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Subject: FW: Comment on Proposed Amendment to CrR and CrRLJ 8.3
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From: Levi Uhrig <LUhrig@co.whatcom.wa.us>
Sent: Tuesday, April 30, 2024 4:19 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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This proposed rule change should be rejected. The proponent of this rule change claims that: “[f]or too long, Washington Courts have been constrained by the Washington State Supreme Court’s unduly narrow interpretation of CrR 8.3(b) in *State v. Starrish*.” To fix this, the proponent claims, the requirement that a defendant be prejudiced by arbitrary action or governmental misconduct to warrant dismissal should be stricken. In *Starrish*, however, the court held that CrRLJ 8.3 as then written required a showing of arbitrary action or governmental misconduct. 86 Wn.2d 200, 202, 544 P.2d 1 (1975). The issue of whether prejudice to the rights of the accused is required was not addressed by this case.

Consistent with longstanding principles of separation of powers and due process, dismissal under CrR and CrRLJ 8.3(b) has been recognized as an “extraordinary remedy” to which courts should turn “only as a last resort.” *State v. Wilson*, 149 Wn.2d 1, 12, 65 P.3d 657 (2003). The language which the proponent seeks to strike was not included randomly or by accident. The requirement of prejudice, added to the rule in a 1995 amendment, “merely reflects preexisting common law requirements for dismissing charges.” *State v. Michielli*, 132 Wn.2d 229, 239, 937 P.2d 587 (1997); *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). Even prior to the amendment in 1995, dismissal under CrR 8.3(b) was interpreted by the Supreme Court of this state as requiring both misconduct and prejudice. *City of Seattle v. Orwick*, 113 Wn.2d 823, 832, 784 P.2d 161 (1989).

It is additionally worth noting that “arbitrary action or governmental misconduct” encompasses government action beyond the control of any prosecutor’s office. For example, in *State v. Jieta*, Division I of the Court of Appeals held that “government misconduct” included mismanagement by court administration. 12 Wn. App. 2d 227, 235, 457 P.3d 1209 (2020). Under the proponent’s amendment, cases could be dismissed due to an error on the court

administration's part which did not affect the defendant's substantive rights in any way.

The current rule correctly reflects preexisting common law requirements and respects separation of powers and due process. There is no benefit to the proponent's amendment, and it should be rejected.

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