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SUPREME COURT
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NO. 98613-4

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE CITIZEN COMPLAINT BY:

THOMAS STOUT,

Petitioner,

v.

GEENE FELIX,

Respondent.

ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

By its plain language, CrRLJ 2.1 provides that criminal proceedings are initiated against another when a citizen files a complaint, following authorization by a judge. Only a complaint, and not an affidavit, can initiate criminal proceedings under CrRLJ 2.1(c). The district court correctly interpreted CrRLJ 2.1 when it dismissed this action, and the Court of Appeals did not err or depart from the usual course of proceedings in denying review. This Court should deny review.

Thomas Stout attempted to initiate criminal proceedings against Geene Felix, a social worker with the Department of Children, Youth, and Families (Department), after Ms. Felix visited his home to ensure the wellbeing of his two children. One day before the expiration of the applicable statute of limitations, Mr. Stout filed an affidavit of a complaining witness, pursuant to the citizen complaint procedure outlined in CrRLJ 2.1(c). In his affidavit, Mr. Stout alleged that Ms. Felix had committed a gross misdemeanor offense. However, no complaint was filed before the prescribed statute of limitations expired. Because a complaint was not filed before expiration of the statute of limitations, criminal proceedings against Ms. Felix for the alleged gross misdemeanor were time barred. Mr. Stout fails to show that the Court of Appeals committed either obvious or probable error, or so far departed from the usual course of

judicial proceedings as to warrant review, in concluding that Mr. Stout failed to properly commence a criminal action against Ms. Felix within the statute of limitations.

II. ISSUE PRESENTED FOR REVIEW

Does the filing of only an affidavit of a complaining witness, pursuant to the citizen complaint procedure outlined in CrRLJ 2.1(c), initiate a criminal proceeding for purposes of the statute of limitations when the plain language of CrRLJ 2.1 provides that criminal proceedings are initiated by complaint?

III. COUNTERSTATEMENT OF THE CASE

A. The Department Received an Intake Concerning Mr. Stout's Children

On September 30, 2016, the Department¹ received an intake concerning the safety of Mr. Stout's children. CP at 45. The reporter stated that a firearm was discharged during an argument that had taken place between Mr. Stout and his partner at Mr. Stout's residence. CP at 45. Mr. Stout's children were home at the time. CP at 45. The children relayed the incident to school personnel and stated that they were afraid to return home. CP at 46.

¹ As of July 1, 2018, the Department of Social and Health Services's duties related to child welfare services transferred to the Department of Children, Youth, and Families (DCYF). Laws of 2017, 3rd Spec. Sess., ch. 6, §§ 321-22. In this brief, both will be referred to as "the Department."

That same day, Ms. Felix and a fellow Department social worker met the children as they returned home from school. CP at 47. The social workers attempted to speak with Mr. Stout about the incident. CP at 47. Mr. Stout became agitated and screamed at the social workers. CP at 47. Mr. Stout reported that he had guns in the home. CP at 47. Eventually, Mr. Stout told the social workers to leave his property, and he called the police. CP at 48.

With Mr. Stout's consent, the social workers relocated to their vehicle parked at the end of Mr. Stout's driveway to wait for the police to arrive. CP at 48. Mr. Stout then attached a chain to his truck and pulled the social workers' vehicle off the property. CP at 48. He subsequently closed a gate located at the end of his driveway. CP at 48. The social workers relocated to a neighbor's home. CP at 48. They saw Mr. Stout walking toward the gate at the end of his driveway while holding a metal object. *See* CP at 48. Ms. Felix believed the metal object was a firearm. *See* CP at 48. When law enforcement arrived, Mr. Stout was placed under arrest; he was later charged with unlawful imprisonment and intimidation of a public servant. CP at 50, 52.

Soon after, Ms. Felix filed a Dependency Petition relaying her account of the visit to Mr. Stout's property. CP at 44-53. The petition stated that Mr. Stout brandished a firearm when he approached the closed gate at

the end of his driveway after the social workers relocated to his neighbor's property. CP at 48. Ms. Felix signed the petition under penalty of perjury. CP at 53.

After the dependency petition had been filed, the prosecutor's office dismissed the charges against Mr. Stout. CP at 106. Surveillance video revealed that Ms. Felix had been mistaken, Mr. Stout had not been holding a firearm when he approached the gate at the end of his driveway. CP at 98. Instead, Mr. Stout held a metal padlock. CP at 98.

B. Mr. Stout Filed an Affidavit of a Complaining Witness One Day Prior To the Expiration of the Statute of Limitations

On October 3, 2018—one day before the expiration of the applicable statute of limitations—Mr. Stout filed an affidavit of a complaining witness in district court. CP at 32-35; RP (Dec. 14, 2018) at 6. An affidavit of a complaining witness is a prerequisite to filing a citizen complaint under CrRLJ 2.1(c). Ruling Denying Mot. for Discr. Review at 2. In his affidavit, Mr. Stout alleged that Ms. Felix committed the gross misdemeanor of false swearing by filing the Dependency Petition, which stated that he had brandished a firearm. *See* CP at 34.

The district court set a hearing for October 19 in order to determine whether probable cause supported the alleged offense of false swearing. CP at 86. The district court continued the hearing to December 14,

requesting briefing as to whether the alleged offense was time barred by the applicable statute of limitations. CP at 3; *see* CP at 119-29. The district court dismissed the action, determining that “this 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.” CP at 3. Instead, the district court reasoned, “[a] criminal action is commenced by filing a complaint.” CP at 3.

Mr. Stout appealed the district court’s decision to the superior court, and the superior court affirmed. CP at 1, 184-86. The superior court similarly reasoned that the filing of a complaint initiates a criminal action, and not the filing of an affidavit requesting a citizen complaint. CP at 186. Mr. Stout then moved for discretionary review in Division Two of the Court of Appeals. CP at 191. The Court of Appeals denied review. Ruling Denying Mot. for Discr. Review at 1. Mr. Stout now asks this Court to grant discretionary review.

IV. ARGUMENT AS TO WHY REVIEW SHOULD BE DENIED

Applying principles of statutory interpretation, CrRLJ 2.1(c) plainly provides that a criminal action is commenced only when a citizen files a complaint, as authorized by a judge following a probable cause finding. Here, no complaint was filed against Ms. Felix within the prescribed statute of limitations. Instead, Mr. Stout filed only an affidavit of a complaining

witness. Under the plain language of the rule an affidavit does not initiate criminal proceedings. As a result, Mr. Stout cannot demonstrate that any of the discretionary review criteria in RAP 13.5(b) are satisfied, and this Court should deny discretionary review.

A. Mr. Stout’s Motion for Discretionary Review Is Subject To This Court’s Review Under Only RAP 13.5(b)

Mr. Stout seeks this Court’s discretionary review of the Court of Appeals decision denying his motion to modify a discretionary ruling of the Court of Appeals Commissioner.² Because the Court of Appeals decision is interlocutory, Mr. Stout may seek review pursuant to only RAP 13.5. He fails to meet the criteria set forth in RAP 13.5(b), and this Court should deny review.

A party seeking discretionary review faces various levels of scrutiny. *See In re Peterson*, 138 Wn.2d 70, 89, 980 P.2d 1204 (1999). First, a party may file a motion for discretionary review of a superior court decision entered in a proceeding to review a district court decision. RAP 2.3(d). A Commissioner of the Court of Appeals may rule on the motion. *Peterson*, 138 Wn.2d at 89. The movant may then move to modify an adverse ruling by the Commissioner, triggering scrutiny by a panel of

² This Court is treating Mr. Stout’s petition for discretionary review as a motion for discretionary review. Letter, *In re Citizen Complaint by Stout v. Felix*, No. 98613-4, at 1 (Wash. June 3, 2020).

Court of Appeals judges. RAP 17.7. “If the panel affirms the ruling denying discretionary review, the movant may seek discretionary review of that interlocutory decision in the Supreme Court pursuant to RAP 13.5.” *Peterson*, 138 Wn.2d at 89.

Mr. Stout moves for discretionary review of the Court of Appeals decision denying modification of the Commissioner’s ruling on his motion for discretionary review. Because the Court of Appeals did not accept discretionary review in this case, there is no “decision terminating review.” RAP 13.4(a). Instead, the Court of Appeals decision is an interlocutory decision that is subject to review by this Court under only RAP 13.5. RAP 13.3(c); RAP 13.5; Letter, *In re Citizen Complaint by Stout v. Felix*, No. 98613-4, at 1 (Wash. June 3, 2020). Mr. Stout’s motion fails to argue or address the criteria set forth in RAP 13.5(b). Regardless of the standard applied, Mr. Stout does not show that this Court’s review is warranted.

B. The Court of Appeals Did Not Commit Either Obvious or Probable Error, or So Far Depart From the Usual Course of Judicial Proceedings as To Warrant Review, in Denying Discretionary Review

The plain language of CrRLJ 2.1(c) provides that a complaint filed by a citizen upon authorization by a judge—and not an affidavit—initiates criminal proceedings. The Court of Appeals properly interpreted CrRLJ 2.1(c) when it concluded that criminal proceedings against Ms. Felix

were time barred when Mr. Stout filed only an affidavit of a complaining witness before expiration of the applicable statute of limitations. Accordingly, Mr. Stout fails to show that the Court of Appeals committed either obvious or probable error, or so far departed from the usual course of judicial proceedings as to warrant review, in denying discretionary review.

Discretionary review of an interlocutory decision of the Court of Appeals will be accepted by the Supreme Court only:

(1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or

(2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or

(3) If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

RAP 13.5(b).

“A statute of limitations is a legislatively imposed limit on the time in which charges may be brought.” *In re Matter of Swagerty*, 186 Wn.2d 801, 813, 383 P.3d 454 (2016). As a result, the statute of limitations bars prosecution of charges initiated after the period prescribed in the statute. RCW 9A.04.080(1); *Swagerty*, 186 Wn.2d at 808.

Here, Mr. Stout alleged that Ms. Felix committed the gross misdemeanor of false swearing. CP at 32-35; *see* RCW 9A.72.040(2). The statute of limitations for a gross misdemeanor is two years. RCW 9A.04.080(1)(j). Accordingly, any criminal proceedings for false swearing initiated against Ms. Felix after the two-year statute of limitations are time barred.

At issue is whether filing only an affidavit of a complaining witness, pursuant to CrRLJ 2.1(c), initiates criminal proceedings for statute of limitations purposes. *See* Am. Pet. for Discr. Review at 11. As a result, this Court must interpret CrRLJ 2.1, the court rule governing the filing of misdemeanor and gross misdemeanor criminal charges in district court. Mr. Stout argues that the filing of an affidavit of a complaining witness initiates criminal proceedings under CrRLJ 2.1 and does not require that a complaint be filed within the prescribed statute of limitations. Mot. for Discr. Review at 18-21. Mr. Stout's reading of CrRLJ 2.1 is overbroad and contrary to the plain language of the court rule. CrRLJ 2.1(c) plainly provides that only a citizen complaint, authorized by a judge, initiates criminal proceedings.

This Court interprets a court rule as though it were drafted by the Legislature. *State v. Greenwood*, 120 Wn.2d 585, 592, 845 P.2d 971 (1993). As a result, principles of statutory interpretation apply. *Id.* The goal in

interpreting a court rule is to determine the drafter’s intent. *State v. Stump*, 185 Wn.2d 454, 460, 374 P.3d 89 (2016). This Court determines the drafter’s intent by first examining the court rule’s plain meaning. *See State v. Schwartz*, 194 Wn.2d 432, 439, 450 P.3d 141 (2019). “Plain meaning is discerned from reading the rule as a whole, harmonizing its provisions, and using related rules to help identify the . . . intent embodied in the rule.” *State v. Chhom*, 162 Wn.2d 451, 458, 173 P.3d 234 (2007). If the meaning of the court rule is plain on its face, this Court must give effect to that plain meaning. *See Schwartz*, 194 Wn.2d at 439. This Court presumes that absurd results were not intended. *Id.* at 443.

CrRLJ 2.1 provides:

(a) Complaint.

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

....

(b) Citation and Notice to Appear.

....

(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 The judge may

consider any allegations on the basis of an affidavit sworn to before the judge. . . .

....

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

If the judge is satisfied that probable cause exists . . . 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 ability to file a citizen complaint is “limited to misdemeanors and is very rarely exercised.” David Boerner, *Prosecution in Washington State*, 41 Crime & Just. 167, 173 (2012).

CrRLJ 2.1(c) states that a citizen seeking to initiate criminal proceedings against another must submit an affidavit sworn to a judge alleging the commission of a misdemeanor or gross misdemeanor. If the judge determines that probable cause supports the alleged offense, the judge may authorize the citizen to file a complaint. CrRLJ 2.1(c). By its plain language, CrRLJ 2.1(c) provides a two-step process before the initiation of criminal charges. First, a citizen files an affidavit detailing the alleged offense. *See* CrRLJ 2.1(c). Then, a judge determines whether probable cause supports the offense alleged in the affidavit. *See* CrRLJ 2.1(c). If probable cause supports the alleged offense, the judge may authorize the citizen to file a complaint, consistent with CrRLJ 2.1(a). *See* CrRLJ 2.1(c).

As recognized by the Court of Appeals: “The plain language of CrRLJ 2.1(c) unambiguously vests the district court with discretion to authorize a citizen to file a complaint.” *Matter of Ware*, 5 Wn. App. 2d 658, 675, 420 P.3d 1083 (2018).

CrRLJ 2.1(c) specifically references CrRLJ 2.1(a), a related provision of the rule. CrRLJ 2.1(a)(1) plainly provides that all criminal proceedings are initiated upon the filing of a complaint, unless the rule provides otherwise. The exception to this general rule is found in CrRLJ 2.1(b). CrRLJ 2.1(b)(5) states that a citation and notice, signed by the citing law enforcement officer, is “deemed a lawful complaint for the purpose of initiating prosecution of the offense charged therein.” No such exception applies to citizen complaints. *See* CrRLJ 2.1(c). Instead, CrRLJ 2.1(c) plainly provides that, upon authorization by a judge, a citizen may file a complaint consistent with CrRLJ 2.1(a). Reading CrRLJ 2.1(c) and CrRLJ 2.1(a) harmoniously, a citizen complaint initiates a criminal proceeding.

Therefore, reading the rule as a whole, the plain language of CrRLJ 2.1 provides three methods in which criminal proceedings may be initiated in district court: a criminal complaint filed by a prosecutor; a citation and notice signed by a law enforcement officer; and a citizen complaint filed *after* the district court judge finds that probable cause

supports an affidavit of a complaining witness and authorizes the citizen to sign and file the complaint.³

Moreover, Mr. Stout's reading of CrRLJ 2.1 produces absurd results. This Court avoids such absurdity. *Schwartz*, 194 Wn.2d at 443. Mr. Stout suggests that an affidavit, on its own, is sufficient to initiate a criminal proceeding. Mot. for Discr. Review at 18-21. But a complaint is the initial pleading commencing a criminal action. *See* RCW 10.37.010 ("No pleading other than an indictment, information or complaint shall be required on the part of the state in any criminal proceedings . . ."); *Mark v. King Broad. Co.*, 27 Wn. App. 344, 349, 618 P.2d 512 (1980), *aff'd sub nom. Mark v. Seattle Times*, 96 Wn.2d 473, 635 P.2d 1081 (1981). "An affidavit is not a pleading, and cannot be made to take the place of a pleading." *Brady v. Yount*, 42 Wn.2d 697, 699, 258 P.2d 458 (1953). As such, this Court should presume that the drafters of CrRLJ 2.1(c) never intended for only an affidavit to commence criminal proceedings.

³ Because the language of CrRLJ 2.1 is plain and unambiguous, this Court need not resort to principles of construction to determine its meaning. *State v. James-Buhl*, 190 Wn.2d 470, 474, 415 P.3d 234 (2018). However, Ms. Felix notes that the Court's own customer service help page provides that "[a] criminal action may be initiated . . . *when a citizen's complaint is filed* following the submission of sworn testimony of a citizen alleging the commission of an offense." *Processing Citizen Complaints*, Wash. Courts, https://cushelp.courts.wa.gov/app/answers/detail/a_id/1364/~/-processing-citizen-complaints (updated June 29, 2012) (emphasis added).

CrRLJ 2.1(c) plainly provides that a complaint filed by a citizen and authorized by a judge initiates criminal proceedings. Because a complaint was not filed before the expiration of the two-year statute of limitations applicable to the alleged offense of false swearing, any criminal proceedings against Ms. Felix for the offense of false swearing are time barred.

Mr. Stout fails to show that the Court of Appeals committed either obvious or probable error, or so far departed from the usual course of judicial proceedings as to warrant review, in denying discretionary review. The Court of Appeals properly interpreted CrRLJ 2.1 when it concluded that criminal proceedings had not been initiated before expiration of the statute of limitations when Mr. Stout filed only an affidavit of a complaining witness. Ruling Denying Mot. for Discr. Review at 6. Thus, this Court should deny discretionary review.

V. CONCLUSION

The Court of Appeals committed neither obvious nor probable error, and did not so far depart from the usual course of judicial proceedings as to warrant review. The Court of Appeals properly interpreted CrRLJ 2.1 in determining that an affidavit of a complaining witness does not initiate criminal proceedings for statute of limitations purposes. Under the plain language of the rule, only a complaint filed by a citizen, following

authorization by a judge, commences a criminal proceeding. This Court should deny Mr. Stout's motion for discretionary review.

RESPECTFULLY SUBMITTED this 13th day of July, 2020.

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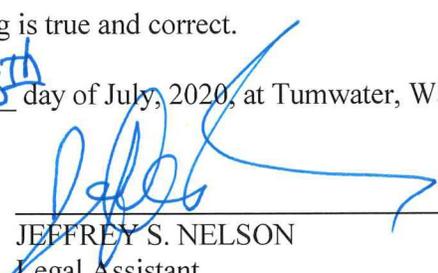
I certify that I served a true and correct copy of the foregoing document on all parties or their counsel of record on the date below as follows:

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

EXECUTED this 13th day of July, 2020, at Tumwater, Washington.



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