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

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Thomas Stout,
Petitioner

v.

Gene Felix,
Respondent.

MOTION FOR DISCRETIONARY REVIEW

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A. ASSIGNMENTS OF ERROR and ISSUES

Assignments of Error

1. The court erred in finding that when a Citizen Complaint alleging a gross misdemeanor has been instituted pursuant to CrRLJ 2.1(c) that the complaint must be filed within two years of the alleged crime.
2. The court erred in finding that when a Citizen Complaint alleging a gross misdemeanor has been instituted pursuant to CrRLJ 2.1(c) that the criminal action is commenced by filing a complaint.
3. The court erred in ruling that Mr. Stout's attempt to file a Citizen Complaint pursuant to CrRLJ 2.1(c) was time barred when he both appeared before the judge and his Affidavit of Complaining Witness was sworn before the judge a day before the statute of limitations ran.

Issues Pertaining to Assignments of Error

1. Whether the Court of Appeals should accept discretionary review?
2. Whether a Citizen Complaint is commenced by the filing of the complaint rather than by the Complaining Witness filing the Affidavit required by CrRLJ 2.1(c)?
3. Whether Mr. Stout's Citizen Complaint was time barred when he filed his Affidavit of Complaining Witness before the statute of limitations ran but the court did not set its hearing on probable cause until several weeks after the Affidavit was filed and the court did not even complete the probable cause hearing?
4. Whether even if Mr. Stout's Citizen Complaint is otherwise time barred the doctrine of equitable tolling should be applied because Mr. Stout acted with due diligence and the court itself chose to set the probable cause hearing beyond the statute of limitations?

B. STATEMENT OF THE CASE

Though the issue on discretionary review is only procedural, a brief statement of the underlying facts provides the context in which the appeal is brought. See generally, CP 1–4. 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 34–44, 13–23. The Petitions were on mandatory form WPF JU 03.0100 entitled Dependency Petition (DPP), CP 70–72, 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 73–74, 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 54, 33.

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 38, 17: (1) “[Mr. Stout] then blocked the driveway so the SWs could not leave the property,” CP 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 8, 9. 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

gavel. 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 10–12. 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 62–63.

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 41, 19. When the police saw the surveillance video, however, all charges against Mr. Stout were dropped and the cases dismissed. CP 75.

PROCEDURAL FACTS

Mr. Stout began the Citizen Complaint process in August, 2018, well before the statute of limitations ran, but 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 99–100

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 1–55, sworn to before Judge Victoria Meadows. CP 4, CrRLJ 2.1(c). (An amended affidavit/declaration was also filed. CP 65–75.) The Affidavit was filed within the two-year statute

of limitations for a gross misdemeanor. RCW 9A.04.080(1)(j).

The crime alleged by Mr. Stout that Ms. Felix had committed was false swearing, CP 76, 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 the filing of Mr. Stout’s Affidavit, the court assigned a case number and followed the procedure set forth in CrRLJ 2.1(c). Judge Meadows and issued a Summons/ Subpoena Notice to “Defendant” Gene Felix, setting a probable cause hearing 16 days later, CP 56, and granted, as authorized by CrRLJ 2.1(c), the prosecutor, the Ms. Felix and her attorney, law enforcement and other potential witnesses to be heard prior to a determination of probable cause. CP 55.

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 102. 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 102–104. Mr. Stout moved for Reconsideration, CP 101, but it was denied and the Judge entered Findings of Fact Conclusions of Law and Order on December 21, 2018.

The essential issue on appeal is Judge Meadows ruled, CP 103, 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. Petitioner timely sought review.

C. SUMMARY OF ARGUMENT

The basis for this Petition for Discretionary Review is RAP 2.3(d)(3) in that the rulings for which review is sought raise “an issue of public interest which should be determined by an appellate court.” Specifically, there are very few case which even address Citizen Complaints under CrRLJ 2.1(c), and there are no cases which address the issue of statute of limitations which was the sole issue presented below. This Petition for Review raises no issue of fact but only construction of CrRLJ 2.1(c).

For the purposes of a Citizen Complaint pursuant to CrRLJ 2.1(c), the date of filing the action and appearing before the judge

toll the statute of limitations. Otherwise, factors outside the plaintiff's control determine the date of the filing the complaint. To hold otherwise denies the citizen complainant who files within the statute of limitations the same access to the courts as the prosecutor or law enforcement officer who files within the statute.

In essence, the holdings of the district and superior courts below require the citizen complainant—one who is likely less familiar with legal procedure—to know that the statute of limitations has been shortened for him by some uncertain number of days determined only by the district court judge. The rule designed to give a citizen the right to bring a criminal complaint before the court is thus construed so as to deprive him of that right even when that citizen follows the necessary procedure.

D. ARGUMENT

- I. THE COURT SHOULD ACCEPT REVIEW BECAUSE THE DECISIONS BELOW INVOLVE A AN ISSUE OF PUBLIC INTEREST WHICH THE APPELLATE COURT SHOULD DETERMINE.

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).

II. A CITIZEN COMPLAINT IS PROCEDURALLY DIFFERENT FROM OTHER CRIMINAL PROCEEDINGS IN COURTS OF LIMITED JURISDICTION.

A. Commencement of criminal proceedings.

CrRLJ 2.1(a) makes it clear that a criminal complaint in a court of limited jurisdiction is normally initiated by complaint brought by the prosecutor:

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

(Emphasis added.) But the foregoing language makes clear that the filing of a complaint is not always necessary to initiate criminal proceedings.

The Supreme Court, RCW 3.30.080, has established two other methods of initiating criminal proceedings in District Court. One method is when criminal proceedings are initiated by a law enforcement officer signing a citation and notice and filing it in court within two days, at which point the notice and citation is deemed a lawful complaint. CrRLJ 2.1(b)(5). In addition, despite the language of CrRLJ 2.1(a)(1), the Supreme Court has held that

“criminal proceedings were ‘initiated’ “ at the time the defendant was arrested for DUI such that the right to counsel attached at the arrest. *State v. Fitzsimmons*, 93 Wn.2d 436, 444, 610 P.2d 893, 18 A.L.R.4th 690 (1980), *vacated and remanded*, 449 U.S. 977, 101 S. Ct. 390, 66 L. Ed. 2d 240, *aff’d*, 94 Wn.2d 858, 620 P.2d 999 (1980), *overruled on other grounds*, *City of Spokane v. Kruger*, 116 Wn.2d 135, 803 P.2d 305 (1991). In other words, criminal proceedings began even before citation and notice by law enforcement or complaint by the prosecutor.

The third and final means of initiating criminal proceedings in a court of limited jurisdiction under CrRLJ 2.1 is the Citizen Complaint, set forth in CrRLJ 2.1(c) in part:

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.

(Emphasis added.) Further on in subsection (c), the rule provides

language for the required affidavit “in substantially the following form”:

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.) Mr. Stout did what the rule required to *institute*¹ a criminal action.

- He appeared before the judge on October 3 before the statute ran.
- He signed his Affidavit of Complaining Witness
- He swore to his affidavit before Judge Meadows
- Judge Meadows verified his signature

CrRLJ 2.1(c) required nothing more of him. And Mr. Stout also filed his affidavit with the court. CP 1.

The court then assigned Mr. Stout a case number and Judge Meadows granted, as authorized by CrRLJ 2.1(c), other relevant persons including Ms. Felix to be heard prior to a determination of probable cause. CP 55. The court also issued a Summons/

¹ CrRLJ 2.1(c) uses both “institute” and “start”.

Subpoena Notice to “Defendant” Geene Felix, with the warning that failure to respond as directed may result in a warrant for her arrest.

B. “Said hearing”.

CrRLJ 2.1(c) begins by stating the citizen “shall appear before a judge”. There is no requirement that such appearance be noted or that it be done on any particular calendar. Just as the prosecutor controls the timing of filing a criminal complaint, CrRLJ 2.1 (a)(3), (d), and law enforcement controls the timing of filing a citation and notice, CrRLJ 2.1(b)(5), so the Citizen Complaint rule, CrRLJ 2.1(c), allows the citizen to control the timing of when he “appears” before the judge. And that happened in this case. When Mr. Stout appeared before Judge Meadows, she verified his signature on his affidavit, CP 4, and assigned a case number.

Mr. Stout’s appearing before the judge was a hearing within the meaning of the rule, for CrRLJ 2.1(c) also states:

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.

(Emphasis added.) The words “said hearing” refer to the citizen presenting his affidavit to the judge. In this case, the court chose to allow others to give evidence and set the date for October 19, 2018. CP 55. The October 18 date was thus a continuance of “said hearing” that began on October 3. The hearing was continued at least one more time and the court took testimony on the issue of probable cause.² Because the court had not found probable cause and ordered the filing of a criminal complaint within the statute of limitations, prior to completion of testimony Ms. Felix filed, and Judge Meadows (who was to retire by the end of the month) granted, Ms. Felix’ motion to dismiss.

In other words, even though Mr. Stout appeared before the judge, as required by CrRLJ 2.1(c), within the statute of

² Though the sole issue in this appeal is procedural, for the purpose of appeal there is substantial, if not clear, evidence of probable cause. CP 3, 38, 62–63, 76, Exhibit flash drive.

limitations, the court chose to extend the time of the hearing beyond the statute of limitations and then held Mr. Stout had not come within the statute.

C. Statute of limitations.

The statute of limitations for gross misdemeanors, which includes the crime of false swearing alleged in the present case, is set forth in RCW 9A.04.080(1)(j):

(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.

It is important to keep in mind that a statute of limitations is not of constitutional magnitude.

Compliance with the statute of limitations is a statutory requirement, not a constitutional requirement.

State v. Merritt, 193 Wn.2d 70, 81, 434 P.3d 1016 (2019). The distinction between statute and rule in this regard is set forth 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.

Nearing v. Golden State Foods Corp., 114 Wn.2d 817, 821, 792 P.2d 500 (1990).

D. Construing the various terms regarding commencement of actions.

Addressing the issues on appeal depends on understanding the several terms employed.

1. *Criminal proceedings.*

The following terms are used for the criminal case: prosecution (RCW 9A.04.080(1)(j)); criminal proceedings (CrRLJ 2.1(c)(1)); prosecution (CrRLJ 2.1(b)(5)); criminal action (CrRLJ 2.1(c)); criminal complaint (CrRLJ 2.1(c)); and criminal proceedings (CrRLJ 2.1(c)). All these terms must be construed to mean the same thing.

2. *Commencement.*

The following terms are used for what begins the criminal case: commence (RCW 9A.04.080(1)(j)); initiation (CrRLJ

2.1(c)(1)); initiation (CrRLJ 2.1(b)(5)); institute (CrRLJ 2.1(c)); initiate (CrRLJ 2.1(c)); and start (CrRLJ 2.1(c)). These terms must be construed to mean the same.

3. *Commencement of criminal proceedings.*

CrRLJ 2.1(a)(1) provides the most general statement by speaking of how “all criminal proceedings” were to be initiated—*except* as otherwise provided in CrRLJ 2.1. There must therefore be other means to initiate a criminal proceeding besides filing a complaint. CrRLJ 2.1(c) provides one alternate means—allowing one to sign an Affidavit sworn to before the judge as the “method to start criminal proceedings.”

E. Determination of probable cause.

The determination of probable cause is also addressed differently in the three different methods of commencing criminal proceedings.

1. *CrRLJ 2.1(a). Complaint by prosecutor.*

Under CrRLJ 2.1(a), a prosecutor is not required to obtain a finding of probable cause prior to filing a complaint. The term

“probable cause” does not appear in that subsection. It is presumed the prosecutor knows when probable cause exists. (See, e.g., RCW 9.94A.411(2)(b)(ii)(A), regarding a charging decision when investigation is incomplete but there is probable cause.) For this reason, the prosecutor is not in need of a gatekeeper to determine if the complaint is sufficient. There is thus no need for a finding of probable cause in order for a prosecutor to initiate a criminal proceeding by filing a complaint.

2. *CrRLJ 2.1(b). Citation and Notice to Appear.*

In a Citation and Notice to appear, determination of probable cause is *concurrent* with the citation. CrRLJ 2.1(b)(4). The law enforcement officer certifies “that he or she has probable cause to believe the person committed the offense”. As a practical matter, in most cases the officer is personally aware of the facts and, rather than arrest a person for charging by the prosecutor, the officer has the option to issue a citation. Since the crime and the citation would generally occur contemporaneously, the statute of limitations would seldom if ever be implicated.

3. CrRLJ 2.1(c). Citizen Complaint.

Unlike the other two means of initiating criminal proceedings, in the case of a Citizen Complaint, the court must determine probable cause *prior to* authorizing the complaint to be filed.

CrRLJ 2.1(c).

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: . . . If the judge is satisfied that probable cause exists . . . the judge may authorize the citizen to sign and file a complaint in the form prescribed in CrRLJ 2.1(a).

The finding of probable cause is not the beginning of the criminal proceedings in a Citizen Complaint. Neither, as indicated in CrRLJ 2.1(a)(1), is the filing of the complaint after authorization

by the judge. Rather it is the swearing of the Affidavit before the judge.

A law enforcement officer is also presumed to know what probable cause is and there is no need for a gatekeeper. But a citizen is not presumed to know what probable cause is and there is therefore a need for a gatekeeper in order that the police power of the state is not used to harass on improperly inconvenience a citizen. Thus, the procedure set forth in CrRLJ 2.1(c) balances the right of a private citizen to institute a criminal action against the right of another citizen—the defendant—to not be harassed by legal means.

Mr. Stout having met the requirements of CrRLJ 2.1(c), the rest was in the hands of the judge, who chose to order a probable cause hearing 16 days later. The rule authorized the judge take evidence at “said hearing”, and if the court found probable cause, the court would then authorize Mr. Stout to sign and file a complaint in the form prescribed in CrRLJ 2.1(a). Notice that the Citizen Complaint is “start[ed]” by signing the Affidavit and

presenting it to the judge. In this way the citizen *institutes* a criminal action, which is different from the prosecutor or law enforcement officer initiating an action; the judge serves as a gatekeeper after the citizen starts the action. Mr. Stout’s action commenced—started, to use the language of CrRLJ 2.1(c)—when he appeared before Judge Meadows on October 3, 2018.

The drafters of CrRLJ 2.1(c) intended that, unlike the prosecutor-initiated complaint in CrRLJ 2.1(a) or the police-initiated citation and notice in CrRLJ 2.1(b), the citizen’s affidavit—not filing the complaint,—“start[ed] criminal proceedings”. CrRLJ 2.1(c). That was within the statute of limitations. If the court chose to take evidence of probable cause at a later date, it could only be seen as continuation of “said hearing.”

III. EVEN IF THE AFFIDAVIT SWORN BEFORE THE JUDGE DID NOT INSTITUTE CRIMINAL PROCEEDINGS, EQUITABLE TOLLING APPLIES TO ALLOW THE DETERMINATION OF PROBABLE CAUSE AND FILING OF A COMPLAINT.

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) (emphasis added) (footnote citations omitted).

The essence of equitable tolling is that the statute ran not due to the neglect, even excusable neglect, of the party. *Benyaminov* cited two cases giving examples of the application of the doctrine. In *In re Personal Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (2000), the court applied the doctrine to toll the one-year time limit of RCW 10.73.090.

There, Hoisington pleaded guilty under an agreement that incorrectly stated that the charged crime was a class B felony rather than a class A felony. Because of the mutual misunderstanding, the appropriate remedy was to grant Hoisington a choice between specifically enforcing the agreement or withdrawing the guilty plea. Hoisington had raised the issue of specific enforcement on direct appeal, but the court failed to address the claims. Because Hoisington acted with due diligence and the court was at fault for not addressing his claims on appeal, the *Hoisington* court concluded that the one-year time bar should be equitably tolled.

Benyaminov v. City of Bellevue, *id.* at 761. The second case was *State v. Littlefair*, 112 Wn. App. 749, 51 P.3d 116 (2002), *review denied*, 149 Wn.2d 1020, 72 P.3d 761 (2003), in which the court allowed a collateral attack on a conviction after the time limit had passed due to a bizarre series of events and the mistakes of others. *Benyaminov v. City of Bellevue*, *id.* at 765–66.

In the present case, Mr. Stout sought assistance from the court clerk, the court commissioner, the prosecutor and the sheriff, beginning about two months before the running of the statute of limitations. When he finally figured out how to initiate the Citizen Complaint, he went before the judge the day before the statute ran. It was the judge who set the probable cause hearing out beyond the statute of limitations, and as noted, there is nothing in CrRLJ 2.1(c) that would have put a citizen on notice that he had to appear before a judge well before the statute ran.

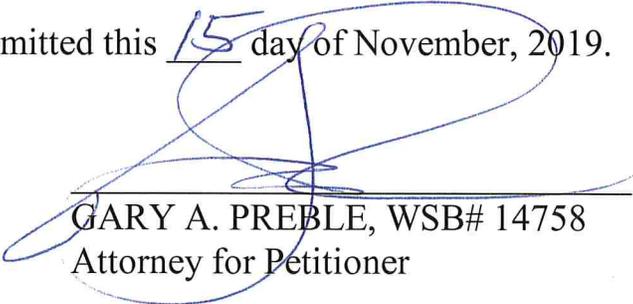
Because Mr. Stout followed the rule and because the judge set the probable cause hearing past the statute of limitations, if it is found that the probable cause hearing and filing of the criminal

complaint should have both occurred within the statute, the doctrine of equitable tolling should apply because the running of the statute occurred due to reasons other than Mr. Stout's actions.

E. 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 15 day of November, 2019.



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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

(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 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;

Appendix A - 3

Name _____
Address _____
Phone _____ Bus. _____

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 _____

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.]

FILED
Court of Appeals
Division II
State of Washington
11/18/2019 8:00 AM

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

In re Citizen Complaint by:

NO. 53923-3

THOMAS W.M. STOUT,
Plaintiff/Appellant

CERTIFICATE OF SERVICE

vs.

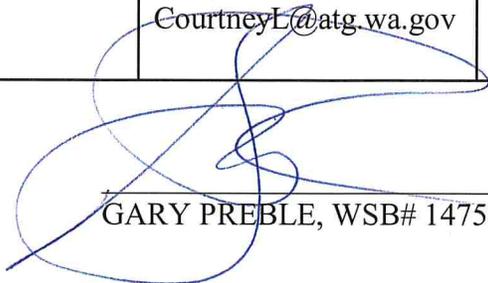
GEENE D. FELIX,
Defendant/Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of November, 2019, he caused a copy of the below identified document to be served on the parties listed below by the method(s) indicated:

Document: MOTION FOR DISCRETIONARY REVIEW

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 State 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 State WSB #43226 (360) 586-6516 w CourtneyL@atg.wa.gov	COA Portal



GARY PREBLE, WSB# 14758

PREBLE LAW FIRM, P.S.

November 15, 2019 - 7:06 PM

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

The following documents have been uploaded:

- 539233_Affidavit_Declaration_20191115184859D2282244_3284.pdf
This File Contains:
Affidavit/Declaration - Service
The Original File Name was Declaration of Service - MDR.pdf
- 539233_Motion_20191115184859D2282244_3960.pdf
This File Contains:
Motion 1 - Discretionary Review
The Original File Name was Motion for Discretionary Review.pdf

A copy of the uploaded files will be sent to:

- CourtneyL@atg.wa.gov
- martin.wyckoff@atg.wa.gov
- shsappealnotification@atg.wa.gov

Comments:

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Address:
2120 STATE AVE NE
OLYMPIA, WA, 98506-6500
Phone: 360-943-6960

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