

FILED
Court of Appeals
Division II
State of Washington
12/10/2019 8:00 AM
NO. 53923-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Thomas Stout,
Petitioner

v.

Geene Felix,
Respondent.

REPLY TO ANSWER
TO MOTION FOR DISCRETIONARY REVIEW

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A. REPLY

1. **Respondent's Request for Relief, RAP 2.4(a)(2), is at best premature.** Respondent requests the Court of Appeals change the cause number below to a civil from a criminal number. Such a request, if appropriate at all, is premature because neither the District Court ruling nor Superior Court ruling on RALJ appeal addressed the substance of the case but only the issue of statute of limitations. Moreover, the case is brought under CrRLJ 2.1. The CrRLJ govern procedure in "all criminal proceedings" in District Court. CrRLJ 1.1, 1.2.

2. **Respondent's reliance on RCW 9A.04.080(4) is misplaced.** Respondent claims with no citation to authority that the "only state action that could toll the running of the statute" is stated in RCW 9A.04.080(4). That statute reads as follows:

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.

Nothing in the statute claims it applies to all criminal issues, but that statute applies only if the criminal action is “set aside.” Nor does a defendant’s option to waive the statute of limitations determine this case.

In making the foregoing arguments, Respondent begs the question by failing to recognize and/or address Petitioner’s argument that Petitioner “start[ed] criminal proceedings” on the basis of “an affidavit sworn to before the judge”, CrRLJ 2.1(c), within the statute of limitations and that the judge continued “said hearing” to take additional evidence. Petitioner’s argument is that he complied with the statute of limitations.¹

3. Respondent misstates the requirement of CrRLJ 2.1(c).

Respondent misstates CrRLJ 2.1(c) by claiming it sends a person back to CrRLJ 2.1(a) “to sign and file a complaint.” But subsection (c) refers only to the “form prescribed in” subsection (a). *See*, CrRLJ 2.1(a)(2) and (3). It obviously does not “send the citizen back” to subsection (a) because that subsection applies to

¹ The issue of equitable tolling is replied to below.

the prosecutor. Rather it informs the citizen, presumably a non-attorney, of what goes into a complaint.

4. Respondent does not address the meaning of terms.

Respondent asserts with no argument for her claim that different terms in the rule must mean different things; yet she provides no alternative to Petitioner's argument. CrRLJ 2.1 Argument unsupported by citation to the record or authority will not be considered. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). While Petitioner's Motion only set forth the statement that the listed terms must mean the same thing, the purpose was to show that the rule contains a variety of terms that appear to have no differing meanings. If a court rule does not define a term—and the CrRLJ do not define “initiate”, “institute” or start—the court will resort to a standard dictionary to “determine the plain and ordinary meaning.” *State v. Mankin*, 158 Wn. App. 111, 122, 241 P.3d 421 (2010). “Institute” is defined as “2. to start; initiate. Webster's New World Dictionary 730 (2d College ed.1980).

5. *Ware* is inapplicable for the purpose cited. Respondent mischaracterizes Petitioner's argument regarding probable cause at pages 18–22 of the Motion for Discretionary Review. *Matter of Ware*, 5 Wn. App. 2d 658, 677, 420 P.3d 1083 (2018) merely sets forth the criteria in CrRLJ 2.1(c) by which the court makes its decision to authorize the citizen to sign and file his complaint. With this the Petitioner has no disagreement. However, the courts below did not reach the substance of the case. Rather, it was only decided on the issue of whether Petitioner Thomas Stout had brought the matter within the statute of limitations. The merits are not before this court, and *Ware* is thus inapplicable.

6. *Equitable tolling* is appropriate. With no citation to authority, Respondent claims equitable tolling of the statute of limitations is not available in a criminal case. Yet cases cited in the Motion for Discretionary Review indicate that equitable tolling is available in criminal cases. *In re Personal Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (2000); *State v. Littlefair*, 112 Wn. App. 749, 51 P.3d 116 (2002). A citizen

complainant's rule-based right should have available the doctrine of equitable tolling when the date of signing and filing the complaint—unlike for the prosecutor or law enforcement officer who are allowed choose the time of filing themselves—is subject to timing set by the court. Thus would the rule-based right of the citizen be balanced with the statute-based right of the defendant.

Mr. Stout filed and swore his affidavit before the District Court judge within the statute of limitations, in compliance with the statute-based right of Ms. Felix. His rule-based right to start criminal proceedings should not be denied due to the court's scheduling choice.

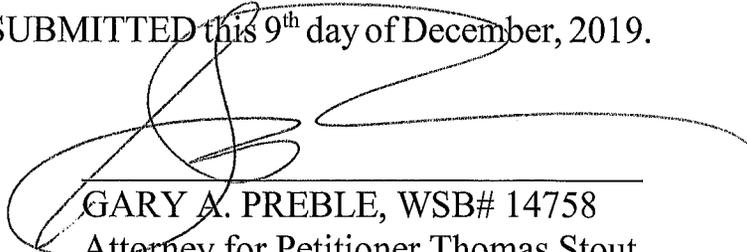
B. CONCLUSION

The purposes underlying the CrRLJ are to secure “simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay.” CrRLJ 1.2. Those purposes are not limited to defendants but apply to citizen complainants as well. To accept the Respondent's position is to provide a bright line for the

prosecutor, the law enforcement officer and the defendant as to when a criminal action is instituted—but not for the citizen complainant.

The best that can be said for the citizen is that he must come to court sometime before the statute runs but not the day before. Is a week prior sufficient? A month? Two months? In this case 72 days—the time from the date Mr. Stout swore his affidavit before Judge Meadows on October 3, 2018 and December 14, 2018, the date Judge Meadows ruled the statute of limitations had run, CP 102—was not enough. As of that date, the hearing on probable cause had still not been completed. And simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay had not been secured for Mr. Stout.

RESPECTFULLY SUBMITTED this 9th day of December, 2019.



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

FILED
Court of Appeals
Division II
State of Washington
12/10/2019 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.

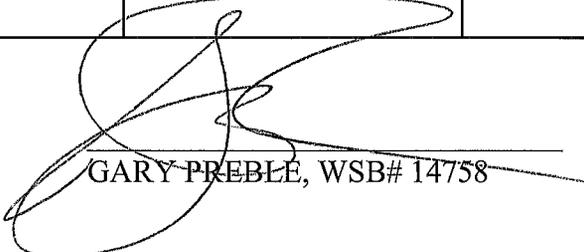
GEENE D. FELIX,
Defendant/Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 9th day of December, 2019, he caused a copy of the below identified document to be served on the parties listed below by the method(s) indicated:

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FOR DISCRETIONARY REVIEW**

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Appellate Court Case Title: In re Citizen Compliant by: Thomas Stout, Pet v. Geene Felix, Resp
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