

FILED
SUPREME COURT
STATE OF WASHINGTON
6/25/2025 10:34 AM
BY SARAH R. PENDLETON
CLERK

NO. 104022-9

SUPREME COURT OF THE STATE OF WASHINGTON

SCOTT L. STOLLER,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF
CORRECTIONS,

Respondent.

**STATE'S ANSWERING BRIEF TO PETITIONER'S
MOTION FOR DISCRETIONARY REVIEW**

[treated as Answer to Petition for Review](#)

NICHOLAS W. BROWN
Attorney General

Joshua Schaer
Assistant Attorney General
WSBA #31491
800 Fifth Avenue, Suite 2000
Seattle WA 98104
206-464-7744
OID #91019

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	COUNTERSTATEMENT OF THE ISSUE.....	2
III.	COUNTERSTATEMENT OF THE CASE.....	2
	A. Stoller Engaged in Disruptive Behavior While Incarcerated.....	2
	B. Prison Staff Investigated Stoller’s Grievances Concerning an Assault.....	3
	C. Stoller Filed Suit with the Assistance of Counsel and Retained new Counsel to Oppose Summary Judgment.....	4
IV.	ARGUMENT WHY REVIEW SHOULD BE DENIED	7
	A. The Denial of Stoller’s CR 56(f) Continuance does not Present an Issue of Substantial Public Interest.....	7
	B. This Case Does Not Warrant Review Under RAP 13.4(b)(3)	10
V.	CONCLUSION	13

TABLE OF AUTHORITIES

Cases

<i>In re Dependency of Grove</i> , 127 Wn.2d 221, 897 P.2d 1252 (1995).....	11
<i>MRC Receivables Corp. v. Zion</i> , 152 Wn. App. 625, 218 P.3d 621 (2009).....	9
<i>Pelton v. Tri-State Mem’l Hosp., Inc.</i> , 66 Wn. App. 350, 831 P.2d 1147 (1992).....	8
<i>State v. Davis</i> , 141 Wn.2d 798, 10 P.3d 977 (2000).....	11
<i>Stoller v. Dep’t of Corr.</i> , 33 Wn. App. 2d 1053, 2025 WL 252858 (Jan. 21, 2025) (unpublished)	7, 10, 12
<i>Turner v. Kohler</i> , 54 Wn. App. 688, 775 P.2d 474 (1989).....	8
<i>W.G. Platts, Inc. v. Platts</i> , 73 Wn.2d 434, 438 P.2d 867 (1968).....	10
<i>Willapa Trading Co., Inc. v. Muscanto, Inc.</i> , 45 Wn. App. 779, 727 P.2d 687 (1986).....	1, 9

Rules

CR 56(f).....	1, 2, 6, 7, 8, 9
RAP 13.4(b)(3).....	2, 10, 11, 13
RAP 13.4(b)(4).....	2, 8, 10-11, 13

I. INTRODUCTION

“A party does not have an absolute right to a continuance, and the granting or denial of a motion for a continuance is reversible error only if the ruling was a manifest abuse of discretion.” *Willapa Trading Co., Inc. v. Muscanto, Inc.*, 45 Wn. App. 779, 785, 727 P.2d 687 (1986).

The Court of Appeals correctly concluded that the trial court acted well within its wide discretion here. Petitioner Scott Stoller sought more time under CR 56(f) to defend against the Washington State Department of Corrections’ (DOC’s) summary judgment motion. CP 36-38. But as the trial court observed, DOC’s summary judgment motion had already been continued once before. RP 6:3-11 (Apr. 14, 2023). Further, Stoller did not seek any discovery during approximately 17 months while his case was pending, and he was unable to identify how obtaining discovery would create a genuine issue of material fact. CP 38; RP 14:13-21 (Apr. 14, 2023).

Stoller asks this Court to grant review to second-guess the trial court's exercise of discretion. This Court should decline and instead deny Stoller's Petition for Review, which does not establish an issue of substantial public interest warranting review under RAP 13.4(b)(4) or raise a significant constitutional question of law under RAP 13.4(b)(3).

II. COUNTERSTATEMENT OF THE ISSUE

Whether this Court should deny review because the Court of Appeals properly affirmed the trial court's exercise of discretion in denying a CR 56(f) continuance.

III. COUNTERSTATEMENT OF THE CASE

A. Stoller Engaged in Disruptive Behavior While Incarcerated

Between 2011 and 2017, Stoller was placed in administrative segregation because he sought to manipulate and compromise prison staff, in addition to targeting female staff specifically. Suppl. CP 81-82.

Stoller was "a member of a white supremacist security threat group [STG]," and his prison record showed he was "an

aggressive inmate who knows how to ‘work the system’ to his advantage. He received approximately 60 inmate disciplinary infractions, which included STG activity, sexual harassment of staff, and indecent exposure.” Suppl. CP 170-71.

During his incarceration, Stoller did not express any concerns to prison officials or staff regarding a specific threat to his safety. Suppl. CP 77.

B. Prison Staff Investigated Stoller’s Grievances Concerning an Assault

In September 2018, another inmate began hitting Stoller at the Clallam Bay Correctional Center (CBCC). Suppl. CP 95-105. CBCC officers immediately responded and stopped the fight in under two minutes. Suppl. CP 97. Stoller was taken to the hospital for treatment of his injuries. Suppl. CP 97.

Within three days, Stoller was transferred to the Stafford Creek Corrections Center in Aberdeen. Suppl. CP 77. In December 2018, Stoller submitted a grievance, claiming that he had sought protective custody that would have avoided the subject incident. Suppl. CP 118. DOC investigated Stoller’s

grievance and responded that its administrative segregation policy had been followed. Suppl. CP 118.

Stoller then submitted a grievance appeal. Suppl. CP 127. He maintained that prison officials failed to protect him from harm. Suppl. CP 127. DOC again investigated and responded that there were “[n]o records of requests [by Stoller] for protective custody.” Suppl. CP 128.

Stoller submitted yet another grievance appeal. Suppl. CP 133. DOC responded that a complete investigation had been conducted, and the prior responses already addressed Stoller’s complaint. Suppl. CP 133.

C. Stoller Filed Suit with the Assistance of Counsel and Retained new Counsel to Oppose Summary Judgment

In November 2021, nearly three years after the incident at CBCC, Stoller, through counsel Dennis Clayton, filed suit against DOC. CP 1-4. In November 2022, DOC moved for summary judgment and noted the hearing for January 27, 2023. CP 5. In support of the motion, DOC filed declarations with an expert witness opinion and records related to Stoller’s

incarceration. CP 66-67; Suppl. CP 76-175. Stoller did not serve any discovery requests during the preceding 14 months. Instead, two days prior to the motion hearing, Stoller's counsel Clayton filed a Notice of Withdrawal citing health issues. CP 18-25. On Stoller's oral motion, the court continued the scheduled hearing to give Stoller time to obtain new counsel, and "recommended" he do so "as soon as possible." RP 6:5-11 (Apr. 14, 2023).

DOC re-noted its motion to April 14, 2023, serving Stoller directly. Suppl. CP 177-80. Sometime during February 2023, Stoller sought the assistance of replacement counsel William McCool, asking him to "be involved in this matter." CP 34.

At the April 14 hearing, McCool appeared on Stoller's behalf. He had mailed DOC a notice of appearance and motion for a continuance three days before but failed to timely file them with the court. CP 30, 39; RP 5:7-17 (Apr. 14, 2023).

Stoller's motion was brought under CR 56(f), arguing that he needed more time to identify names of individuals with information about his claim. CP 38. However, the summary

judgment motion included declarations with incident reports containing names of the inmate who attacked Stoller and the involved officers. Suppl. CP 76-134.

The trial court heard argument on Stoller's continuance motion, which it denied. RP 9:7-19 (Apr. 14, 2023). McCool claimed he had been too busy to work on the case during the prior two months. RP 13:15-14:3 (Apr. 14, 2023). The trial court found that Stoller and his counsel had failed to exercise diligence or identify information that would create a genuine issue of material fact, and the trial court heard argument on the merits of DOC's summary judgment motion. RP 16:4-17:11 (Apr. 14, 2023). The trial court granted summary judgment to DOC. RP 28:7-29:20 (Apr. 14, 2023).

Stoller, acting pro se, filed a motion for reconsideration of the trial court's CR 56(f) denial. CP 40-50. However, Stoller failed to note a hearing until December 2023. CP 56-62. Although Stoller's motion was not timely, DOC did not object, and the trial court heard arguments. CP 64; RP 8:1-17, 9:2-10:4

(Dec. 23, 2023). The trial court denied reconsideration and Stoller appealed. CP 64-65.

In an unpublished decision, the Court of Appeals affirmed the trial court's denial of a continuance. *Stoller v. Dep't of Corr.*, 33 Wn. App. 2d 1053, 2025 WL 252858 (Jan. 21, 2025). Stoller's petition to this Court is limited to denial of his CR 56(f) motion. *Id.* at *1 (Stoller . . . challenges the denial of his motion to continue").

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Denial of Stoller's CR 56(f) Continuance does not Present an Issue of Substantial Public Interest

Stoller's argument that the trial court abused its discretion when it denied his motion for a continuance is not supported by the law or the facts. Further, it ignores his failure to create a record to justify a continuance, as contemplated by CR 56(f). Further, his assertion that this case presents an issue of substantial public interest is without merit and his Petition should be denied.

This case does not meet the RAP 13.4(b)(4) standard because it does not broadly affect the public or involve important questions of statutory interpretation. Rather, it involves the proper denial of a continuance when Stoller failed to offer sufficient grounds to justify a CR 56(f) continuance that his counsel sought five months after DOC's motion was originally filed, and approximately 17 months into the lawsuit after Stoller failed to conduct any discovery.

A trial court may deny a CR 56(f) continuance to obtain additional affidavits or essential discovery when:

(1) the requesting party does not have a good reason for the delay in obtaining the evidence; (2) the requesting party does not indicate what evidence would be established by further discovery; or (3) the new evidence would not raise a genuine issue of fact.

Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989).

Denial can be based on any one of these reasons. *See Pelton v.*

Tri-State Mem'l Hosp., Inc., 66 Wn. App. 350, 356, 831 P.2d 1147 (1992). The standard of review for a denial order is a

manifest abuse of discretion. *See, e.g., MRC Receivables Corp. v. Zion*, 152 Wn. App. 625, 629, 218 P.3d 621 (2009).

In *Willapa Trading Co.*, the Court of Appeals held that a party with advance knowledge of counsel's intended withdrawal cannot simply wait until the last minute to forestall proceedings. 45 Wn. App. at 785-86. Here, Stoller sought to accomplish what *Willapa Trading Co.* prohibits; his counsel mailed a CR 56(f) motion to the trial court just three days before DOC's summary judgment hearing, although he addressed the mail to the wrong location, and it was not received in the court file. RP 6:16-7:2; 7:11-23; 9:7-16 (Apr. 14, 2023). Despite this procedural infirmity, the trial court allowed Stoller's counsel to argue in support of a CR 56(f) continuance *and* argue against summary judgment. RP 5:18-6:15, 16:2-17:13 (Apr. 14, 2023).

Further, Stoller has never explained how obtaining more time to conduct discovery would establish admissible evidence to raise a genuine issue of fact. "The whole purpose of summary judgment procedure would be defeated if a case could be forced

to trial by a mere assertion that an issue exists without any showing of evidence.” *W.G. Platts, Inc. v. Platts*, 73 Wn.2d 434, 443, 438 P.2d 867 (1968). In support of its summary judgment motion, DOC provided a copy of the relevant administrative segregation policy, Stoller’s profile sheet, incident reports, and grievance records. Suppl. CP 81-134. Stoller offered no declarations or other evidence in response that would have suggested a dispute with DOC’s stated facts. *See* CP 5-8.

Thus, the Court of Appeals correctly determined that Stoller “fail[ed] to identify any ‘desired’ evidence which will raise a genuine issue of material fact,” nor was such evidence pursued. *Stoller*, 2025 WL 252858 at *6 (citing *Kozol v. Dep’t of Corr.*, 192 Wn. App. 1, 6, 366 P.3d 933 (2015)). This case does not present an issue of substantial public interest. *See* RAP 13.4(b)(4).

B. This Case Does Not Warrant Review Under RAP 13.4(b)(3)

Although Stoller primarily seeks review under RAP

13.4(b)(4), he also argues in passing that the trial court denied his constitutional rights, implicating RAP 13.4(b)(3). Pet.'s Br. at 7. This case does not meet the RAP 13.4(b)(3) standard because there is no constitutional question at issue. There is not Sixth Amendment right to counsel in this proceeding, and, in any event, Stoller was represented by counsel.

There is no Sixth Amendment right to counsel in civil proceedings. *See, e.g., In re Dependency of Grove*, 127 Wn.2d 221, 237, 897 P.2d 1252 (1995) (no right to counsel unless “physical liberty is threatened” or a “fundamental liberty interest . . . is at risk”); *cf. State v. Davis*, 141 Wn.2d 798, 860, 10 P.3d 977 (2000) (Sixth Amendment right to counsel is assured in state court criminal prosecutions by the Fourteenth Amendment’s due process clause). When “the interest at stake is only a financial one, the right which is threatened is not considered ‘fundamental’ in a constitutional sense.” *Grove*, 127 Wn.2d at 238.

Here, Stoller did not possess a constitutional right to counsel, and the invocation of such right is immaterial here

because two different attorneys represented Stoller during the pendency of his lawsuit. *E.g.*, CP 1-4, 30, 34, 39.

Moreover, as the Court of Appeals observed, the trial court provided a lengthy explanation regarding the untimeliness of actions that Stoller took. *Stoller*, 2025 WL 252858 at *8-9; *see also* RP 16:2-17:11 (Apr. 14, 2023). As the Court of Appeals ruled, Stoller could not identify what evidence was sufficient to raise a genuine issue of material fact, and he admitted “that neither he nor either of his lawyers pursued such evidence.” *Stoller*, 2025 WL 252858 at *6. Given the information DOC provided in support of its motion, the Court of Appeals concluded that it was “not an abuse of discretion for the court to have found that Stoller failed to provide ‘a good reason’ to explain why he did not proffer *any* evidence in response to DOC’s motion for summary judgment, even considering his pro se status following his first attorney’s withdrawal.” *Id.* at *8 (emphasis in original).

Given the absence of a significant constitutional law question, this Court should decline to accept review under RAP 13.4(b)(3).

V. CONCLUSION

Stoller's petition does not demonstrate grounds for discretionary review pursuant to either RAP 13.4(b)(3) or (b)(4). Consequently, this Court should deny review of the Court of Appeals' opinion.

This document contains 2,045 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 25th day of June, 2025.

NICHOLAS W. BROWN
Attorney General

/s/ Joshua Schaer
JOSHUA SCHAER
WSBA #31491
Assistant Attorney General
Attorney for Respondent
OID #91019

CERTIFICATE OF SERVICE

I declare under penalty of perjury, pursuant to the laws of the State of Washington, that on the date below, the preceding “STATE’S ANSWERING BRIEF TO PETITIONER’S MOTION FOR DISCRETIONARY REVIEW” was electronically filed in the Washington State Supreme Court, and electronically served on the following parties, according to the Court’s protocols for electronic filing and service and via U.S. Mail on the following party as follows:

Scott L. Stoller
Special Commitment Center
PO Box 88600
Steilacoom, WA 98388

DATED this 25th day of June, 2025, at Seattle, Washington.

/s/ Mo Braithwaite
MO BRAITHWAITE
Paralegal to Joshua Schaer

June 25, 2025 - 10:34 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 104,022-9
Appellate Court Case Title: Scott L. Stoller v. WA State Department of Corrections, et al.
Superior Court Case Number: 21-2-01953-0

The following documents have been uploaded:

- 1040229_Answer_Reply_20250625101408SC412496_0331.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was PFR_Response_v5.1.pdf

A copy of the uploaded files will be sent to:

- TorSeaEf@atg.wa.gov

Comments:

Sender Name: Mo Braithwaite - Email: mo.braithwaite@atg.wa.gov

Filing on Behalf of: Joshua Saul Schaer - Email: joshua.schaer@atg.wa.gov (Alternate Email: TORTTAP@atg.wa.gov)

Address:
PO Box 40126
Olympia, WA, 98504-0126
Phone: (360) 586-6300

Note: The Filing Id is 20250625101408SC412496