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Subject: FW: Comment to Proposed Rule Change to CrR 8.3 / CrRLJ 8.3
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From: Robert Lehman <robertl@co.adams.wa.us>
Sent: Monday, April 28, 2025 2:04 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to Proposed Rule Change to CrR 8.3 / CrRLJ 8.3

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Good Morning Rule Committee,

I am commenting regarding the proposed rule changes to CrR 8.3 and CrRLJ 8.3. I am encouraging the committee to reject the proposed changes. It has long been the standard in this state that the test for dismissal for government misconduct or arbitrary action is whether the defendant's constitutional right to a fair trial was prejudiced. This proposed rule tosses out this long-standing precedent and sets forth a four-part test that had nothing to do with whether the conduct prejudiced the defendant's constitutional right to a fair trial.

If the proposed change was adopted, a trial court would first consider the seriousness and circumstances of the offense. This is a vague statement to begin with. Does this test mean that if the offense is something minor, like driving with a suspended license in the third degree, that arbitrary actions or governmental misconduct is acceptable and does not warrant dismissal? Or if a defendant is charged with first degree murder or rape of a child in the first degree, the offense is so serious that the court should tolerate some amount of misconduct by the government. Whether a court dismisses a case for government misconduct or arbitrary actions, should not be based on what kind of offense was committed.

Secondly, the proposed change would require the court to consider the safety and welfare of the community. So, if a defendant was charged with first degree murder or rape of a child in the first degree, should the need to keep the community safe from a defendant outweigh the misconduct committed against the defendant? Or if the defendant is a prominent member of the community, then there should be less tolerance for government misconduct than someone with no ties to the community? Whether a court dismisses a case should not be based upon how the community would be affected by the dismissal.

Thirdly, the proposed change would require courts to consider the impact of a dismissal or lack of dismissal upon the confidence of the public in the criminal justice system. This test would require judges to base their decision on public sentiment in the community on whether

the government misconduct warrants dismissal rather than on whether a defendant's constitutional rights have been violated. The court should not be basing its decisions on the popularity of those decisions with the public. Such decision making turns the court into a political body instead of a neutral magistrate.

Fourthly, the proposed change would require the court to consider the degree and impact of the arbitrary action of government misconduct. This factor is vague. What is the court supported to consider the degree and impact against? Is it against the defendant's constitutional rights, the confidence of the public, the welfare of the community, the effect on the victim, etc.? This vague requirement provides no guidance to the court to weigh.

It has long been held in the courts in Washington state, that dismissal for government misconduct or arbitrary action is based *solely* on the effect that the government misconduct or arbitrary action has on the defendant's constitutional rights to a fair trial. This is because it is the defendant's constitutional rights that are violated by the government misconduct or arbitrary action. It is the defendant's liberty interests that are affected by government misconduct or arbitrary action. Considering the effect on the Defendant is the appropriate party whose rights are to be considered. The effect of the government misconduct or arbitrary action on others that are not the defendant should not be a factor being considered. This committee should reject the proposed rule change.

Thank you,

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