). For these reasons, CrRLJ 2.1(c), when read in its entirety, does not appear to support Stout's position that he properly commenced the criminal action before the limitations period expired. *Ware*, 5 Wn. App. 2d at 658. And Stout fails to show this issue warrants review under RAP 2.3(d)(3).

Tolling

Stout next argues that even if the affidavit did not start the criminal proceedings, the statute of limitations should be equitably tolled for the probable cause hearing.

Equitable tolling 'permits a court to allow an action to proceed when justice requires it, even though a statutory time period has nominally elapsed.' "Appropriate circumstances generally include 'bad faith, deception, or false assurances by the defendant, and the exercise of diligence by the plaintiff.'" "Courts typically permit equitable tolling to occur only sparingly, and should not extend it to a 'garden variety claim of excusable neglect.'"

Benyaminov v. City of Bellevue, 144 Wn. App. 755, 760-61, 183 P.3d 1127 (2008) (footnotes and quotations omitted), *review denied*, 165 Wn.2d 1020 (2009).

The State responds that a statute of limitations benefits a criminal defendant and a court cannot equitably toll it to assist the prosecution. It adds that the only statute of limitations tolling provision is in former RCW 9A.04.080(4). And this provision still requires the State to start a prosecution *before* the limitations period lapses:

If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

Former RCW 9A.04.080(4).

The State adds that a statute of limitations benefits a defendant and, therefore, only a defendant can waive a statute of limitations. *State v. Peltier*, 181 Wn.2d 290, 297, 332 P.3d 457 (2014) (“[C]riminal defendants can waive rights that exist for their own benefit, and this [waiver of a statute of limitations] is no different”). Consequently, if a defendant does not waive a statute of limitations and the statute of limitations runs, a trial court lacks any authority to rule or impose a sentence. *Peltier*, 181 Wn.2d at 297 (“When a statute of limitations has not run and the court still has authority to sentence on charges if convicted, a defendant may waive the statute of limitations if he or she so chooses. This waiver must be express.”). This court agrees that statutory tolling under former RCW 9A.04.080(5) is unavailable here and that *Peltier* supports the State’s argument that Stout cannot otherwise toll the limitations period.

In addition, the only equitable tolling statute of limitations cases cited by Stout are ones in which a court equitably tolled a *defendant’s* statute of limitations (the collateral attack time bar), not the State’s. Mot. for Disc. Rev. at 23-24 (citing *Benyaminov*, 144 Wn. App. at 760-61; *In Re Personal Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (2000); and *State v. Littlefair*, 112 Wn. App. 749, 51 P.3d 116 (2002), *review denied*, 149 Wn.2d 1020 (2003)). The one case cited in *Benyaminov* that equitably tolled the State’s deadline was *State v. Duvall*, 86 Wn. App. 871, 940 P.2d 671 (1997), *review denied*, 134 Wn.2d 1012 (1998).

But *Duvall* did not concern a delay in commencing an action. It addressed the State’s request to toll a 60-day deadline to hold a post-sentencing restitution hearing. And in *Duvall*, the criminal defendant had provided false information to the trial court that

indicated he had agreed to restitution and also could not show that he would be prejudiced by holding a restitution hearing. This comports with *Benyaminov*, which sets out that equitable tolling may apply if one side acts in bad faith and the other exercises due diligence. Here, however, even assuming Stout acted with due diligence, Felix did not act with bad faith. In sum, Stout fails to demonstrate review of the tolling issue is warranted under RAP 2.3(d).

Request To Change Caption

In her answer to the motion for discretionary review, Felix notes that the superior court changed the caption from "*State v. Felix*" to "*Stout v. Felix*," but "kept a criminal cause number on the caption." Resp. to Mot. for Disc. Rev. at 2. She asks this court to change "the appeal cause number to reflect . . . that this is a civil matter and not a criminal appeal." Resp. to Mot. for Disc. Rev. at 2-3. The motion is denied. This court does not distinguish between criminal appeals and civil appeals in its docket numbers. RAP 3.4. Accordingly, it is hereby

ORDERED that the motion for discretionary review is denied.

DATED this 20th day of February, 2020.



Aurora R. Bearse
Court Commissioner

cc: Gary A. Preble
Courtney V. Lyon
Martin E. Wyckoff
Hon. Monty Cobb

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Criminal Rules for Courts of Limited Jurisdiction

RULE CrRLJ 2.1

COMPLAINT--CITATION AND NOTICE

(a) Complaint.

(1) Initiation. Except as otherwise provided in this rule, all criminal proceedings shall be initiated by a complaint.

(2) Nature. The complaint shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting authority. Allegations made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that he or she committed it by one or more specified means. The complaint shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.

(3) Contents. The complaint shall contain or have attached to it the following information when filed with the court:

(i) the name, address, date of birth, and sex of the defendant;

(ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number

(b) Citation and Notice To Appear.

(1) Issuance. Whenever a person is arrested or could have been arrested pursuant to statute for a violation of law which is punishable as a misdemeanor or gross misdemeanor the arresting officer, or any other authorized peace officer, may serve upon the person a citation and notice to appear in court. Criminal citations shall be on a form entitled "Criminal Citation" prescribed by the Administrative Office of the Courts. Citation forms prescribed by the Administrative Office of the Courts are presumed valid.

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(2) Release Factors. In determining whether to release the person or to hold him or her in custody, the peace officer shall consider the following factors:

(i) whether the person has identified himself or herself satisfactorily;

(ii) whether detention appears reasonably necessary to prevent imminent bodily harm to himself, herself, or another, or injury to property, or breach of the peace;

(iii) whether the person has ties to the community reasonably sufficient to assure his or her appearance or whether there is substantial likelihood that he or she will refuse to respond to the citation and notice; and

(iv) whether the person previously has failed to appear in response to a citation and notice issued pursuant to this rule or to other lawful process.

(3) Contents. The citation and notice to appear shall include or have attached to it:

(i) the name of the court and a space for the court's docket, case or file number

(ii) the name, address, date of birth, and sex of the defendant; and all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.

(iii) the date, time, place, numerical code section, description of the offense charged, the date on which the citation was issued, and the name of the citing officer;

(iv) the time and place the person is to appear in court, which may not exceed 20 days after the date of the citation and notice, but which need not be a time certain.

(4) Certificate. The citation and notice shall contain a form of certificate by the citing official that he or she certifies, under penalties of perjury, as provided by RCW 9A.72.085, and any law amendatory thereto, that he or she has probable cause to believe the person committed the offense charged contrary to law. The certificate need not be made before a magistrate or any other person.

(5) Initiation. When signed by the citing officer and filed with a court of competent jurisdiction, the citation and notice shall be deemed a lawful complaint for the purpose of initiating prosecution of the offense charged therein.

(c) Citizen Complaints. Any person wishing to institute a criminal action alleging a misdemeanor or gross misdemeanor shall appear before a judge empowered to commit persons charged with offenses against the State, other than

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a judge pro tem. The judge may require the appearance to be made on the record, and under oath. The judge may consider any allegations on the basis of an affidavit sworn to before the judge. The court may also grant an opportunity at said hearing for evidence to be given by the county prosecuting attorney or deputy, the potential defendant or attorney of record, law enforcement or other potential witnesses. The court may also require the presence of other potential witnesses.

In addition to probable cause, the court may consider:

(1) Whether an unsuccessful prosecution will subject the State to costs or damage claims under RCW 9A.16.110, or other civil proceedings;

(2) Whether the complainant has adequate recourse under laws governing small claims suits, anti-harassment petitions or other civil actions;

(3) Whether a criminal investigation is pending;

(4) Whether other criminal charges could be disrupted by allowing the citizen complaint to be filed;

(5) The availability of witnesses at trial;

(6) The criminal record of the complainant, potential defendant and potential witnesses, and whether any have been convicted of crimes of dishonesty as defined by ER 609; and

(7) Prosecution standards under RCW 9.94A.440.

If the judge is satisfied that probable cause exists, and factors (1) through (7) justify filing charges, and that the complaining witness is aware of the gravity of initiating a criminal complaint, of the necessity of a court appearance or appearances for himself or herself and witnesses, of the possible liability for false arrest and of the consequences of perjury, the judge may authorize the citizen to sign and file a complaint in the form prescribed in CrRLJ 2.1(a). The affidavit may be in substantially the following form:

THE STATE OF WASHINGTON)
) ss. No. _____
COUNTY OF _____)

AFFIDAVIT OF COMPLAINING WITNESS

DEFENDANT:

Name _____ Name _____
Address _____ Address _____
Phone _____ Bus. _____ Phone _____ Bus. _____

WITNESSES:

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Name _____
Address _____
Phone _____ Bus. _____

I, the undersigned complainant, understand that I have the choice of complaining to a prosecuting authority rather than signing this affidavit. I elect to use this method to start criminal proceedings. I understand that the following are some but not all of the consequences of my signing a criminal complaint: (1) the defendant may be arrested and placed in custody; (2) the arrest if proved false may result in a lawsuit against me; (3) if I have sworn falsely I may be prosecuted for perjury; (4) this charge will be prosecuted even though I might later change my mind; (5) witnesses and complainant will be required to appear in court on the trial date regardless of inconvenience, school, job, etc.

Following is a true statement of the events that led to filing this charge. I (have)(have not) consulted with a prosecuting authority concerning this incident.

On the ____ day of _____, 19__, at _____
(location)

Signed _____

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 19__.

Judge

(d) Filing.

(1) Original. The original of the complaint or citation and notice shall be filed with the clerk of the court.

(2) Time. The citation and notice shall be filed with the clerk of the court within two days after issuance, not including Saturdays, Sundays or holidays. A citation and notice not filed within the time limits of this rule may be dismissed without prejudice.

[Amended effective March 18, 1994; July 2, 1996; September 1, 1999; November 21, 2006; May 6, 2008.]

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- 中文形式/Chinese
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Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53923-3
Appellate Court Case Title: In re Citizen Compliant by: Thomas Stout, Pet v. Geene Felix, Resp
Superior Court Case Number: 19-1-00024-4

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