



April 22, 2024

To: Clerk of the Supreme Court

Re: Proposed Changes to CrR 8.3 and CrRLJ 8.3

I write in opposition of the proposed amendments to CrR 8.3 and CrRLJ 8.3.

It is well established that CrR 8.3(b) is designed to protect a defendant's right to a fair trial. Due process is not defined by personal notions of fairness but rather by "fundamental conceptions of justice."

Amendment of the rule in the manner suggested would effectively overrule decades of precedent affirming the prejudice requirement under CrR 8.3(b) without a showing that any of those cases are harmful and incorrect.

The proposed amendment is also inconsistent with recent cases from this Court recognizing that a defendant must show prejudice to establish the violation of a constitutional right. See e.g., State v. Stearns, __Wn.3d__, 545 P.3d 320 (2024) (affirming and clarifying the prejudice required for a due process dismissal based on preaccusatorial delay). If a defendant must show prejudice from a violation of his constitutional rights, a court rule authorizing a lesser showing must be justified by something other than an unreviewable reference to arbitrary and variable notions of "justice."

Under the proposed rule change, a defendant could successfully have his case dismissed based solely on the individual concept of "justice" held by the judge randomly assigned to the case. Meanwhile, a different defendant, charged with the same crime and based on substantially similar facts, could have his motion denied by a different randomly assigned judge. Racial disparity is correlated with unstructured and unreviewed discretion. The potential amendment may foment more of the injustice it purports to prevent.


Moreover, the proposed rule change would result in significant additional litigation. Without a showing of prejudice, any defendant could (and undoubtedly would) argue for dismissal. The cost of such a significant change in the law to the resources of our already overtaxed system cannot be overstated.

Importantly, the authority of a trial court to dismiss a prosecution under CrR 8.3(b) is tempered by concerns of separation of powers. But under the proposed rule change, a court could conclude that any decision made by a prosecutor was arbitrary — from charging decisions to sentencing recommendations. This suggests that a court could dismiss a case based on its disagreement with the executive’s charging decision or the legislature’s setting of punishments for the crimes charged. This illustrates that “arbitrary action” or “misconduct” is so broad as to allow dismissal for any reason at all. A “furtherance of justice” standard that is not tied to the defendant’s right to a fair trial interferes with the prosecutor’s charging decisions and violates the separation of powers between the judiciary and the executive.

This Court should reject the proposal to amend CrR 8.3(b) to authorize courts to dismiss a case without a showing of material prejudice to the defendant’s right to a fair trial. Dismissal without such a showing arbitrarily cuts against society’s legitimate interest in the fair prosecution of crimes that are properly alleged and ignores the strong societal interest in protection of the community. It disregards a victim’s right to justice and safety from those who cause harm. I believe that most citizens in this State would strenuously disagree with a rule that causes further harm to crime victims and provides a windfall to those who victimize others.

Thank you for considering my comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Meckling", is written over a horizontal line.

Amy Meckling WSBA #28274
Senior Deputy Prosecuting Attorney
Appellate Unit Co-Chair
King County Prosecuting Attorney's Office