

**SAN JUAN COUNTY DISTRICT COURT**

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**Stewart R. Andrew**  
Judge

**Melissa I. Derksema**  
Court Administrator

July 26, 2018

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**RE: In re the Application for a Citizen Complaint, Gerald Grellet-Tinner, Petitioner,  
Decision on Reconsideration – Supplemental Decision**

Dear Counsel:

The court issued its letter decision in this case on June 20, 2018. The petitioner filed a Motion to Reconsider and to Supplement the Record on June 26, 2018. The Court of Appeals, Division II issued its opinion In the Matter of the Petition of BARNES MICHAEL WARE, to Convene a Grand Jury 50285-2-II, consolidated with: In the Matter of the Application of ERIKA JOHNSON for a Citizen's Complaint 50877-0-II, Slip Opinion filed June 26, 2018, (hereinafter referred to as The Matter of the Application of Johnson). The Criminal Justice Training Commission (CJTC) filed its "Order of Default and Final Order Revoking [Mr. Parker's] Peace Officer Certification" on June 26, 2018.

The petitioner's motion was heard on July 17, 2018. The court's Decision on Reconsideration is intended to supplement its earlier decision dated June 20, 2018, and to supersede the seven Factors findings contained therein. This decision will address the issues raised as follows:

1. Effect of the Court of Appeals Opinion in The Matter of the Application of Johnson;
2. Probable Cause and Venue for Obstructing a Law Enforcement Officer; and,
3. Petition to File Citizen's Complaint. CrRLJ 2.1(c) 7 Factors.

**1. Effect of the Court of Appeals Opinion in The Matter of the Application of Johnson**

The Court of Appeals upheld the Lewis County District Court's denial of a Petition to File a Citizen Complaint under CrRLJ 2.1(c). In so doing the Court of Appeals stated that the District Court's decision was subject to a RALJ Appeal and the standard of review on appeal was for abuse of discretion. The Court of Appeals also endorsed the District Court's findings that the Lewis County Prosecuting Attorney had conducted a thorough investigation of the circumstances involved in the petition and that there had been no willful disregard by the prosecutor of his oath or obligations generally.

**2. Probable Cause and Venue for Obstruction of a Law Enforcement Officer**

The court previously found probable cause for Making a False or Misleading Statement to a Public Servant, RCW 9A.76.175 only.

At the first hearing, the deputy prosecutor offered State v. Williamson, 171 Wn.2d 474 (2011) and Mr. Parker's counsel offered State v. Budick, 173 Wn.2d 727 (2012) both for the proposition that more than a simple false statement to a Law Enforcement Officer was needed to support a charge of Obstructing a Law Enforcement Officer. At the time the petitioner failed to address this issue in his Reply Brief and the court declined to find probable cause for Obstructing a Law Enforcement Officer.

The petitioner asks to supplement the record to show that Mr. Parker threatened Ms. Garcia with deportation if she did not recant her statement that she and Mr. Parker had a sexual relationship. The court will supplement the record and find probable cause to believe Mr. Parker committed the crime of Obstructing a Law Enforcement Officer, RCW 9A.76.020; the Petitioner will be allowed to amend his affidavit. Finding probable cause requires a further review of the venue question.

Mr. Parker's Counsel argued that venue should be in Skagit County. The False or Misleading Statement by Mr. Parker was first made in Skagit County in Skagit County Sheriff's Deputy Lori Sigman's office. She asked him to put his statement in writing. He signed his statement in San Juan County and mailed it to her in Skagit County. Deputy Sigman led the investigation into Mr. Parker's conduct. Other Skagit County Sheriff's Deputies were involved. After reviewing the investigation of the Skagit County Sheriff, the Skagit County Prosecutor declined to file felony charges.

To convict Mr. Parker, the jury would have to find that the acts constituting Obstructing a Law Enforcement Officer occurred in San Juan County. It is probable that if a complaint is filed in San Juan County, the defense's first motion will be to transfer venue to Skagit County because of the extensive adverse publicity the case has received locally. It is quite possible the case would be transferred to Skagit County.

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It is evident venue is more appropriate in Skagit County. Petitioner's response is that venue is proper in either county and he chooses San Juan. The deputy prosecutor acknowledges that the petitioner is correct. The court finds that venue is proper in either San Juan or Skagit County.

**3. Petition to File Citizen's Complaint. CrRLJ 2.1(c) Factors**

The court's decision on the seven factors below applies to both charges presented. **The findings concerning the factors contained here supersede those in the court's earlier letter decision dated June 20, 2018.** The court's review of the seven factors follows:

**(1) Whether an unsuccessful prosecution will subject the State to costs or damage claims under RCW 9A.16.110, or other civil proceedings;**

An unsuccessful prosecution would cost the State but the court does not believe it would subject it to a damage claim under RCW 9A.16.110, or other civil proceedings.

**(2) Whether the complainant has adequate recourse under laws governing small claims suits, anti-harassment petitions or other civil actions;**

A criminal charge would not result in monetary compensation to the petitioner. The petitioner has filed a \$10,000,000 tort claim against the county. Presumably, if not settled, this claim will become a lawsuit. The petitioner has an adequate civil remedy for his lost reputation and liberty.

**(3) Whether a criminal investigation is pending;**

The court is not aware of any pending criminal investigation regarding Mr. Parker's conduct. The investigation referred to above concluded some time prior to the Skagit County Prosecutor declining to prosecute Mr. Parker by letter dated January 3, 2017. Thereafter, the San Juan County Sheriff prepared a document entitled "Misconduct by Stephen G. Parker" for the Criminal Justice Training Commission (CJTC), dated January 24, 2017. The misconduct described by the Sheriff is more detailed and expansive than the conduct referred to in the petition.

The Criminal Justice Training Commission filed a "Statement of Charges" against Mr. Parker on April 19, 2018. Count I is Failure of Duty and/or Official Misconduct RCW 42.20.100, RCW 9A.90.010 and Count II is Making a False or Misleading Statement to a Public Servant and/or False Swearing RCW 9A.76.175, RCW 9A.72.040. Count II in the CJTC document is the same as Count II in the Petition herein.

The CJTC filed its "Order of Default and Final Order Revoking Peace Officer Certification" on June 26, 2018. The court supplements the record to include the CJTC order. The

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order revokes Mr. Parker's Peace Officer Certification. While not a criminal proceeding, the revocation of Mr. Parker's Peace Officer Certification terminates his career in law enforcement in Washington, and as a practical matter, any other state.

The CJTC establishes training programs for, and certifies, law enforcement officers in Washington. It serves the public's interest in having properly trained and certified peace officers with ethics and integrity appropriate to their office. Revoking Mr. Parker's peace officer credential protects the public and deters similar conduct by other law enforcement officers.

**(4) Whether other criminal charges could be disrupted by allowing the Citizen Complaint to be filed;**

There are no other criminal charges pending.

**(5) The availability of witnesses at trial;**

The petitioner did not provide a list of witnesses he believes would be called to testify at trial. Ms. Garcia continues to live in the county. The Skagit County Prosecutor declined to participate in this proceeding, but presumably, the Skagit County employees who would be called to testify, continue to be available.

Mr. Parker lives in Florida. His Washington attorney appeared at the first hearing on May 30, 2018. He gave the impression that Mr. Parker would not be returning to Washington. Mr. Parker did not respond to the CJTC Statement of Charges. He allowed his Peace Officer Certification to be revoked. There is little reason to believe that Mr. Parker will return to San Juan County should the court permit the Citizen Complaint to be filed. If filed and the prosecutor chooses to pursue the charges, it is likely a bench warrant would be issued when Mr. Parker failed to respond to a summons on the complaint. The court is unaware of a case where the prosecutor has pursued extradition for a gross misdemeanor charge. The cost would be considerable. It is unlikely the prosecutor would do so in this case.

The petitioner suggests that, "... the issuance of the warrant would likely dissuade Parker from returning to the State and would prevent the citizens of Washington from being placed in danger by his presence in Washington." It is not Mr. Parker's presence in Washington that endangers Washington citizens; it is the authority he exercises if he is employed as a law enforcement officer. The CJTC revocation of his peace officer certification better protects Washington citizens than a bench warrant for a case that starts old and will only grow older

- (6) **The criminal record of the complainant, potential defendant and potential witnesses, and whether any have been convicted of crimes of dishonesty as defined by ER 609; and,**

The court is not aware of any prospective witnesses having criminal convictions for crimes of dishonesty.

- (7) **Prosecution standards under RCW 9.94A.440 (Recodified 9.94A.441).**

#### **Re-Victimization of Ms. Garcia**

The deputy prosecutor stated that the primary reason for not filing charges against Mr. Parker was that Ms. Garcia (the victim in the earlier case) would be re-victimized. The deputy prosecutor stated it would be a cruel thing to do. The court notes that the petitioner's trial had to be recessed at one point to allow her to recover her composure after she broke down while on the stand as she recounted having sex with the petitioner.

Deputy Sigman's initial investigation (report dated August 23, 2016) notes that Ms. Garcia admitted a sexual relationship with Mr. Parker and then recanted that position. When Ms. Garcia was interviewed on Orcas Island on September 25, 2016 she again admitted and described the relationship in greater detail. Also, at that same interview, despite all that had happened, she stated that she liked both the petitioner and Mr. Parker and did not want either of them to get into trouble.

The petitioner points out that Ms. Garcia had not recanted since her September 2016 interview. The Victim Advocate that helped her in the first trial is no longer employed by the county. It is not known if Ms. Garcia will cooperate with the prosecution of Mr. Parker two years later. The petitioner asked the court to require her presence at a hearing to ascertain her position. The court denies the request.

Ms. Garcia has given inconsistent statements regarding her relationship with Mr. Parker. If a complaint was filed and a trial ensued, she would be subjected to a lengthy pre-trial interview by Mr. Parker's attorney as well as a lengthy cross-examination at trial. She would be portrayed in an extremely negative light. Her experience at the second trial could easily be more difficult than her first. On this issue the Petitioner responded only that Ms. Garcia was an adult.

#### **Motives of the Petitioner**

At the first hearing the deputy prosecutor took the position that petitioner's \$10,000,000 tort claim against the county was evidence of financial bias that extended to his counsel. The filing of a complaint against Mr. Parker could conceivably improve the petitioner's position in tort claim turned lawsuit.

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The petitioner argues in his Motion for Reconsideration that his motive for filing a tort claim is irrelevant under CrRLJ 2.1(c). The deputy prosecutor raised motive as a factor to be considered under RCW 9.94A.411 which is incorporated by reference into CrRLJ 2.1(c). Motive of the petitioner is therefore an appropriate factor to consider. The petitioner also argues that there is no evidence in the record to support a finding that his motive for filing a Citizen Complaint is improper.

The petitioner compares the situation to a DUI case where there is a criminal prosecution of the driver and a civil suit by an injured party. The comparison is apt except that the plaintiff in the civil suit is not also the party that files the complaint in the criminal prosecution. If a prosecutor is financially interested in the outcome of a civil suit, that prosecutor could not be involved in a criminal charging decision regarding the same defendant in the civil suit.

The petitioner devoted a substantial amount of time and briefing to persuade the court that the prosecutor's office should be disqualified from participating in this proceeding. At some point in the June 20 hearing, the deputy prosecutor pointed out that if the prosecutor's office was disqualified, and the court permitted the Citizen Complaint to be filed, there would be no one to prosecute the case, a result she called absurd. Yet that result was acceptable to the petitioner. The court will note that if it had granted the motion to disqualify, it would also have denied the petition as being a waste of court and judicial resources.

At another point in the June 20 hearing, the petitioner stated that he wanted the complaint filed so that the elected Prosecutor would have to decline to prosecute on the record, or in the eyes of the public. This is the most concise statement regarding the petitioner's reason for filing his petition. That purpose was achieved when the deputy prosecutor stated that if the Citizen Complaint was filed, they would decline to prosecute.

The petitioner has offered a detailed timeline with numerous and voluminous exhibits, together with a narrative to support: (1) his previously filed tort claim against the county, and, (2) his position that the prosecutor has improperly failed to file charges against Mr. Parker. At the hearing on the motion to reconsider he argued that the Sheriff and elected Prosecutor did not want Mr. Parker prosecuted because the circumstances surrounding the hiring of Mr. Parker will come to light. There is no evidence to support this assertion in the record.

Assuming the information contained in a Seattle Times article, referred to several times by the petitioner, is reliable, it shows it is likely that the San Juan and Skagit County Prosecutors misunderstood each other. The article references the Skagit County Prosecutor indicating perjury should be charged by the San Juan County Prosecutor. And

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then the San Juan County Prosecutor is quoted as saying he was disappointed that perjury was not charged by the Skagit County Prosecutor.

The deputy prosecutor stated that their office believed the Skagit County Prosecutor's January 3, 2017 decision not to prosecute applied to all crimes both felony and misdemeanor. This is confirmed and was explained to the county council by the elected Prosecutor. The investigation was given to another county prosecutor and part of making that referral is to respect the decision of the county prosecutor declining to bring charges against Mr. Parker. A misunderstanding between elected prosecutors does not establish a conspiracy by the Sheriff and the elected Prosecutor to shield their conduct from public view.

The court has previously described why Skagit was a better county to file this Citizen Complaint. Perhaps the most significant reason to file the petition in Skagit County would be to eliminate the need to move to disqualify the Prosecutor's Office. The petitioner was asked why he did not file his petition in Skagit County. He offered only that venue was proper in either San Juan or Skagit County. Filing in San Juan County makes more sense if the petitioner's purpose was to disqualify the prosecutor's office in the case in San Juan County. The petitioner's focus on the elected Prosecutor's prior conduct fails to address in any substantial way the reasons given by the deputy prosecutor for not filing a Citizen Complaint against Mr. Parker.

#### **Age of the Case**

The deputy prosecutor stated she had prosecuted more than 2,000 misdemeanor and gross-misdemeanor cases in her career and that in only one other case did she file a complaint for conduct that had occurred 18 months earlier.

The deputy prosecutor's statement was made in the context of the lateness of the petitioner's request, implying he could have filed his petition soon after the Skagit County Prosecutor declined to prosecute Mr. Parker in January 2017. The petitioner argues that the prosecutor's decision not to file charges earlier is the reason the case is old.

Whether the petitioner could have filed this petition soon after January 2017 after the Skagit County Prosecutor declined to file charges against Mr. Parker, or, whether the San Juan County Prosecutor could have stepped in and filed these charges after the Skagit County Prosecutor declined to do so is not the issue. The fact is that the lapse of time between the petition and the conduct in question is a factor weighing against filing charges.

#### **CONCLUSION**

The court previously found that the Prosecutor's Office had shown no bad faith or inappropriate reasons for not filing charges against Mr. Parker. After reviewing the Court of Appeals' opinion

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in The Matter of the Application of Johnson, and the record in the present case, the court finds that the case was thoroughly investigated and that there has been no showing of a willful disregard by the Prosecutor's Office of any oath or obligation.

The Prosecutor's Office takes the position that pursuant to RCW 9.94A.411 that the re-victimization of Ms. Garcia, the motives of the petitioner, and the passage of time, taken together, justify not filing a Citizen Complaint against Mr. Parker. The court agrees.

After considering in addition the factors described in CrRLJ 2.1(c), including the factors listed under RCW 9.94A.411, the court concludes the filing of a Citizen Complaint is not justified. The Petition to File a Citizen's Complaint against Mr. Parker is denied.

Thank you.

Sincerely,



Stewart R. Andrew  
District Court Judge