always Appealing: Washington Supreme Court Divides on Balancing Finality and Error Correction

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Washington Supreme Court Divides on Balancing Finality and Error Correction

By Ian C. Cairns

"Always Appealing" is a column addressing current issues in appellate practice and recent appellate cases written by the lawyers of Smith Goodfriend, P.S., a Seattle law firm that limits its practice to civil appeals and related trial court motions practice.

In recent months, the Washington Supreme Court issued two opinions balancing competing goals at the core of our judicial system — our desire for finality and our desire for correct decisions. In both cases, all of the justices agreed there was an error but disagreed over what, if anything, to do about it. The majority in each case held the Court could and should address the error. The dissenting justices believed that principles of finality precluded relief. Below I discuss these cases and then offer my observations about why I believe the argument for valuing error correction over finality was much stronger in one of them.

The first case is State v. Wallahee, decided in May of this year.1 In Wallahee, the Estate of a deceased citizen of the Yakama Nation, Clyde Wallahee, sought to vacate the 1924 conviction of his family member, Jim Wallahee, for violating

game laws by killing a deer on ceded Yakama land.2 More specifically, the attorney for Clyde Wallahee's Estate filed a motion to intervene in the Supreme Court's original case affirming Jim Wallahee's conviction in a 1927 opinion, and a motion to withdraw the mandate in that case and vacate the conviction.3 The case thus raised three issues: 1) whether the Estate could intervene in the original case, 2) whether the Estate had standing to seek vacation of the conviction, and 3) whether the Court could recall its mandate nearly a century after issuing it.

The majority opinion, authored by Chief Justice Gonzalez, answered "yes" to these questions. Regarding intervention, the majority reasoned the attorney representing Clyde Wallahee's Estate had "represented the family's efforts in the past and we have been given no reason to believe he is not properly continuing to do so now."4 As to standing, the majority noted that "[s]tanding requirements are relaxed in cases of serious public importance" and held that the Estate had standing given "we are faced with a clear violation of a treaty right" and that "[b]oth this court and the legislature have recognized that this is the sort of wrong that demands a remedy."5 Regarding the mandate, the majority acknowledged that RAP 12.9 provides narrow grounds for recalling a mandate but then explained that under RAP 1.2(c) it can "waive or modify our rules in order to serve the needs of justice" and that it was necessary to do so because the Court had a "duty to explicitly repudiate" "the belief that Native Americans lack basic human and equal rights and therefore treaties with them may be disregarded."6

The dissent, authored by Justice Madsen and joined by Justice Stephens, agreed that the Court's 1927 opinion affirming Jim Wallahee's conviction was an "injustice."7 The dissent argued, however, that "while it is important to acknowledge injustice, it is also important to consider what tools we use to address it."8 The dissent disagreed that RAP 1.2(c) provided standing, stating "there is no cognizable interest protected by statute or rule in this case" and that "RAP 1.2(c) does not confer a freestanding right for a party to prosecute a claim."9 The dissent also argued that while its 1927 opinion was "incorrect and offensive,"10 the Court was "precluded from recalling a mandate to reexamine a cause on the merits for the purpose of granting supplemental relief."11

Two months after Wallahee, the Supreme Court decided In re Fletcher, again pitting finality against error correction.12 In Fletcher the Court reviewed a personal restraint petition (PRP) filed by Olajide Fletcher, who shot his girlfriend in the legs five times.13 Fletcher entered a “Alford/Newton” plea (a plea without admission of guilt) to charges of second degree assault and unlawful possession of a firearm, and agreed to an exceptional sentence of 120 months (the statutory maximum for both crimes).14 Because Fletcher filed his PRP more than one year after his judgment and sentence (J&S) became final, he was required to demonstrate that the J&S was facially invalid.15 Fletcher argued the J&S was facially invalid because the offender score used to calculate his standard sentencing range erroneously included two prior juvenile adjudications.16

As in Wallahee, all of the justices agreed there was an error — Fletcher’s offender score and standard sentencing range had in fact been miscalculated and the standard sentencing range should have been 50 months lower. But the justices again disagreed about whether to correct error.

The majority opinion, written by Justice McCloud, held that the J&S was facially invalid, i.e., was “imposed in excess of the court’s statutory authority,” because it was “based on an upwardly miscalculated offender score.”17 The majority emphasized Fletcher’s standard sentencing range “was much higher than it should have been”18 and that “the magnitude of the error was startling” because it “reflects a standard range . . . that is more than three times the standard range actually permitted.”19 The majority rejected the argument that Fletcher’s PRP should be denied because he stipulated to an exceptional sentence, stating “stipulation or not, the sentencing judge remains the one responsible for deciding whether to depart from the standard range and, if so, by how much”20 and that the judge “could not possibly do that in a fair, statutorily authorized, or reliable way given the extreme miscalculation of Fletcher’s offender score and standard sentence range.”21

Fletcher had two dissenting opinions, one authored by Justice Stephens and joined by Justice Madsen, and another written by Chief Justice Gonzalez and joined by Justice Yu. Justice Stephens started her dissent by stating “[r]espect for the finality of judgments is a cornerstone of our legal system.”22 Justice Stephens argued that while courts “strive to avoid errors, and the appellate process serves

to correct mistakes that are timely identified,”23 an “erroneous judgment and sentence . . . must be final after a point in time.”24 Justice Stephens would have held that the J&S was not facially invalid because the sentencing judge “had authority to impose the agreed-to exceptional sentence that complied with the purposes of the SRA.”25

In his dissent, Justice Gonzalez stressed that “Fletcher bargained for, and received, an exceptional sentence above the standard range in return for the State’s agreement to significantly reduce the original charges, to not file additional charges, and to not file charges against his girlfriend.”26 Justice Gonzalez then stated that “[h]ad Fletcher not stipulated to an exceptional sentence . . . I would concur with the majority that his judgment and sentence is not valid.”27 Justice Gonzalez also addressed finality and error correction, stating that while he was “disturbed that this sentencing error has no remedy,”28 “[i]n the absence of an exception or exemption to the time bar, whether there was an error and whether that error was prejudicial is irrelevant to the result.”29

Wallahee and Fletcher highlight the perpetual challenge courts, especially appellate courts, face in weighing error correction (and ultimately justice) versus finality. Giving this weighty topic the treatment it deserves is far beyond the scope of this column.30 Nonetheless, I offer some humble observations about Wallahee and Fletcher and, in particular, explain why I believe four distinctions between them make the argument for favoring error correction over finality much stronger in Wallahee.

First, and perhaps most obviously, there is a stark contrast in the underlying conduct at issue in Wallahee and Fletcher. Jim Wallahee committed no crime but exercised “a clear and enforceable treaty right to hunt,”31 while Fletcher “shot [his girlfriend] in the legs five times.”32

Second, in Wallahee the Estate sought to address a broad societal injustice — a decision founded on “the belief that Native Americans lack basic human and equal rights”33 — while in Fletcher the petitioner sought resentencing for himself.34 The Wallahee majority emphasized this point, stating the erroneous conviction was “a matter of public importance”35 and, in an apparent jab at the dissent, that the Court’s 1927 “decision can be characterized as an instructive feature of the past only by those who do not feel its sting in the present.”36

Third, while Washington law has specific mechanisms for correcting errors in criminal sentences, it has no obvious mechanism for correcting a nearly century old hunting conviction premised on "many centuries' worth of harmful tropes about Native Americans."37 It is thus difficult to fault the Estate for not doing more to correct the injustice of Jim Wallahee's conviction, especially considering the Supreme Court denied Clyde Wallahee's previous attempt to vacate the conviction. In contrast, Fletcher filed a PRP more than five years after the one-year deadline in RCW 10.73.090(1).

Fourth, the potential adverse consequences of disturbing finality were more perceptible in Fletcher than in Wallahee. In Wallahee the dissent cited a general concern that the majority had undermined "our responsibility to decide cases for the collective citizens of this state, not just for the individual" but did not link that concern to any specific consequences.38 In contrast, the dissent in Fletcher pointed to "the number of sentences — going back decades — that contain criminal history points invalidated by this court's decision in State v. Blake" to argue "[t]he impact of the majority's holding will be far reaching, requiring courts to reopen final judgments that remain valid and lawful despite a scoring error."39

If nothing else, Wallahee and Fletcher demonstrate reasonable jurists can disagree on how to weigh finality and error correction. It will be interesting to see if our Supreme Court continues to value error correction over finality and, if not, what changes its mind.

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1 State v. Wallahee, 3 Wn.3d 179, 548 P.3d 200 (2024).

2 See State v. Wallahee, 143 Wash. 117, 255 P. 94 (1927).

3 3 Wn.3d at 184-85, ¶¶8-9. This was not Clyde Wallahee's first attempt to vacate Jim Wallahee's conviction; he had brought an identical motion prior to his death, which the Supreme Court denied in 2005. 3 Wn.3d at 184-85, ¶8.

4 3 Wn.3d at 185, ¶9.

5 3 Wn.3d at 185-87, ¶¶10-15 (citing State v. Towessnute, 197 Wn.2d 574, 486 P.3d 111 (2021); RCW 9.96.060(4)). As acknowledged by the majority, the Estate

did not rely on RCW 9.96.060(4) for standing because the statute allows vacation of convictions for fishing violations, not hunting violations. 3 Wn.3d at 187, ¶14.

6 3 Wn.3d at 187-89, ¶¶16-19.

7 3 Wn.3d at 190, ¶22.

8 3 Wn.3d at 190, ¶22.

9 3 Wn.3d at 192, ¶29.

10 3 Wn.3d at 195, ¶35.

11 3 Wn.3d at 194, ¶33. The dissent also questioned whether "overturning and removing" its prior decision was the best method of addressing the injustice of Jim Wallahee's conviction, expressing concern that "destroying physical evidence that this court has discriminated against Native people" would "eas[e] the way for future generations to look back and conclude that it never existed at all." 3 Wn.2d at 197, ¶38. It is not clear, however, that the Court's recall of the mandate and withdrawal of its 1927 opinion "removed" or "destroyed" it; the opinion remains accessible on Westlaw at least.

12 In re Fletcher, __ Wn.3d __, 552 P.3d 302 (2024).

13 552 P.3d at 304, ¶¶5-6.

14 552 P.3d at 304-05, ¶¶8-9.

15 552 P.3d at 308, ¶31 (citing RCW 10.73.090(1)). Fletcher did not argue that any of the exceptions to the time bar listed in RCW 10.73.100 applied. 522 P.3d at 308, ¶31.

16 552 P.3d at 305, ¶13.

17 552 P.3d at 308-09, ¶33.

18 552 P.3d at 303, ¶1 (emphasis in original).

19 552 P.3d at 311, ¶44 (emphasis in original).

20 552 P.3d at 311, ¶49.

21 552 P.3d at 304, ¶4.

22 552 P.3d at 316, ¶76.

23 552 P.3d at 316, ¶76.

24 552 P.3d at 323, ¶108.

25 552 P.3d at 321, ¶100.

26 552 P.3d at 324, ¶111.

27 552 P.3d at 324, ¶112.

28 552 P.3d at 325, ¶117.

29 552 P.3d at 324, ¶114.

30 As one author put it, “the epitome of tension in the appellate review process” is “balancing the competing interests of finality and justice.” Major Terri J. Erisman, Defining the Obvious: Addressing the Use and Scope of Plain Error, 61 A.F. L. Rev. 41, 43 (2008).

31 3 Wn.3d at 181, ¶1.

32 552 P.3d at 304, ¶6.

33 3 Wn.3d at 189, ¶19.

34 552 P.3d at 316, ¶74.

35 3 Wn.3d at 187, ¶14.

36 3 Wn.3d at 189, ¶21.

37 3 Wn.3d at 188, ¶18. As noted above, RCW 9.96.060(4) provides for vacation of convictions for fishing violations but not hunting violations.

38 3 Wn.3d at 190, ¶24 (Madsen, J., dissenting).

39 552 P.3d at 316, ¶76, & n.1 (Stepehns, J., dissenting).