

FILED
8/26/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,)	No. 78282-7-I
)	
Respondent,)	DIVISION ONE
)	
v.)	PUBLISHED OPINION
)	
PARAMJIT SINGH BASRA,)	
)	
Appellant.)	
)	FILED: August 26, 2019

HAZELRIGG-HERNANDEZ, J. — Paramjit Basra was convicted of murder in 2012. Four years later, after resolution of his direct appeal, he filed a motion to dismiss all charges under Criminal Rule (CrR) 8.3(b). He contends that the superior court erred in finding this motion untimely because the criminal rule does not contain an explicit time limit. Because the text and context of the rule indicate that it was not intended to authorize post-judgment motions to dismiss, we affirm.

FACTS

In 2012, Paramjit Basra was convicted of murder in the first degree and sentenced to 240 months in prison. This court affirmed his conviction on appeal, but remanded to correct the period of community custody. The mandate confirming termination of review issued on April 21, 2014. In 2016, Basra filed a pro se motion for relief from judgment and sentence under CrR 7.8 and a separate motion to dismiss all charges under CrR 8.3(b) in superior court. (The court

construed both filings as motions for relief from judgment under CrR 7.8(c). It found both motions to be time-barred by RCW 10.73.090 and transferred them to this court for consideration as personal restraint petitions. Although we recognized that the superior court had treated the CrR 8.3(b) motion as an additional CrR 7.8 motion, because Basra opposed the transfer and accurately pointed out that CrR 8.3(b) did not contain an explicit time limit or provision for transfer to the court of appeals, the motion was remanded back to superior court for consideration as labeled.

On remand, the superior court appointed counsel for Basra and, after briefing and oral argument, denied the motion to dismiss under CrR 8.3(b) as untimely. The court found that it had no jurisdiction to decide Basra's claims because CrR 8.3(b) only authorized a court to dismiss a criminal prosecution, and the prosecution had concluded prior to the filing of the motion. Basra appealed. The parties briefed the issue of appealability as requested by a commissioner of this court. Basra argued that this order was appealable as a matter of right under RAP 2.2(a)(13). The State disagreed but requested that this court grant discretionary review under RAP 2.3(b) to clarify the proper way to handle such a motion.

DISCUSSION

I. Appealability

Basra contends that the denial of a post-judgment motion to dismiss under CrR 8.3(b) is appealable as a matter of right because it meets the requirements of RAP 2.2(a)(13). The State responds that the trial court's decision was not a final

order affecting Basra's substantial rights because the court did not rule on the merits of the motion.

Unless otherwise prohibited by a statute or court rule, a party may appeal from any final order made after judgment that affects a substantial right. RAP 2.2(a)(13). A party seeking review must therefore show both (1) effect on a substantial right and (2) finality. State v. Howland, 180 Wn. App. 196, 202 n.3, 321 P.3d 303 (2014).

The timing of the instant motion affects its appealability. Orders denying pre-judgment motions to dismiss under CrR 8.3(b) are not immediately appealable because they are not final. See State v. Wright, 51 Wn.2d 606, 609, 320 P.2d 646 (1958). Certainly, where a court has denied a CrR 8.3(b) motion made pre-trial or even during trial, the matter may be considered as a part of the defendant's direct appeal after entry of judgment. Or if a pre- or mid-trial CrR 8.3(b) motion is granted, therefore ending the prosecution, the State may appeal that final ruling.

Here, however, Basra presents a completely different set of facts and procedural timeline. Basra does not point to any authority explicitly stating that the denial of a post-conviction CrR 8.3(b) motion as untimely is appealable as of right under RAP 2.2. In support of his position, he cites one recent unpublished decision of this court in which we reviewed on the merits a trial court's denial of a post-judgment motion to dismiss under CrR 8.3(b). State v. Longshore, No. 77764-5-I, slip op. at 4 (Wash. Ct. App. Mar. 5, 2018) (unpublished), <http://www.courts.wa.gov/opinions/pdf/777645.pdf>. However, the opinion noted that we assumed for the purposes of the appeal that review of the trial court's

decision was proper under RAP 2.2(a)(13) because the State failed to challenge the appealability of the decision: Id. at 4 n.1. Because of the lack of argument from the State, Longshore does not definitively resolve the question of appealability.

Basra relies on State v. Gossage in his argument for finality, contending that this was a final appealable order because it left "nothing else to be done to arrive at the ultimate disposition of the petition." 138 Wn. App. 298, 302, 156 P.3d 951 (2007) (quoting In re Det. of Petersen, 138 Wn.2d 70, 98, 980 P.2d 1204 (1999) (Sanders, J., dissenting)), rev'd in part on other grounds, 165 Wn.2d 1, 195 P.3d 525 (2008). In Gossage, this court found that denial of a post-judgment petition for certificate of discharge from restitution, early termination of sex offender registration requirements, and restoration of civil rights was a final judgment appealable as of right. Id. The court distinguished that case from those in which the trial court retained continuing jurisdiction over the offender or conducted scheduled review of the issues. Id. Although the denial of the petition did not prevent the defendant from petitioning again in the future, the court felt that this "mere potentiality" of a renewed motion differed from the certainty of future proceedings in cases where review was scheduled. Id. at 302 n.7. On review, the Supreme Court declined to address the issue of appealability because the State failed to raise the issue in its answer or cross-petition. Gossage, 165 Wn.2d at 6.

The State argues that this order is not appealable under RAP 2.2(a)(13) because the superior court did not reach the merits of Basra's motion, and (Basra could theoretically file the same claims in a CrR 7.8 motion or personal restraint petition). This argument appears to challenge the finality element by analogizing

this situation to a pre-judgment dismissal without prejudice. In a criminal prosecution, a dismissal without prejudice within the statute of limitations is not final "[b]ecause the legal and substantive issues are generally not resolved." State v. Taylor, 150 Wn.2d 599, 602, 80 P.3d 605 (2003). (A dismissal without prejudice) "leaves the matter in the same condition in which it was before the commencement [of the prosecution]." Id. (quoting State v. Corrado, 78 Wn. App. 612, 615, 898 P.2d 860 (1995)).

In this case, the fact that the superior court did not reach the merits of Basra's motion makes the situation more akin to a dismissal without prejudice than denial of a petition to discharge a restitution obligation, terminate a registration requirement, and restore civil rights. A renewed motion or prosecution is a "mere potentiality" in both instances but the dismissal of Basra's motion as untimely did not resolve the legal and substantive issues contained within the motion. Because the order does not satisfy the finality prong of RAP 2.2(a)(13), we hold that Basra's post-judgment CrR 8.3(b) motion is not appealable as a matter of right.

Basra and the State both request that this court accept discretionary review if appeal as a matter of right is unavailable. When an act of the superior court is not appealable as a matter of right under RAP 2.2, a party may seek discretionary review of the act under RAP 2.3. "A notice of appeal of a decision which is not appealable will be given the same effect as a notice for discretionary review." RAP 5.1(c). Because the parties agree that we should grant review and the dearth of authority provides ground for a difference of opinion, we find that review is appropriate.

II. Timeliness

Basra contends that the trial court erred in finding his CrR 8.3(b) motion to dismiss to be untimely because the rule does not contain any explicit time limit. CrR 8.3 governs dismissal of a criminal case. Section (b) of the rule provides that "[t]he court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial." CrR 8.3(b).

The appellate court reviews the interpretation of court rules *de novo*. State v. McEnroe, 174 Wn.2d 795, 800, 279 P.3d 861 (2012). We analyze court rules using the principles of statutory construction. *Id.* When interpreting the rules, the court aims to "ascertain and carry out the intent of the drafting body." City of Bellevue v. Hellenthal, 144 Wn.2d 425, 431, 28 P.3d 744 (2001). If the language of a court rule is plain on its face, the court will give effect to that plain meaning and assume it represents the writers' intent. *Id.* To determine the plain meaning of a statute or rule, the court should consider its text, the context of the statute or rule, related provisions, amendments to the provision, and the scheme as a whole. Columbia Riverkeeper v. Port of Vancouver USA, 188 Wn.2d 421, 432, 395 P.3d 1031 (2017).

CrR 8.3(b) does not define "criminal prosecution" or otherwise specify the stage of a case to which it applies. Black's Law Dictionary defines "prosecution" as "[a] criminal proceeding in which an accused person is tried." Prosecution, Black's Law Dictionary (10th ed. 2014). Webster's Dictionary defines "prosecution"

as "the institution and continuance of a criminal suit involving the process of exhibiting formal charges against an offender before a legal tribunal and pursuing them to final judgment on behalf of the state or government." Prosecution, Webster's Third New International Dictionary (3d ed. 1993).

The Washington Supreme Court originally adopted CrR 8.3 in 1973, superseding a statute that had previously outlined the criteria for dismissal of a criminal case. State v. Rohrich, 149 Wn.2d 647, 653 n.3, 71 P.3d 638 (2003). The predecessor statute provided that "[t]he court may, either upon its own motion or upon application of the prosecuting attorney, and in furtherance of justice, order any criminal prosecution to be dismissed." State v. Pringle, 83 Wn.2d 188, 190, 517 P.2d 192 (1973) (citing former RCW 10.46.090 (1973), repealed by Laws of 1984, ch. 76, § 29). In Pringle, the sentencing judge, who had not presided over the case when the guilty plea was entered, deleted language from the portion of the judgment and sentence containing the court's findings. Id. at 189. The judge stated that he was acting within the court's power under former RCW 10.46.090. Id. The Supreme Court considered the meaning of "criminal prosecution" under the statute and found that the trial court was without jurisdiction under RCW 10.46.090 because "the prosecution had been terminated" upon entry of the defendant's voluntary plea of guilty. Id. at 191. A voluntary plea has the same effect as a guilty verdict. Id. The court reasoned that the statute "relate[d] to the dismissal of a 'criminal prosecution' and in no way authorize[d] a sentencing judge to modify a criminal information after the conclusion of the prosecution and after a valid plea of guilty ha[d] been entered." Id. at 190.

We agree with the superior court that the definition of "criminal prosecution" applied in Pringle also applies to the term as it is used in CrR 8.3(b). A criminal prosecution is no longer ongoing post-judgment and therefore is not subject to dismissal under CrR 8.3(b).

Additionally, the Criminal Rules contain a separate section under which a defendant can obtain relief from a judgment or order. A defendant may request relief under CrR 7.8 on a number of bases, including "misconduct of an adverse party" or "[a]ny other reason justifying relief from the operation of the judgment." CrR 7.8(b). This rule specifies time constraints for motions on these grounds and indicates that it is subject to the statutes governing the time for collateral attack. CrR 7.8(b). Any action for post-conviction relief other than a direct appeal is referred to as a collateral attack, including, among others, a personal restraint petition, habeas corpus petition, and motion to vacate judgment. RCW 10.73.090(2). Any petition or motion for collateral attack on a judgment and sentence must be filed within one year after the judgment becomes final, unless the judgment and sentence is invalid. RCW 10.73.090(1). A judgment becomes final when it is filed with the clerk of the trial court, when an appellate court issues a mandate disposing of a timely direct appeal, or when the United States Supreme Court denies a timely petition for certiorari—whichever date is last. RCW 10.73.090(3). Untimely motions for relief from judgment must be transferred to the court of appeals for consideration as personal restraint petitions. CrR 7.8(c)(2).

At oral argument, Basra conceded that the post-judgment motion to dismiss under CrR 8.3(b) could be characterized as a collateral attack because it was not

a direct appeal, but argued that the time limit in RCW 10.73.090 did not apply. Relief by way of a collateral attack is extraordinary. In re Coats, 173 Wn.2d 123, 132, 267 P.3d 324 (2011). The bases and time for collateral attack are limited because “[c]ollateral relief undermines the principles of finality of litigation, degrades the prominence of trial, and sometimes costs society the right to punish admitted offenders.” In re Hagler, 97 Wn.2d 818, 824, 650 P.2d 1103 (1982). Basra’s contention that a post-judgment motion under CrR 8.3(b) is exempt from the general time limits for a collateral attack is inconsistent with these principles. The absence of a cross-reference to RCW 10.73.090 and related statutes in CrR 8.3 is further evidence that it is not intended to be a vehicle for post-judgment collateral attack.

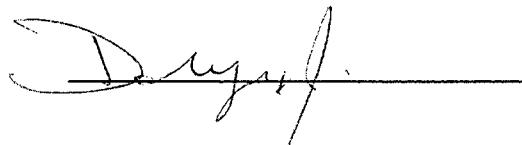
The surrounding provisions of CrR 8.3 support the conclusion that dismissal under CrR 8.3(b) is not intended to be available post-judgment. Section (a) of the rule allows the court to dismiss an “indictment, information or complaint” on the prosecutor’s motion. CrR 8.3(a). Section (c) explicitly sets out a procedure for pre-trial dismissal “due to insufficient evidence establishing a prima facie case of the crime charged.” CrR 8.3(c). The rule does not reference dismissal or vacation of a conviction or judgment.

Despite the form of Basra’s motion as a challenge under CrR 8.3(b), the trial court did not err in initially treating the collateral attack as a CrR 7.8 motion and transferring it to this court. On remand, when directed to analyze the motion as labeled, the superior court properly found that Basra’s criminal prosecution ended well before he filed this motion for dismissal under CrR 8.3(b). Because the

criminal prosecution was not ongoing and Basra had not succeeded in reopening the prosecution by, for example, prevailing on a CrR 7.8 motion, the superior court did not err in dismissing the motion as untimely.

Affirmed.

WE CONCUR:



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FILED
KING COUNTY, WASHINGTON

MAR 12 2018

SUPERIOR COURT CLERK
BY LeAnne Symonds
DEPUTY

SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

vs.

PARAMJIT SINGH BASRA,

Defendant.

Case No. 09-1-05492-1 KNT

**ORDER DENYING CrR 8.3(b)
MOTION TO DISMISS AS
UNTIMELY**

The Court DENIES Defendant Paramjit Singh Basra's CrR 8.3(b) Motion to Dismiss as untimely, as further set forth below.

I. BACKGROUND

On April 2, 2016, Mr. Basra was sentenced for murder in the first degree. Dkt. 175.

On May 4, 2016, Mr. Basra filed a Motion to Dismiss pursuant to CrR 8.3(b). Dkt. 224C.

On May 19, 2016, the Honorable Brian Gain transferred the CrR 8.3(b) Motion to Dismiss to the Court of Appeals pursuant to CrR 7.8(c)(2), concluding that the Motion was time-barred under RCW Section 10.73.090. Dkt. 227.

On July 21, 2017, the Court of Appeals remanded the Motion to Dismiss to the Superior Court "for disposition." Dkt. 235 at 6.

ORDER - I
09-1-05492-1 KNT

King County Superior Court
Maleng Regional Justice Center
401 4th Avenue North, Rm 2D
Kent, Washington 98032
(206) 477-1483

Appendix B

1 **II. FINDINGS AND CONCLUSIONS**

2 **A. The Court May Only Dismiss a “Prosecution” Under CrR 8.3(b)**

3 A trial court, in furtherance of justice, after notice and hearing, “may dismiss any
4 criminal *prosecution* due to arbitrary action or governmental misconduct when there has
5 been prejudice to the rights of the accused which materially affect the accused’s right to a
6 fair trial.” CrR 8.3(b) (emphasis added). However, a trial court does not have the authority
7 to dismiss a criminal prosecution under CrR 8.3 where the prosecution has been terminated.
8 See *State v. Pringle*, 83 Wn.2d 188, 191, 517 P.2d 192 (1973). In *Pringle*, the trial court
9 relied upon now-former RCW Section 10.46.090 to delete language in a judgment and
10 sentence form. *Id.* at 189. That statute provided in relevant part

11 The court may, either upon its own motion or upon application of the
12 prosecuting attorney, and in furtherance of justice, order any criminal
13 *prosecution* to be *dismissed*.

14 *Pringle*, 83 Wn.2d at 190 (quoting RCW § 10.46.090, *repealed* by Laws 1984, ch. 76, §
15 29)) (emphasis added). The trial judge in *Pringle* struck certain language from a judgment-
16 and-sentence form, and the Court of Appeals held that the “judge acted without jurisdiction
17 ... where the *prosecution* had been terminated.” *Id.* at 191 (emphasis added).

18 **B. This Prosecution is Complete, and the Court Lacks Jurisdiction to Consider
19 the CrR 8.3(b) Motion to Dismiss**

20 Here, as in *Pringle*, the “prosecution” has been terminated, and this Court lacks
21 jurisdiction to hear Mr. Basra’s CrR 8.3(b) motion. While CrR 8.3 does not define
22 “prosecution,” the Court of Appeals has defined the term as “‘the institution and
23 continuance of a criminal suit involving the process of exhibiting formal charges against
24 an offender before a legal tribunal and pursuing them to final judgment on behalf of the
25 state or government.’” *Utter v. State Dep’t of Social & Health Servs.*, 140 Wn. App. 293,
304-05, 165 P.3d 399 (2007) (quoting *Prosecution*, Webster’s Third New Int’l Dictionary
1820); *see also id.* at 305 (“[T]he term ‘prosecute’ means ‘[t]o institute and pursue a

1 criminal action against (a person).'" (quoting *Prosecute*, Black's Law Dictionary 1258
2 (8th ed. 2004)); *id.* ("[T]he term 'prosecution' means '[a] criminal proceeding in which an
3 accused person is tried.'" (quoting *Prosecution*, Black's Law Dictionary 1258 (8th ed.
4 2004)). Thus, while Mr. Basra is correct that there is no *express* time-limit in CrR 8.3(b),
5 there is a practical time limit which flows from the rule's application to prosecutions;
6 when the prosecution is over, time is up. Here, the prosecution has long been over, Mr.
7 Basra's CrR 8.3(b) motion is untimely, and the Court lacks the jurisdiction to hear the
8 motion. Without jurisdiction, it follows that the Court's only option is to dismiss the
9 motion as untimely.

10 **C. The Court's Construction is Consistent With the Scheme of the Rules**

11 Furthermore, while the Court concludes that CrR 8.3(b)'s reference to prosecution
12 is unambiguous, even if the Court resorted to the canons of statutory construction, those
13 canons further confirm that Mr. Basra cannot seek dismissal at this point. In determining
14 the plain meaning of a statute (or here, a rule), a court looks at the context of the statute,
15 related provisions, and the statutory scheme as a whole. *E.g., State v. Pinkey*, No. 49261-
16 0-II, 2018 WL 989866, *2 (Feb. 21, 2018) (citation omitted). The Court's construction of
17 CrR 8.3(b) and its limitation to prosecutions is consistent with the overall scheme of the
18 Superior Court Criminal Rules. Shortly before filing his CrR 8.3(b) motion with Judge
19 Gain, Mr. Basra filed a Motion for Relief from Judgment and Sentence pursuant to CrR
20 7.8. Dkt. 218. Judge Gain transferred the CrR 7.8 motion to the Court of Appeals. Dkt.
21 222. CrR 7.8 allows a trial court in relevant part to "relieve a party from a *final*
22 *judgment.*" CrR 7.8(b) (emphasis added). Mr. Basra cannot simultaneously move for
23 relief from a final judgment under CrR 7.8 and dismissal of a prosecution under CrR
24 8.3(b); both cannot be true. Here, the prosecution is over, the judgment is final, and this
25 construction is consistent with the scheme of the rules.

D. The Court's Construction Avoids Absurd Results

Finally, again, while the Court concludes that CrR 8.3(b)'s limit to prosecutions is unambiguous and ends the inquiry (and this Court's jurisdiction), the Court notes that the Court's construction of CrR 8.3(b) also avoids absurd results. *E.g., State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) ("[A] reading that results in absurd results must be avoided.") (citation omitted). In his CrR 8.3(b) motion, Mr. Basra alleges that "[t]he prosecutor had charged the defendant with two different counts of Murder for the same victim committing one act violating Article 1 § 9." Dkt. 224C at 1. The Court of Appeals referred to this argument in 2013. *State v. Basra*, No. 68661-5-I, 2013 WL 6199251, *3 (Nov. 25, 2013). In his CrR 8.3(b) motion, Mr. Basra alleges that "[t]he State Unlawfully convicted this defendant that is illiterate to the English language." Dkt. 224C at 1. The Court of Appeals referred to this argument in 2013. *Basra*, WL 6199251 at *3. In his CrR 8.3(b) motion, Mr. Basra alleges that "[t]he defendant[']s Fifth Amendment Rights were violated during interrogation by investigating officers and were used in court." Dkt. 224C at 1. The Court of Appeals referred to this argument in 2013. *Basra*, WL 6199251 at *3. In his CrR 8.3(b) motion, Mr. Basra alleges that "[t]he Jury Instructions had prejudiced the defendant." Dkt 224C at 1. The Court of Appeals referred to this argument in 2013. *Basra*, WL 6199251 at *3. In his CrR 8.3(b) motion, Mr. Basra alleges that "[t]he Prosecutor had acted vindictively in the Charging of the Defendant in this case." Dkt. 224C at 1. The Court of Appeals referred to this argument in 2013. *Basra*, WL 6199251 at *4. In his CrR 8.3(b) motion, Mr. Basra alleges that "[t]he Attorney of record failed to protect the defendant[']s Sixth Amendment Rights to receive a Fair Trial." Dkt. 224C at 1. The Court of Appeals referred to this argument in 2013. *Basra*, WL 6199251 at *4. Here, at least one absurd result to be avoided is allowing Mr. Basra or any defendant in a criminal case to file a direct appeal from a trial court

1 judgment and then repackage that appeal as a CrR 8.3(b) motion to dismiss a prosecution.
2 Such a result is avoided here by dismissing Mr. Basra's CrR 8.3(b) motion as untimely.
3

4 **III. CONCLUSION**

5 For the foregoing reasons, the Court DENIES Mr. Basra's CrR 8.3(b) motion to
6 dismiss as untimely.

7 **IT IS SO ORDERED.**

8 DATED this 12th day of March, 2018.

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10 
11 David S. Keenan
12 Judge
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FILED
SUPREME COURT
STATE OF WASHINGTON
1/8/2020
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

Department I of the Court, composed of Chief Justice Stephens and Justices Johnson, Owens, González, and Yu (Justice Madsen sat for Justice Yu), considered at its January 7, 2020, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 8th day of January, 2020.

For the Court

Stephan C. J.
CHIEF JUSTICE

APPENDIX C

**Additional material
from this filing is
available in the
Clerk's Office.**