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Court of Appeals
Division II
State of Washington
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NO. 53923-3-II

**COURT OF APPEALS, DIVISION II
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

Geene Felix respectfully requests this Court deny Mr. Stout's Motion for Discretionary Review. This action involves a situation where a citizen waited until one day before the running of a statute of limitation to begin a process that he had to complete, and prevail at, before the statute expired.

Respondent, Geene Felix, is a former social worker with the Department of Social and Health Services (Department)[1]. Ms. Felix, acting on behalf of the Department, signed dependency documents on October 4, 2016.[2] Mr. Stout believes statements in those documents amount to false swearing, but he took no action in District Court until one day before a statute of limitations had run. He then began the preliminary hearing process outlined in CrRLJ 2.1, which is not part of the criminal trial process. In theory, the hearing process might have allowed him to file a criminal complaint had he been successful.

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[1] As of July 1, 2018, the Department of Social and Health Services' duties related to child welfare services transferred to the Department of Children, Youth, and Families. RCW 43.216.906: Laws of 2017, 3rd Spec. Ses, ch 6§§ 321-22. In this brief, both agencies will be referred to as "the Department."

[2] The clerk's papers from the District Court include documents filed by Mr. Stout that contain confidential dependency information. Those documents contain not only the names of children and their dates of birth, they also contains Ms. Felix's version of what occurred in September of 2016. Counsel believes those documents are sealed by the District Court prior to them being sent to this Court.

Prior to making any ruling on the merits of Mr. Stout's request for permission to file a complaint, the District Court wanted to hear from the prosecutor's office and the potential defendant as allowed in CrRLJ 2.1.

The District Court issued subpoenas and held a hearing beginning October 19, 2018; just over two weeks after the statute of limitations had run. The Court asked for briefing on the statute of limitations issue and the merits of the action. After considering that briefing and argument, the District Court dismissed the action without finishing the probable cause hearing or reaching the merits.

At the Superior Court level, Mr. Stout labeled this action as *State of Washington v. Geene Felix*. Given that heading, the court clerk numbered the appeal as a criminal matter. That means that during the entire pendency of the appeal, even though Ms. Felix has not been charged with a crime, she cannot pass a background check. The Superior Court agreed to change the case caption back to *Stout v. Felix*, but kept a criminal cause number on the action. Ms. Felix cannot fully perform her job duties, she cannot apply for any other position that requires a person to pass a background check, nor can she chaperon or work with children through schools or church functions.

Pursuant to RAP 2.4(a)(2), Ms. Felix asks the Court to change the appeal cause number on this appeal to reflect that this is a civil matter and

not a criminal appeal so as to give Ms. Felix the ability to pass a background check.

II. ISSUE PRESENTED

Whether the District Court and Superior Court properly interpreted CrRLJ 2.1, and RCW 9A.040.080 in holding that the filing of a charging document commences a criminal action, and accordingly, dismissed this action as time barred.

III. STANDARD OF REVIEW

The standard of review for interpretation of a court rule or a statute is de novo review. *State v. Otton*, 185 Wn.2d 673, 676, 374 P.3d 1198, 1110 (2016).

IV. COUNTERSTATEMENT OF THE FACTS

A. Overview

While the parties disagree as to the truth of the statements made by Ms. Felix, and the parties disagree whether those statements constitute the crime of false swearing, those are not the issues before the Court. Instead, the issues in this case are whether Plaintiff's attempt to file a citizen complaint in District Court is barred by the running of the two year statute of limitations found in RCW 9A.04.080(1)(j), and, whether the filing of an affidavit in a preliminary hearing matter can contradict RCW 9A.04.080(4) which sets forth what state actions can toll the statute of limitations.

It is uncontested that Mr. Stout did not obtain court permission to file a criminal action by filing a complaint or charging document before October 4, 2018.

B. Procedural Facts

On October 4, 2016, Ms. Felix signed dependency documents setting forth the facts surrounding her September 30, 2016 interactions with Mr. Stout. CP 13-54

Mr. Stout waited until one day before the two-year statute of limitations on the crime of false swearing had run, to file an affidavit that begins the process outlined in CrRLJ 2.1 for possibly obtaining permission from the District Court to sign and file a complaint. CP 1-54. The District Court set a hearing for October 19, 2018. CP Page 55. The District Court mailed the notice to Ms. Felix on October 8, 2018. CR 56. At the October 19, 2018 hearing, the District Court asked for briefing regarding application of the statute of limitations to this action. The parties agreed to a briefing schedule.

After considering briefing and hearing oral argument, the District Court dismissed the action because the statute of limitations had run prior to the filing of a complaint. CP 102-03. The District Court did not reach the merits.

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After considerable delay in the Superior Court, the parties briefed Mr. Stout's appellate issues in full. Mr. Stout argued issues regarding his interpretation of CrRLJ 2.1. The Superior Court carefully analyzed CrRLJ 2.1 in its entirety and then rendered a well-reasoned memorandum decision affirming the District Court. Appendix A.

V. ARGUMENT

A. Discretionary Review is Not Warranted Where a Plain Reading of CrRLJ 2.1 and RCW 9A.040.080(4) Tell us What Commences a Criminal Action and What State Actions Toll the Running of the Statute of Limitations

Discretionary review is not appropriate in this case. Mr. Stout's attempts to redefine the date on which a criminal proceeding is commenced lack merit. The District Court correctly dismissed this action because Mr. Stout did not file his complaint within two years. The incident that Mr. Stout alleges was false swearing occurred on October 4, 2016. CP 54. The statute of limitations expired on October 4, 2018. RCW 9A.04.080(1)(j). An affidavit does not charge a person with a crime.

The only state action that could toll the running of the statute is set forth by statute. RCW 9A.04.080(4) (the statute tolls while there is a charging document before a court). Mr. Stout has never had the ability to file a charging document in this case and he needed to complete the process and obtain permission to file a complaint before October 4, 2018.

Accordingly, Mr. Stout's efforts were untimely, and the statute of limitations prohibited the District Court from authorizing the filing of a criminal complaint. The decisions of the District Court and Superior Court follow the plain language of the applicable statutes, court rules, and applicable precedent. As a result, there is no public interest in further guidance from this Court. Mr. Stout also identifies no conflict with any published decision, nor does this issue involve a significant question of constitutional law.

This case involves an attempt to file a citizens' criminal complaint for the alleged commission of a gross misdemeanor. "No gross misdemeanor may be prosecuted more than two years after its commission." RCW 9A.04.080(1)(j). That is, a prosecution must be "commenced" within two years. RCW 9A.04.080(1). A prosecution is commenced with the filing of the criminal complaint or charging document. *State v. Barnes*, 146 Wn.2d 74, 81, 43 P.3d 490, 493 (2002). Only a waiver by the defendant or the filing of a charging document tolls the running of the statute of limitations. *See* RCW 9A.04.080(4) (filing of a complaint); *see also State v. Peltier*, 181 Wn.2d 290, 298, 332 P. 3d 457, 461 (2014) (waiver by defendant prior to the statute running).

The filing of a criminal complaint by a citizen requires judicial authorization. CrRLJ 2.1(c). Because no criminal complaint was filed

within two years, no criminal prosecution was commenced for purposes of RCW 9A.04.080(1)(j), and the District Court had no authority to proceed as it could not sentence Ms. Felix.

B. Interpretation of a Court Rule

The wording in CrRLJ 2.1 explicitly sets forth what actions are considered initiating a criminal action in Sections (a) and (b). Section (c) sends a person back to section (a) to sign and file a complaint if, and only if, they receive the authorization of the court.

The Court of Appeals in *Ware* set forth the standard for interpreting a court rule and stated:

> 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 Wash.2d 673, 683, 374 P.3d 1108 (2016) (alteration in original) (quoting *State v. George*, 160 Wash.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 Wash. App. 1, 6, 367 P.3d 607 (2016) (quoting *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

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

Both the District Court and Superior Court complied with the holding in *Ware.* When all portions of the rule are harmonized, the rule sets forth the paths for commencing a criminal action, each of which results in a document that is considered as a complaint being filed. As the

Superior Court noted, nothing matures into a complaint "until such time as the lower court authorizes the citizen to proceed, and the complaining party signs and files, a complaint in the form prescribed by CrRLJ 2.1(a)." *See* Appendix A at 3.

The Superior Court's decision gives full effect to the last paragraph of CrRLJ 2.1(c), where the District Court ensures a person is aware of the gravity of "initiating a criminal complaint." *See* CrRLJ 2.1(c). The Superior Court ruling also give full effect to the portion of CrRLJ 2.1(c) that allows a District Court Judge to authorize a person to sign and file a complaint "in the form prescribed in CrRLJ 2.1(a)." It is in 2.1(a) that the rule explicitly states that all criminal proceedings are initiated by a complaint.

In an attempt to confuse the rule, Mr. Stout asks the court to consider different terms to mean the same thing. Mr. Stout's argument contradicts one of the basic rules of construction. When different terms are used, the entity using the term intends a different meaning. *See generally State v. Schwartz,* __ Wn.2d __, 450 P.3d 141, 146 (2019) (addressing statutory construction).

Mr. Stout's position, that a District Court simply determines probable cause, is in direct conflict with this Court's reasoning and holding in *Ware. See* Motion for Discretionary Review at 18-22. In *Ware,*

the Court recognized that nothing mandates the District Court allow the filing of a complaint and the court considers multiple factors besides probable cause before exercising its discretion to grant or deny a citizen the authority to commence a criminal action. *Ware,* 5 Wn, App. 2d at 677. There is no reason to accept review of this case.

C. The Power to Prosecute

The framework for consideration of this case already exists. District Court authorization to sign and file a complaint is explicitly set forth in the rule and is necessary because a citizen does not have the authority to take on the power given to a prosecutor in RCW 36.27.020. The legislature vested the power to commence criminal actions with the executive branch. Accordingly, until authorized by the District Court, Mr. Stout cannot file a charging document and nothing tolled the statute of limitations. *See* RCW 9A.04.080(4) (the statute of limitations is tolled while a charging document is before a court). Mr. Stout did not act in a timely manner and the statute of limitations, which benefits the defendant, expired.

As the framework for consideration of this case already exists, there is no reason to accept review of this case.

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D. The Benefit of the Statute of Limitations Belongs to the Potential Defendant and Equitable Tolling is Not Available in Criminal Actions

Only Ms. Felix could waive her right to having the statute of limitations apply in this action, and she had to make an express waiver before the statute ran. *Peltier*, 181 Wn.2d at 298. Ms. Felix did not waive her rights regarding the statute of limitations prior to October 4, 2018; in fact, she was unaware of this action until she received the subpoena from the District Court. The District Court did not mail the subpoena until after the statute had already expired. CR 56.

In *Peltier,* the Washington State Supreme Court held that the statute of limitations is not jurisdictional, instead the running of the statute deprives a court of the authority to rule or sentence a person. *Peltier*, 181 Wn.2d at 298. The Supreme Court's ruling allows a person to waive the statute of limitation if they do so before the statute had expired; but after the statute has expired, it cannot be waived as the court has lost the authority to proceed. *Peltier*, 181 Wn 2d at 298.

Equitable tolling is not available to Mr. Stout because Washington courts have lost the ability to sentence Ms. Felix for the alleged improper conduct. Equitable tolling of the statute of limitation is not available in a criminal case, in part because the benefit of a statute of limitation belongs to the defendant rather than the prosecution.

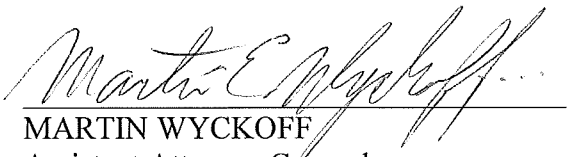
Further, the civil cases cited by Mr. Stout regarding equitable tolling require a showing of bad faith, deception, or a false assurance by the defendant. Ms. Felix was unaware Mr. Stout's filed anything on October 3, 2018. She was unaware of these proceedings until she received the District Court subpoena, which was not mailed until October 8, 2018. CP 56. Thus, no act by Ms. Felix justifies a court even considering equitable tolling. The Court should deny the motion for Discretionary review.

VI. CONCLUSION

For the reasons stated above, the Court should deny this Motion for Discretionary Review. The public interest is not served by consideration of this case.

RESPECTFULLY SUBMITTED this 2 day of December, 2019.

ROBERT W. FERGUSON
Attorney General



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CERTIFICATE OF SERVICE

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

- ☐ US Mail Postage Prepaid
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- ☐ ABC/Legal Messenger
- ☐ State Campus Delivery
- ☒ Electronic via the Court's Portal

TO:

Gary Preble
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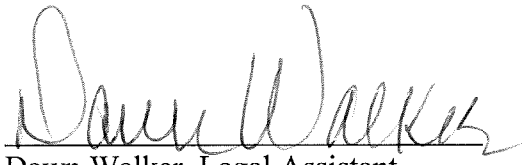
2120 State Ave NE
Olympia, WA 98506-6500

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

EXECUTED this 2nd day of November, 2019, in Tumwater, WA.



Dawn Walker, Legal Assistant

APPENDIX A

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SUPERIOR COURT OF WA.
SHARON K. FOGO

BY_____DEPUTY

Superior Court of Washington
In and for Mason County

In re Citizen Complaint by:	No. **19-1-00024-23**
THOMAS W. STOUT, Petitioner/Plaintiff,	**MEMORANDUM DECISION**
vs.	☒ **Clerk's Action Required**
GEENE D. FELIX Respondent/Defendant.	

I. BACKGROUND

This matter comes before the court on appeal from the Mason County District Court. On December 21, 2018 that court entered Findings and an Order determining that Stout's request for a citizen complaint was time-barred. Because the lower court based its ruling on the statutory time for filing, it did not address the merits of the request for a citizen complaint. The parties do not dispute the relevant dates, only the interpretation of CrRLJ 2.1 and its intersection with the statute of limitations applicable to the charge sought.

II. DISCUSSION

In an appeal from the lower court, this court's scope of review is outlined in RALJ 9.1. This court shall accept the factual determinations that were made by the lower court and supported by the record or facts that can reasonably be inferred from that court's judgment. The applicable standard of review is abuse of discretion. *In The Matter of Ware,* 5 Wn.App2d 658, 675, 420 P.3d 1083 (2018).

CrRLJ 2.1(a)(1) states: "Except as otherwise provided in this rule, all criminal proceedings shall be initiated by a complaint." The rule goes on to describe what a complaint is: "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." (emphasis added).*

Stout argues that the rule allows for methods other than a complaint to be used to initiate criminal proceedings. CrRLJ 2.1(b) describes a process to begin criminal actions by citation and notice to appear. The rule specifically limits the crimes this process may be used for and also specifically limits who can use the process. But sub (b)(5) of the rule goes on to state: "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). CrRLJ 2.1(b)(5) accomplishes two very important things. First, it defines a properly executed citation and notice as a *complaint* even though it isn't signed by the prosecuting authority as required in CrRLJ 2.1(a)(1). Second, the rule explains *when* the citation is deemed a complaint. A citation under the rule only initiates prosecution after it is filed with the court and has thus become a complaint.

The citizen complaint is the third option under CrRLJ 2.1. Like the citation and notice procedure in sub (b), the citizen complaint process in sub (c) has a preliminary process. For a citizen complaint, that process involves an appearance before a judge and the court rule outlines several steps or considerations the lower court may undertake when considering the complainant's request. The portion of sub (c) relevant to the dispute before this court is as follows:

> 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)*

(emphasis added).

A request for a citizen complaint sought pursuant to CrRLJ 2.1(c) does not mature into a complaint until such time as the lower court authorizes, and the complaining party signs and files, a complaint in the form prescribed by CrRLJ 2.1(a).

So, while Stout is partly correct in asserting that CrRLJ 2.1 allows alternate means to a prosecutor complaint, each of the two alternatives in the rule still require the filing of a complaint – albeit at the end of an alternate process -- to initiate criminal proceedings. CrRLJ 2.1(b) defines a properly completed and filed citation and notice as a complaint. CrRLJ 2.1(c) authorizes a complaint to be signed and filed by someone other than the prosecuting authority -- after getting approval from the lower court. In each of the three CrRLJ 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.

The findings of the lower court are supported by the record. The complained of events occurred October 4, 2016 when Felix signed the dependency petition under penalty of perjury. Stout initiated his request for a citizen complaint October 3, 2018. The statute of limitations for the requested offense is two years.

Based on the foregoing, the lower court did not abuse its discretion when it determined that filing the affidavit to request a citizen complaint does not commence a criminal action. Further the lower court did not abuse its discretion when it determined that, since the complaint itself had not been filed within the statute of limitations, the action was time-barred.

The decision of the lower court entered December 21, 2018 is affirmed.

So ordered this 21st day of August 2019

Judge Monty D. Cobb

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

December 02, 2019 - 9:31 AM

Transmittal Information

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Superior Court Case Number:	19-1-00024-4

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