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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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90355-7

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	
)	
Appellant,)	No. <u>69154-6</u>
)	
vs.)	MOTION FOR
)	DISCRETIONARY REVIEW
S.J.C,)	
)	
Respondent.)	
)	
)	
)	

1. IDENTITY OF MOVING PARTY

Petitioner, the State of Washington, seeks the relief designated in part 2.

2. STATEMENT OF RELIEF SOUGHT

The State requests that this Court grant discretionary review pursuant to RAP 2.3(b)(1), (2).

3. FACTS RELEVANT TO MOTION

S.J.C. pled guilty to two counts of assault in the fourth degree with sexual motivation. After successfully completing the condition of his sentence, he moved to seal his juvenile offender

records under RCW 13.50.050(11), and (12)(a). The State argued that the records could not be sealed without meeting the requirements of Art. I § 10, Seattle Times v. Ishikawa, 97 Wn2d 30, 640 P.2d 716 (1982), State v. Waldon, 148 Wn. App. 952, 967, 202 P.3d 325 (2009), and GR 15. The trial court disagreed, ruling that "Ishikawa and Waldon do not apply to motions to seal under RCW 13.50.050(11) and (12)."

4. GROUNDS FOR RELIEF AND ARGUMENT

The trial court's ruling qualifies for review under RAP 2.3(a),(b). The decision is clearly or probably incorrect and further proceedings on the issue of access to the public record are useless, absent a change in circumstances.

The state constitution and procedural rules of the superior court all require that documents be filed to ensure the open administration of justice, and to ensure an adequate basis for appellate review. The state constitution mandates that "justice shall in all cases be administered openly. . . ." Art. I, § 10. "All pleadings

and papers . . . required to be served upon a party shall be filed with the court either before service or promptly thereafter.” CR 5(d)(1). Moreover, “[i]t is the policy of the courts to facilitate access to court records.” GR 31(a). “Court records” include any documents that are “maintained by the court in connection with a judicial proceeding.” GR 31(c)(4).

The Supreme Court and this Court have both made it clear that documents considered by a court should not be kept from public view unless specific findings are made. State v. Bone-Club, 128 Wn.2d 254, 258-59, 261, 906 P.2d 325 (1995); State v. Waldon, 148 Wn. App. 952, 967, 202 P.3d 325 (2009). Most recently, this court reiterated that openness is the default and that records can be sealed only under unusual circumstances, and never as a blanket matter. Hundtofte v. Encarnacion, ___ Wn. App. ___, 280 P.3d 513 (July 16, 2012).

The trial court's ruling in this matter states as a categorical rule that constitutional analysis for open records does not apply to a motions to seal juvenile records under the pertinent statute. This

ruling plainly violates the precedents cited above. It keeps from public view documents considered by the court, and does so categorically and absolutely. Under the trial court's ruling, all juvenile court records are except from the constitutional analysis. The ruling thwarts the careful balancing of constitutional interests required by Supreme Court precedent.

For these reasons, the trial court's order is fundamentally flawed; review is appropriate.

For these reasons, the State respectfully asks this Court to grant discretionary review pursuant to RAP 2.3(b)(1) and (2).

Submitted this 13th day of August, 2009.

Norm Maleng
Prosecuting Attorney



JAMES M. WHISMAN, WSBA #19109
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

MOTION FOR
DISCRETIONARY REVIEW

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David S. Marshall, the attorney for the appellant, at 1001 Fourth Avenue, 44th Floor, Seattle, WA 98154-1192, containing a copy of the Motion for Discretionary Review, in STATE V. S.J.C., Cause No. 69154-6-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

U Brame
Name
Done in Seattle, Washington

8/13/12
Date 8/13/12