

WSR 25-02-022
RULES OF COURT
STATE SUPREME COURT
[December 5, 2024]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO CrR ) NO. 25700-A-1621
8.3/CrRLJ 8.3—DISMISSAL )

The King County Department of Public Defense, the Washington State Office of Public Defense, the Washington Defender Association, and the Snohomish County Office of Public Defense, having recommended the suggested amendments to CrR 8.3/CrRLJ 8.3—Dismissal, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 5th day of December, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR9 COVER SHEET

A. Name of Proponent: The King County Department of Defense, the Washington State Office of Public Defense, the Washington Defender Association, and the Snohomish County Office of Public Defense.

B. Spokesperson: Matt Sanders, Larry Jefferson, Christie Hedman, and Jason Schwarz

C. Purpose: Empower a judge to dismiss a case in the furtherance of justice by modifying CrR 8.3b to include factors for the Court to consider.

D. Public Hearing: A public hearing is not recommended.

E. Expedited Consideration: Expedited consideration is not requested.

Introduction

The proposed amendment to CrR 8.3 and CrRLJ 8.3, Dismissal, aims to ensure that judges throughout Washington are empowered to dismiss cases in the furtherance of justice. Moreover, the proposed amendment includes factors for the trial court to consider when making a decision whether to dismiss a case due to prosecutorial misconduct or mismanagement.

For 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*. The Court should now amend CrR 8.3(b) to allow for trial courts to dismiss an action in the "furtherance of justice" and recognize, in the words of Justice Utter in his dissent, that courts are not simply "passive instruments of prosecutorial policies." *State v. Starrish*, 86 Wn.2d 200, 214, 544 P.2d 1 (1975).

A broader dismissal rule will ensure that "the broad discretion of prosecutors and the rigidity of aggravated sentencing laws will not combine to reduce judges to the status of mere clerks assigned to stamp and file the decisions of other agencies of government." *Id.* As Justice Utter warned, CrR 8.3(b) "is too important to be so tightly confined as the majority's decision renders it. It should be read as being as broad and flexible as the principles of justice to which it refers, and against which exercise of judicial power should always be measured." *Id.*

This Court can and should authorize courts to use CrR/CrRLJ 8.3(b) as it was intended and as the demands of justice require. In its June 4, 2020 letter to the legal community, the Court wrote that we:

continue to see racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems. The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will.

The Court should act to amend CrR/CrRLJ 8.3 to ensure that the court can act in the "furtherance of justice" and consider specific factors when evaluating whether to dismiss a case due to prosecutorial mismanagement or misconduct.

Other jurisdictions have court rules allowing dismissal in "the furtherance of justice."

Other jurisdictions provide judges with greater discretion to dismiss a criminal case in the furtherance of justice. These dismissal authorities vary in terms of procedural details - such as whether they require a motion from the defense, a written entry as to reason into the record, or notice to all parties - but they all allow for broader discretion than Washington for courts to dismiss charges. One court examined similar rules across the country and explicitly rejected Washington's narrow approach to CrR 8.3, describing it as "[p]erhaps the most limited application" among the states. See *State v. Brumage*, 435 N.W. 2d 337, 340 (Iowa 1989).

In Idaho, Criminal Rule 48 allows -

**a) Dismissal on Motion and Notice.** The court, on notice to all parties, may dismiss a criminal action on its own motion or on motion of any party on either of the following grounds:

(1) for unnecessary delay in presenting the charge to the grand jury or if an information is not filed within the time period prescribed by Rule 7(f), or for unnecessary delay in bringing the defendant to trial, or

**(2) for any other reason if the court concludes that dismissal will serve the ends of justice and the effective administration of the court's business.**

(emphasis added).

In Ohio, Criminal Rule 48(B) provides that: "[i]f the court over objection of the state dismisses an indictment, information, or complaint, it shall state on the record its findings of fact and reasons for the dismissal." The Ohio Supreme Court has held that the rule

"does not limit the reasons for which a trial judge might dismiss a case, and we are convinced that a judge may dismiss a case pursuant to Crim.R. 48(B) if a dismissal serves the interests of justice." *State v. Busch*, 76 Ohio St.3d at 615 (1996). In Iowa, trial courts are vested with authority to dismiss criminal charges under Rule of Criminal Procedure 27(1), which provides:

The court, upon its own motion or the application of the prosecuting attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a simple or serious misdemeanor; but it is not a bar if the offense charged be a felony or an aggravated misdemeanor.

The Iowa Supreme court interpreted this rule in *State v. Brumage*, 435 N.W.2d 337, 339-41 (Iowa 1989), and found that "[a] trial court's authority to dismiss under Rule 27(1) is limited by the general phrase 'in the furtherance of justice'... We hold that our trial court should dismiss only after considering the substantive rights of the defendant and the interests of the state."

In New York State, Criminal Procedure Law Section 170.40 delineates a number of factors for the Court to consider in evaluating whether to dismiss a case "in the interest of justice" due to "some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such accusatory instrument or count would constitute or result in injustice." The trial court is required to consider the following factors:

- (a) the seriousness and circumstances of the offense;
- (b) the extent of harm caused by the offense;
- (c) the evidence of guilt, whether admissible or inadmissible at trial;
- (d) the history, character and condition of the defendant;
- (e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
- (f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;
- (g) the impact of a dismissal on the safety or welfare of the community;
- (h) the impact of a dismissal upon the confidence of the public in the criminal justice system;
- (i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;
- (j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

Considering these factors (understanding that New York's rule relates to dismissal in the "interests of justice" rather than "arbitrary action or governmental misconduct") along with the practice in other states, Washington state judges should consider the following factors when deciding motions made pursuant to CrR 8.3(b)/CrRLJ 8.3(b):

- (1) the seriousness and circumstances of the offense;
- (2) the impact of a dismissal on the safety or welfare of the community (the defendant is part of the community);
- (3) the impact of a dismissal or lack of dismissal upon the confidence of the public in the criminal justice system;
- (4) the degree and impact of the arbitrary action or governmental misconduct.

Proposed Amendments to CrR 8.3 and CrRLJ 8.3

**CrR 8.3  
DISMISSAL**

(a) [Unchanged.]

(b) On Motion of Court. The 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.~~ In deciding whether to dismiss, the court shall consider the following factors in addition to any other information the court believes is relevant to the inquiry:

- (1) the seriousness and circumstances of the offense;
- (2) the impact of a dismissal on the safety or welfare of the community (the defendant is part of the community);
- (3) the impact of a dismissal or lack of dismissal upon the confidence of the public in the criminal justice system;
- (4) the degree and impact of the arbitrary action or governmental misconduct.

The court shall set forth its reasons in a written order.

(c) [Unchanged]

**CrRLJ 8.3  
DISMISSAL**

(a) [Unchanged.]

(b) On Motion of Court. The 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.~~ In deciding whether to dismiss, the court shall consider the following factors in addition to any other information the court believes is relevant to the inquiry:

- (1) the seriousness and circumstances of the offense;
- (2) the impact of a dismissal on the safety or welfare of the community (the defendant is part of the community);
- (3) the impact of a dismissal or lack of dismissal upon the confidence of the public in the criminal justice system;
- (4) the degree and impact of the arbitrary action or governmental misconduct.

The court shall set forth its reasons in a written order.

(c) [Unchanged]