No.
Court of Appeals No. 57793-3-II

THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent

v.

THOMAS BOARDMAN

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

Petition for Review

GREGORY C. LINK
JESSICA C. WOLFE
Attorneys for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Supreme Court

In re Pers. Restraint of Gentry, 137 Wn.2d 378, 972 P.2d 1250, 1257 (1999) 4
State v. Blilie, 132 Wn.2d 484, 939 P.2d 691 (1997) 2
State v. Delgado, 148 Wn.2d 723, 63 P.3d 792 (2003) 2
State v. Greiff, 141 Wn.2d 910, 10 P.3d 390 (2000) 3
State v. J.P., 149 Wn.2d 444, 69 P.3d 318, 320 (2003) 2
State v. Wilson, 125 Wn.2d 212, 883 P.2d 320 (1994) 2

Washington Court of Appeals

State v. Asaeli, 17 Wn. App. 2d 697, 491 P.3d 245, *rev. denied*, 198 Wn.2d 1026 (2021) 3
State v. Murry, 24 Wn. App. 2d 940, 523 P.3d 794 (2023) 4
State v. Padgett, 4 Wn. App. 2d 851, 424 P.2d 1235 (2018) . 3, 4

Court Rules

CrR 4.7 ..... 1, 2, 3, 4
RPC 1.16 3

A. Introduction

Thomas Boardman sought discovery from his trial after his conviction. The trial court refused his request, concluding no rule which requires it. Division Two of the Court of Appeals affirmed that reasoning, taking an irreconcilable position with that taken by Division Three.

Mr. Boardman asks this Court to accept review pursuant to RAP 13.4 of the Court of Appeals' opinion in his case.

B. Issue Presented

This Court and Court of Appeals have previously held that CrR 4.7, governing discovery in criminal cases, continues to apply even after the trial has begun. Yet, here the trial court denied Mr. Boardman's request for discovery, categorically ruling there is no provision for discovery post-trial. The Court of Appeals affirmed that decision, contrary to decisions of this Court and other opinions of the Court of Appeals.

C. Statement of the Case

Mr. Boardman was convicted in 2017. In 2022, Mr. Boardman filed a motion requesting his client file from his attorney and requested discovery from the prosecutor. CP 6-10.

Defense counsel provided Mr. Boardman their file. CP 13-14. The prosecutor insisted they had no obligation to do anything, claiming there is no right to discovery after trial. CP 11-12.

The court concluded Mr. Boardman had no right to anything more than what he had already received from defense counsel. RP 11-12.

D. Argument

Divisions Two and Three of the Court of Appeals having taken contradictory positions regarding the applicability of CrR 4.7 to post-trial proceedings.

Court rules are interpreted using the rules of statutory construction. *State v. Blilie,* 132 Wn.2d 484, 492, 939 P.2d 691 (1997). There is no need to construe a statute or rule that is

plain and unambiguous. *State v. Delgado,* 148 Wn.2d 723, 727, 63 P.3d 792 (2003); *State v. Wilson,* 125 Wn.2d 212, 217, 883 P.2d 320 (1994). A court may not add terms to an unambiguous statute or rule. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318, 320 (2003).

CrR. 4.7 contains no temporal limitation on its reach. Nowhere does the rule say it applies only before trial. Indeed, it is clear the rule creates a continuing duty to disclose information. *State v. Greiff,* 141 Wn.2d 910, 919, 10 P.3d 390 (2000).

Courts have regularly applied the provisions of CrR 4.7 after convictions. For example, in *State v. Padgett*, the Court of Appeals concluded CrR 4.7(h)(3) together with RPC 1.16 required trial counsel to disclose discovery to their client when the client request a copy of the client file after trial. 4 Wn. App. 2d 851, 854-55, 424 P.2d 1235 (2018).

Nonetheless, in *State v. Asaeli*, 17 Wn. App. 2d 697, 699, 491 P.3d 245, *rev. denied*, 198 Wn.2d 1026 (2021), Division

Two concluded the provisions of CrR 4.7 do not apply post-conviction. Division Two made no effort to explain why some provisions of the rule apply after trial has commenced while others do not. Nor does the opinion make any effort to delineate which provision might fall in each of these undefined categories.

Division Three echoed those criticisms and questioned the overly simplified analysis of *Asaeli* and that opinion's failure to recognize the rule's application at stages beyond the pretrial stage. *State v. Murry*, 24 Wn. App. 2d 940, 948, 523 P.3d 794 (2023). As *Murry* points out, *Padgett* in fact requires application of CrR 4.7 post-trial. *Asaeli* is a poorly reasoned decision which ignores the plain language and scope of the rule. There is no time limit on the discovery obligation in CrR 4.7.

But the Court of Appeals cling to *Asaeli's* myopic reading of CrR 4.7. Opinion at 2-3. In a footnote, the opinion simply brushes *Padgett* and *Murry* aside and Division Three's criticism of *Asaeli* as inapplicable. It is true, as the opinion

says, *Padgett* and *Murry* concerned a request for discovery in defense counsel's file. But that is neither here nor there. If *Asaeli* is correct that CrR 4.7 has no applicability post-conviction, than *Murry* and *Padgett* are incorrect that CrR 4.7 required defense counsel to redact the discovery post-conviction before giving it to their client. Conversely, if Division Three's opinion in *Murry* is correct, than Division Two's reasoning in *Asaeli* and this case is incorrect.

Either CrR 4.7 applies post-conviction or it does not. When faced with that same question, Divisions Two and Three have taken contradictory positions. When such conflicts exist "this [C]ourt has a duty to resolve" them. *In the Matter of Arnold*, 190 Wn.2d 136, 150-51, 410 P.3d 1133 (2018) (citing RAP 13.4). Review is warranted in this case.

E. Conclusion

This Court must resolve the conflict between Divisions Three and Two. This Court should grant review in this case.

This brief contains 777 words and complies with RAP 18.17.

Respectfully submitted this 6th day of January, 2025.

Gregory C. Link - 25228
Jessica C. Wolfe - 47540
Attorney for Appellant
Washington Appellate Project
greg@washapp.org

Filed
Washington State
Court of Appeals
Division Two

December 10, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. THOMAS RUSSELL BOARDMAN, Appellant.	No. 57793-3-II UNPUBLISHED OPINION

PRICE, J. — Thomas R. Boardman appeals the superior court's ruling denying his postconviction motion for discovery from the State. Because Boardman is not entitled to postconviction discovery from the State and he fails to meet his burden to show he should be granted postconviction discovery, the superior court did not abuse its discretion by denying Boardman's motion. Accordingly, we affirm.

FACTS

In 2018, Boardman pleaded guilty to first degree rape of a child. Order Dismissing Pet., *In re Pers. Restraint of Boardman*, No. 53893-8-II (Wash. Ct. App. Mar. 16, 2020). In 2019, Boardman filed a timely personal restraint petition, which was dismissed. *Id.*

In October 2022, Boardman filed a motion for discovery from the State in which he requested 24 categories of information related to his case, including evidence, witness statements, plea agreements, and presentencing reports. Boardman also requested his entire client file from his former defense attorney. The State filed a response, arguing it had no obligation to provide

postconviction discovery. And Boardman's former defense counsel filed a declaration stating that he had provided Boardman with his entire client file.

At the hearing on Boardman's motion, Boardman maintained he needed discovery from the State in order to pursue a new personal restraint petition. The State argued that while the rules of professional conduct entitled Boardman to receive his client file from his attorney (which he had received), he was not entitled to discovery from the State. The superior court agreed with the State and denied Boardman's postconviction motion for discovery from the State.

Boardman appeals.

ANALYSIS

Boardman argues that CrR 4.7 provides for a continuing discovery obligation even after a defendant is convicted. Alternatively, Boardman argues that the superior court erred by failing to determine whether Boardman satisfied the established standard for discovery in a postconviction collateral attack proceeding. We disagree.

Generally, we review discovery decisions for an abuse of discretion. *State v. Asaeli*, 17 Wn. App. 2d 697, 699, 491 P.3d 245, *review denied*, 198 Wn.2d 1026 (2021). However, we review whether a court rule applies to a particular factual scenario de novo. *Id.*

First, Boardman contends that he is entitled to discovery from the State posttrial under CrR 4.7. However, this interpretation of CrR 4.7 has already been rejected multiple times. In *State v. Asaeli*, this court held that CrR 4.7 does not impose discovery obligations on the State after trial. 17 Wn. App. 2d at 700. Similarly, in *State v. Albright*, Division Three of this court held that the State's discovery obligations end once a person is convicted. 25 Wn. App. 2d 840, 842, 525 P.3d 984, *review denied*, 1 Wn. 3d 1023 (2023). Boardman offers no persuasive reason to depart from

these decisions.[1] Thus, Boardman was not entitled to postconviction discovery from the State based on CrR 4.7.

Second, Boardman argues that under due process standards, the superior court was obligated to determine whether he was entitled to postconviction discovery from the State. Boardman cites *In re Personal Restraint of Gentry* for the proposition that "[f]rom a due process standpoint, prisoners seeking post[]conviction relief are not entitled to discovery as a matter of ordinary course, but are limited to discovery only to the extent the prisoner can show good cause to believe the discovery would prove entitlement to relief." 137 Wn.2d 378, 390-91, 972 P.2d 1250 (1999). Under this standard, Boardman argues that the trial court was, "[a]t a minimum, . . . required to determine that standard was not met" before it could deny his discovery request. Br. of Appellant at 4. But Boardman did not seek discovery under this standard at the superior court, and, therefore, the superior court had no reason to consider it. Moreover, it is Boardman's burden to show that he has good cause to believe the discovery would prove entitlement to relief, and, beyond just generally alleging that he needed the materials to support a future personal restraint petition, he made no effort to do so below. Accordingly, the superior court did not err by failing to determine whether Boardman had good cause for discovery under due process standards.

The superior court did not abuse its discretion in denying Boardman's postconviction motion for discovery from the State. Accordingly, we affirm.

[1] To the extent Boardman argues *State v. Padgett*, 4 Wn. App. 2d 851, 424 P.3d 1235 (2018) and *State v. Murry*, 24 Wn. App. 2d 940, 523 P.3d 794 (2022) undermine the reasoning of *Asaeli* and *Albright*, those cases are inapplicable because they address defense counsel's obligations to their clients, not the State's discovery obligations.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

PRICE, J.

We concur:

CRUSER, C.J.

VELJACIC, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 57793-3-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent Randall Sutton
[rsutton@kitsap.gov]
KCPA@co.kitsap.wa.us]
Kitsap County Prosecutor's Office

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: January 6, 2025

WASHINGTON APPELLATE PROJECT

January 06, 2025 - 4:15 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	57793-3
Appellate Court Case Title:	State of Washington, Respondent v. Thomas Russell Boardman, Appellant
Superior Court Case Number:	17-1-01192-2

The following documents have been uploaded:

- 577933_Petition_for_Review_20250106161450D2887692_4300.pdf
  This File Contains:
  Petition for Review
  The Original File Name was washapp.010625-03.pdf

A copy of the uploaded files will be sent to:

- KCPA@co.kitsap.wa.us
- jessica@washapp.org
- rsutton@kitsap.gov
- wapofficemai@washapp.org

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Gregory Charles Link - Email: greg@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20250106161450D2887692