

No. 43591-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Jeffrey Ziegler,

Appellant.

Clark County Superior Court Cause No. 05-1-01088-6

The Honorable Judge Diane M. Woolard

Appellant's Opening Brief

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ASSIGNMENTS OF ERROR

1. The trial court erred by transferring Mr. Ziegler's post-trial motions to the Court of Appeals without notice and an opportunity to be heard.
2. The trial court erred by summarily denying Mr. Ziegler's May 2nd post-trial motions without a hearing.
3. The trial court erred by adopting Finding of Fact No. 3.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Due process requires notice and a meaningful opportunity to be heard before a government deprives any person of life, liberty, or property. In this case, the trial court transferred Mr. Ziegler's post-trial motions to the Court of Appeals without advance notice and in the absence of a meaningful opportunity to be heard. Did the trial judge violate Mr. Ziegler's right to procedural due process under the Fourteenth Amendment and Wash. Const. Article I, Section 3?
2. Under CrR 7.8, a post-trial motion for relief from judgment may not be summarily denied by the superior court. Here, the superior court summarily denied Mr. Ziegler's May 2nd post-trial motions. Did the trial court err by summarily denying Mr. Ziegler's post-trial motions for relief from judgment?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Jeff Ziegler was convicted of three counts of child molestation and three counts of child rape, two of which were reversed on appeal. See Mandate and Opinion (2007), Supp. CP. Following a new sentencing hearing, he appealed again. The judgment and sentence was affirmed, but the case was remanded for removal of a condition of community custody. Mandate and Opinion (2009), Supp. CP. Following denial of a Petition for Review, the Court of Appeals issued a mandate on March 13, 2009. Mandate and Opinion (2009), Supp. CP.

Mr. Ziegler subsequently filed a Motion to Dismiss, alleging a violation of his right to a speedy trial.¹ Motion to Dismiss (11/10/2010), Supp. CP. The trial court took no action. Response to Defendant's Motion (11/30/2010), Supp. CP. Mr. Ziegler also filed a Motion for In-Camera Review (8/24/2011). The court took no action on this motion as well. Response to Defendant's Motion (8/29/2011), Supp. CP.

Mr. Ziegler then sought mandamus relief from the Supreme Court. See Correspondence from Supreme Court (12/30/2011), Supp. CP; Copy – Defendant's Supreme Court Motion (1/3/2011), Supp. CP. On February 7,

¹ In addition, he apparently filed a Personal Restraint Petition in the Supreme Court. The Petition was transferred to the Court of Appeals and later dismissed. Order Dismissing Petition, Supp. CP.

2012, the Supreme Court issued an order granting Mr. Ziegler's petition for a writ of mandamus and directing the trial judge "to act upon Petitioner's motion to dismiss his convictions." See Order (2/7/12) (Appendix B, attached to Preliminary Response to Defendant's CrR 7.8 Motion, Supp. CP).

Following the Supreme Court's order, the trial judge elected to treat Mr. Ziegler's motion to dismiss as a CrR 7.8 motion and ordered it transferred to the Court of Appeals. Order re: CrR 7.8 Motion (3/7/12), Supp. CP. Mr. Ziegler filed a pleading objecting to this action.² Motion of Objection to Reclassification of CrR 8.3 Motion into a CrR 7.8 Motion Without Prior Notice, Supp. CP. The trial judge elected to treat this motion as a CrR 7.8 motion as well, and transferred it to the Court of Appeals.³ Order re: CrR 7.8 Motion (3/27/2012), Supp. CP.

On May 2, 2012, Mr. Ziegler filed a set of documents that included a "Motion for Arrest of Judgment Pursuant to CrR 7.4(b)...", a "Motion for New Trial/Hearing Pursuant to CrR 7.5," and a "Motion to Vacate Transfer(s)..." D-Motion New Trial/Arrest of Judgment, Supp. CP. He

² Later, he filed a Notice of Appeal addressing this same decision. Notice of Appeal, p. 1 (4/24/12), Supp. CP.

³ Mr. Ziegler responded by filing a Notice of Appeal. Notice of Appeal, p. 2 (4/24/12), Supp. CP.

requested a reference hearing, sought appointment of counsel, asked that he be transported from prison, and enclosed an affidavit of prejudice. D-Motion New Trial/Arrest of Judgment, Supp. CP.

The trial judge responded by entering an order denying Mr. Ziegler's motions without holding a hearing.⁴ Findings of Fact, Supp. CP. Mr. Ziegler timely appealed. CP 20.

ARGUMENT

THE TRIAL COURT VIOLATED MR. ZIEGLER'S FOURTEENTH AMENDMENT RIGHT TO PROCEDURAL DUE PROCESS.

A. Standard of Review

Alleged constitutional violations are reviewed de novo. *Bellevue School Dist. v. E.S.*, 171 Wash.2d 695, 702, 257 P.3d 570 (2011). The interpretation of a court rule is an issue of law, reviewed de novo. *State v. McEnroe*, 174 Wash. 2d 795, 800, 279 P.3d 861 (2012). Court rules are to be interpreted using the rules of statutory construction. *Id.* A court rule should be interpreted in such a manner as to avoid constitutional infirmity. *State v. Eaton*, 168 Wash. 2d 476, 480, 229 P.3d 704 (2010); *State v. Coleman*, 151 Wash. App. 614, 622, 214 P.3d 158 (2009).

⁴ Included was a finding that "[t]he Court of Appeals, Division II, also received the defendant's Motion to Vacate Transfer of Petitioner's CrR 7.8 Motion and found the superior court acted within its authority and the transfer was proper." Findings of Fact, Supp. CP.

- B. The trial judge infringed Mr. Ziegler’s right to procedural due process by transferring his post-trial motions to the Court of Appeals without prior notice and an opportunity to be heard.

The state and federal constitutions prohibit the government from “depriv[ing] any person of life, liberty, or property, without due process of law...” U.S. Const. Amend. XIV; Wash. Const. Article I, Section 3. The “touchstone” of this provision “is protection of the individual against arbitrary government actions, whether in denying fundamental procedural fairness (procedural due process) or in exercising power arbitrarily, without any reasonable justification in the service of a legitimate government interest (substantive due process).” *Cradduck v. Yakima County*, 166 Wash. App. 435, 442, 271 P.3d 289 (2012).

The fundamental requirements of procedural due process are notice and an opportunity to be heard. *In re Bush*, 164 Wash.2d 697, 705, 193 P.3d 103 (2008). The opportunity to be heard must be at a meaningful time and in a meaningful manner. *Mansour v. King County*, 131 Wash. App. 255, 264, 128 P.3d 1241 (2006).

In the absence of adequate notice and a meaningful opportunity to be heard, society cannot be confident in the outcome of a proceeding.

CrR 7.8 governs post-trial motions for relief from judgment. Under CrR 7.8(2), the trial court “shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint

petition” unless certain conditions are met. CrR 7.8 must be interpreted in a manner consistent with the procedural due process protections provided by the constitution. Eaton, at 480. Accordingly, a post-trial motion may not be transferred to the Court of Appeals unless the moving party is provided notice and given a meaningful opportunity to contest the transfer. Bush, at 705; Mansour, at 264.

Here, the Supreme Court directed the trial judge to act upon Mr. Ziegler’s post-trial motions. See Order (dated 2/7/12) (Appendix B, attached to Preliminary Response to Defendant’s CrR 7.8 Motion, Supp. CP). Instead, the trial court transferred the motions to the Court of Appeals. Order re: CrR 7.8 Motion (3/7/12), Supp. CP; Order re: CrR 7.8 Motion (3/27/2012), Supp. CP. This was accomplished without prior notice, and without an opportunity to contest the transfer.

Mr. Ziegler deserved notice and a meaningful opportunity to be heard before the trial judge transferred his motions to the Court of Appeals. When the Supreme Court ordered the trial court to act on his motions, he was entitled to believe he would finally receive a decision on the merits, including a chance to present evidence that related to his claims. See Order (2/7/12) (Appendix B, attached to Preliminary Response to Defendant’s CrR 7.8 Motion, Supp. CP).

By transferring Mr. Ziegler's motions to the Court of Appeals without notice and an opportunity to be heard, the trial court violated his Fourteenth Amendment right to procedural due process. Bush, at 705; Mansour, at 264. Instead of denying Mr. Ziegler's May 2nd motions, the trial judge should have realized her error, granted the motions, and addressed the merits of his claims.⁵

For these reasons, the trial court's Findings of Fact, Conclusions of Law, and Order must be vacated. The case must be remanded for a decision on the merits of all the motions Mr. Ziegler presented.

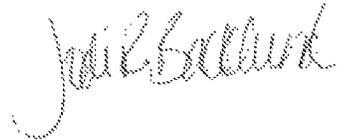
⁵ In the alternative, the trial court should have followed the dictates of CrR 7.8 and transferred the May 2nd motions to the Court of Appeals. CrR 7.8(2).

CONCLUSION

For the foregoing reasons, the trial court's order must be vacated and the case remanded for resolution of Mr. Ziegler's post-trial motions.

Respectfully submitted on September 13, 2012,

BACKLUND AND MISTRY

A handwritten signature in cursive script that reads "Jodi R. Backlund".

Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

A handwritten signature in cursive script that reads "Manek R. Mistry".

Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Jeffrey Ziegler, DOC #886970
Airway Heights Corrections Center
P.O. Box 1899
Airway Heights, WA 99001

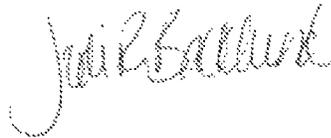
With the permission of the recipient, I delivered an electronic version of the brief, using the Court's filing portal, to:

Clark County Prosecuting Attorney
prosecutor@clark.wa.gov

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on September 13, 2012.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

September 14, 2012 - 9:19 AM

Transmittal Letter

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Case Name: State v. Jeffrey Ziegler

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- Statement of Arrangements
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- Affidavit
- Letter
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Comments:

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