



Snohomish County

Prosecuting Attorney

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Date April 29, 2024

Honorable Charles W. Johnson, Chair
Honorable Mary I. Yu, Chair
Supreme Court Rules Committee
c/o Clerk of the Supreme Court Temple of Justice
P.O. Box 40929 Olympia, WA 98504-0929

RE: Proposed Rule Change to CrR & CrRLJ 8.3(b)

Dear Justice Johnson and Justice Yu:

As the elected Prosecutor for Snohomish County I am writing to join those, including the Superior Court Judge's Association, in opposing the proposed changes to CrR & CrRLJ 8.3(b). The change to rule 8.3(b) proposed by the defense bar asks the court to significantly expand the power of courts while significantly diminishing the powers of the other two co-equal branches of government. This rule change also has the potential to trample on crime victim rights.

I object to this proposed change to rule 8.3(b) because as currently written the rule already reasonably balances society's interest in protection of the public through laws enacted by the Legislature and executed by the executive, while recognizing the court's important role in protecting an individual defendant's rights. Removing the requirement of "prejudice to the defendant's right to a fair trial" before a court can dismiss criminal charges unmoors the court from its proper role and is likely to lead to less consistency and the appearance of greater arbitrariness in application of the criminal law.

Courts are not designed for, or well suited to, exercising executive authority. To maintain the integrity of the criminal justice system, courts must demonstrate restraint in expanding their own powers. The Washington Supreme Court has recognized the vital role of the Prosecutor:

The charging discretion of prosecuting attorneys is an integral part of the constitutional checks and balances that make up our criminal justice system. Each branch of government plays a distinct role: the legislature checks prosecutors and the judiciary by defining the particular acts and circumstances that may warrant criminal punishment and the maximum sentences that may be imposed; prosecutors check the power of the legislature and the judiciary by deciding whom to charge and which available charges and special allegations to file in any given case; and the judiciary checks the legislature and prosecutors by reviewing probable cause, ensuring a fair trial, and determining the appropriate sentence if the defendant is found guilty.

State v. Rice, 174 Wn. 2d 884, 889 (2012).

The Washington State Supreme Court has a long history of recognizing prejudice to the defendant's right to a fair trial as a requirement before the court may take the extraordinary step of dismissing a criminal charge. Dismissal is an extraordinary remedy. *State v. Wilson*, 149 Wn.2d 1, 12 (2003). Even before the change to rule 8.3(b) in 1995 adding the language the defense bar now seeks to strike, the court recognized that prejudice to the defendant's right to a fair trial was a common law prerequisite to dismissal of criminal charges by the courts. *State v. Michielli*, 132 Wn.2d 229, 239 (1997). *Michielli* found the added language about prejudice to a defendant's right to a fair trial to be an insubstantial change since it merely reflected preexisting common law requirements for dismissing charges.

Under the current court rule a defendant has the burden to show by a preponderance of the evidence arbitrary action or governmental misconduct. Governmental misconduct has been interpreted to include any form of "mismanagement" as well as affirmative misconduct or arbitrary action. *State v. Blackwell*, 120 Wn.2d 822, 830 (1993). Without a prejudice requirement, a court could dismiss any charge no matter how serious if it simply concludes that some form of mismanagement occurred during the police investigation, at the crime lab, or during any phase of the prosecution even when there is no impact on the defendant's rights. This could easily result in inconsistent outcomes for defendants and unjust results for crime victims.

Please reject the proposed rule change to 8.3(b).

Respectfully,



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