

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 98613-4

SUPREME COURT
OF THE STATE OF WASHINGTON

THOMAS STOUT,

Petitioner

and

GEENE FELIX,

Respondent.

CORRECTED REPLY OF THOMAS STOUT TO RESPONDENT'S
ANSWER TO MOTION FOR FOR DISCRETIONARY REVIEW

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A. INITIAL REPLY TO RESPONDENT'S ARGUMENT

The opening sentence in the Respondent's Answer both misstates the rule at issue, CrRLJ 2.1, and also sets forth the issue that is now—and has been at every judicial level beginning with the district court—before this court. Specifically, the Respondent states in relevant part:

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.

The fundamental error has been to equate the *filing of a criminal complaint* with the point of *initiating criminal proceedings*.

There is no dispute that criminal proceedings will always contain a complaint (or a citation deemed a complaint, CrRLJ 2.1(b)(5)). There is no disagreement with the Respondent that “the plain language” of the rule is important. And there is no disagreement that the statute of limitation is a bright line. Mr. Stout's disagreement is that the Respondent in fact *disregards* that plain language of the rule as to how criminal proceedings are initiated and that he initiated criminal proceedings within the statute.

The key language in CrRLJ 2.1 is found in subparagraph (a) which is entitled “Complaint” and states in its entirety:

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

The question then arises: Are all criminal proceedings initiated by a complaint? In light of the plain language of CrRLJ 2.1(a)(1), the clear

answer is “No.” In addition, if not all criminal proceedings are initiated by complaint then “criminal proceedings” means something different than “complaint” (or criminal complaint).

The question then becomes: How are criminal proceedings otherwise initiated in CrRLJ 2.1 when they are not initiated by complaint? The different methods are best understood by recognizing that the three methods of initiating criminal proceedings are different because of who the actor is who initiates the criminal proceeding. The differences between subsections (a), (b) and (c) of CrRLJ 2.1 are due to the level of legal acumen of the person who initiates.

The prosecutor of course is a constitutionally recognized elective office Wash. Const. Att XI, sec. 4. He is legally trained and has the experience to understand and properly plead probable cause. Thus subsection (a) of CrRLJ 2.1 allows the prosecutor to initiate criminal proceedings by filing the complaint. And the prosecutor has control over whether a complaint is filed within the statute. And the defendant is not necessarily notified immediately. In fact 89 days could elapse without the defendant being notified and the case would still be valid. *Cf.* CrRLJ 2.1 2.2(g).

Law enforcement officers similarly, though to a lesser degree, are trained in the law and in recognizing when a person has violated the law. They are thus allowed to initiate criminal proceedings by citation under

subsection (b) of CrRLJ 2.1 without the need for intervention by the prosecutor. Though not a complaint, the citation is deemed a complaint for the purpose of initiating “prosecution”. Though in most cases the statute of limitation would likely not come into play when an officer files a citation, the officer like the prosecutor is in control over whether the citation is filed within the statute.

The third actor is the citizen who is presumed to be more or less ignorant of and untrained in the law but who nevertheless believes that a person has committed a misdemeanor and should be prosecuted.. Under the plain language of CrRLJ 2.1(c), the citizen “wishing to institute a criminal action” shall appear before and swear an affidavit before a judge. In so doing the citizen has come within the bright line of the statute of limitation. And the citizen, like the prosecutor and the officer, is in control over whether the criminal action is instituted within the statute of limitation because the citizen chooses to swear an affidavit before a judge before the statute runs.

The citizen should be treated no differently as to the bright line of the statute of limitation.

B. CORRECTION OF RESPONDENT’S FACTUAL ERRORS

Mr. Stout did not consent to the social workers remaining on his property. That is why he attempted to pull them off with his truck. Ms. Felix had a duty unde RCW 26.44.050 to investigate. She had four days to do so

before she filed the offending petition, which was more than “soon after”. She may have been mistaken but she swore under penalty of perjury that which she did not know.

C. REASONS TO ACCEPT DISCRETIONARY REVIEW

RAP 13.5(b) lays out the basess for accepting discretionary review.

In the first place, the Supreme Court should have an interest that rules it has promulgated are properly understood and construed. See e.g. GR 9(a).

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

The obvious error of the COA was its failure to recognize that a citizen complaint is different than a prosecutor or officer’s complaint.

(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;

To deny the citizen the full benefits of the statute of limitations in Citizen Complaints would substantially alter the status quo of the court. A citizen in this respect is equal in the eyes of the law to the law enforcement officer or prosecutor in that they have the power to initiate a process that may lead to a criminal prosecution. To deny the full time period for the statute of limitations compromises this status quo because the citizen is no longer equal to the government authorities.

Perhaps more so the court’s ruling in this case substantially limits the freedom of the Appellant to act because it removes the freedom to file a

citizen's complaint from the hands of the citizen and places it with the court and all the procedures and scheduling constraints that go with it.

The citizen must now guess what their statute of limitations is for a case. Will the courts take a month to schedule the probable cause hearing? Will it be two months until the hearing can be scheduled? The fact of the matter is the last day filing by the Appellant is no different than filing in the last two months leading up to the statute of limitations. In this way the freedom is taken away from the citizen and they are without the power that the rule was designed to instill. The cannot be the movers that causes the action to occur within the time frame.

(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.

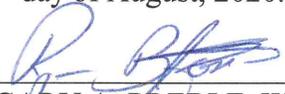
In the same way that the Court of Appeals Decision alters the status quo and restricts the Appellant's freedom, it also a far departure from the usual judicial proceedings. The lower courts understandably were reluctant to overturn the District Court and the specifics of this case call for the Supreme Court to exercise its revisory jurisdiction because it is the rule of the court that is in question. It is a far departure because the statute of limitations is a widely understood concept and it means that a document must be filed or served by a certain time.

To introduce the uncertainty of court scheduling into the black and white world of statute of limitations substantially departs from the usual course of judicial proceedings.

D. CONCLUSION

Mr. Stout requests the court accept discretionary review.

Respectfully submitted this 19th day of August, 2020.

 ON BEHALF OF
USBA 49134
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Transmittal Information

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