**FULLFILLING THE PROMISE OF GIDEON**

**USE OF WRITS OF HABEAS CORPUS, RCW 7.36**

**AND THE INTERLOCUTORY WRITS, RCW 7.16**

Chris Jackson

The Defender Association

September 23, 2014

**WHAT ARE WRITS? A BRIEF HISTORY LESSON**

Writs are powerful procedural mechanisms to secure relief from certain types illegal actions, most often by government actors. These tools can be used to vindicate your client’s rights and protect your client from the unlawful conduct of judges, prosecutors, jails, and probation officers. Superior courts have original jurisdiction to hear most types of writs. Wash. Const. Art. IV, Section 6.

SECTION 6 JURISDICTION OF SUPERIOR COURTS. . . . The superior court shall have original jurisdiction . . . ***for such special cases and proceedings*** as are not otherwise provided for. . . . . They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. . . . Said courts and their judges shall have power to issue ***writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus***, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

There are two categories of writs: the common law writs and the statutory writs. The statutory writs provide relief in most circumstances covered by the common law writs and are the subject of this CLE. But it is important to know the different types of writs and their scope because cases discussing writs do not always identify the specific type of writ at issue.

**Writs of habeas corpus**: the common law and the statutory writ, RCW 7.36. The common law writ of habeas corpus (*“ad subjiciendum”)* as it existed at the time the Washington Constitution was adopted in 1889 is protected by the suspension clause, Wash. Const. Art. I, Section 13, and is limited to persons confined by a court that lacked jurisdiction or a void judgment. In re Runyan, 121 Wn.2d 432, 429-445, 853 P.2d 424 (1993). This limited form of relief is not subject to the time bars for statutory writs and other forms of collateral attack. Id. The primary tool for relief that you will use is the statutory writ of habeas corpus in RCW 7.36, which was first enacted in 1854 and expanded in 1947. The statutory habeas writ permits relatively broad and fast relief to persons subject to illegal ***restraints*** *including, but not limited to, confinement.*

**The interlocutory writs**: common law and statutory writs, RCW 7.16. Superior courts have the inherent power to issue “constitutional” or “common law” writs of certiorari to review arbitrary or capricious decisions; generally the court will not exercise this discretion unless a statutory writ or appeal is not available or the petitioner shows good cause for not pursuing those avenues of relief. Saldin Securities Inc. v. Snohomish Cy., 134 Wn.2d 288,292-94, 949 P.2d 370 (1998) “In general, certiorari is available to provide for judicial review where there is a ‘statutory and contractual hiatus’ that provides no clearly articulated mechanism for obtaining judicial review of a decision.” Clark Cy. PUD No. 1, v. Wilkinson, 139 Wn.2d 840, 844, 991 P.2d 1161 (2000). *See also* Bridle Trails Community Club v. City of Bellevue, 45 Wn.App. 248, 251-54, 724 P.2d 1110 (1986); WPEA v. WPRD, 91 Wn.App. 640, 657-58, 959 P.2d 143 (1998). There are similar distinctions between the common law or constitutional and statutory writs of prohibition and mandamus. The common law writs of prohibition and mandamus lie to restrain or require the exercise of unauthorized judicial or quasi-judicial power. *See* Winsor v. Bridges, 24 Wash. 540, 542, 548, 64 Pac. 780 (1901); North Bend Stage Line, Inc. v. Dept. of Public Works, 170 Wash. 217, 221-226, 16 P.2d 206 (1932). RCW 7.16, the Special Proceedings Act of 1895, expanded the availability of the writs and placed them within the constitutional jurisdiction of the superior court. Winsor, 24 Wash. At 543; North Bend, 170 Wash. At 208. The superior court’s writ jurisdiction is also broader than the Supreme Court’s. North Bend, supra.

**Quo warranto**: *See* RCW 7.56 *and* Reid v. Dalton, 124 Wn.App. 113, 100 P.3d 349 (2004) regarding actions to resolve conflicts over the rightful holder of a public or corporate office or franchise.

**WRITS v. APPEALS**

The right to proceed by writ of habeas corpus cannot be conditioned upon the exhaustion of any other remedy, such as a personal restraint petition or RALJ appeal. *See respectively* Toliver v. Olsen, 109 Wn.2d 607, 610, 746 P.2d 809 (1987) *and* Weiss v. Thompson, 120 Wn.App. 402, 407, 85 P.3d 944 (2004) (superior court improperly denied habeas writ because appeal may be available). The writ of certiorari, by its very terms, is a “writ of review.” RCW 7.16.040. No such language appears in the habeas statute.

The RALJ (Rules for Appeal of Decisions of Courts of Limited Jurisdiction) “do not supercede and do not govern the procedure for seeking review of a decision of a court of limited jurisdiction by statutory writ.” RALJ 1.1( c). The statutory writ of certiorari is the only available means of obtaining interlocutory appeal of decisions by courts of limited jurisdiction. City of Seattle v. Williams, 101 Wn.2d 445, 454‑56, 680 P.2d 1051 (1984) (writ available to review pretrial ruling that defendants waived right to jury trial). The other two “interlocutory” writs –prohibition and mandamus-- are not in the nature of appeals. These writs are not limited to the record below and contemplate an evidentiary hearing to establish the claims, although such a hearing is not necessary. See RCW 7.16.210, .310.

In contrast, the RAPs (Rules of Appellate Procedure governing review in the Court of Appeals and Supreme Court) supercede the review of trial courts “formerly available by extraordinary writs of review, certiorari, mandamus, prohibition and other writs . . . .” RAP 2.1(b). *But see* RAP 16 for writs within appellate courts original jurisdiction. *See also* RAP 16.3(a) , (b) (PRP replaces habeas other than those initiated in superior court). While a habeas writ can be taken to challenge the decision of a superior court or a superior court matter, caution should be exercised in this course of action. While the superior court has jurisdiction to hear the writ, the court can, and often will, transfer the writ to the Court of Appeals to be heard as a PRP and that procedure imposes a more stringent standard on petitioner. *See* Toliver v. Olson, 109 Wn.2d 607, 609-10, 746 P.2d 809 (1987).

Mandates and the time for trial. Writs are treated as an appeal for purposes of calculating the time for trial; acceptance of review or grant of a stay resets the commencement date to the defendant’s first appearance after the stay or notice to the court. CrRLJ 3.3( c)(2)(iv). But the superior court does not issue a mandate or notice of the decision to the lower court after a writ as it does after an appeal. *See* RALJ 9.2(b). This has at least two potential consequences for your case. If you are the losing party after a prosecution writ, you might want to lay low as the prosecutor may neglect to bring the case back to the lower court and eventually you may get a dismissal. If you are the winning party and the relief requires action by the lower court, then you will want to obtain a certified copy of the order and serve and file it on the court.

**THE MECHANICS: FILING A WRIT**

The mechanics of filing a writ is generally the same for each type of writ. All writs –even writs of certiorari—are filed as ***original actions***. You are initiating an action; you are suing the respondent. That means you need to either pay a filing fee or get the fee waived. This also means that you need to have your application –which functions as a complaint—ready to go when you file a writ. When you go to file a writ your goal is to come away with two things: 1) a cause number, that means you have successfully filed your application for a writ and 2) a court date, you have secured an opportunity to argue the writ and get a ruling. You should also check to see if your jurisdiction has any local rules that govern statutory writs. *See e.g.,* King County LR 98.40.

RCW 7.16 writs, must be filed within the jurisdictional time limit provided in the RALJ. City of Seattle v. Agrellas, 80 Wn.App. 130, 134-35, 906 P.2d 995 (1995). Also, the civil rules apply. RCW 7.16.340. That means that you will need to give the requisite notice under the state wide and local rules when seeking a hearing on the application for the writ and a stay. You can move to shorten time if necessary. For habeas writs, such timelines do not apply. The habeas statute directs the issuing court “upon application the writ shall be granted without delay.” RCW 7.36.040. Habeas relief may be granted on non-judicial days and Sundays. RCW 7.36.230 and Wash. Const. art. IV, § 6.

Indigent applicants for habeas writs may apply to proceed *in forma pauperis*. RCW 7.36.250. Also, superior courts have inherent power to waive the filing fee for indigent persons seeking access to the court, particularly when related to a matter involving an important liberty interest. *See* Bullock v. Roberts, 84 Wn.2d 101, 105, 524 P.2d 835 (1974); Richland v. Kiehl, 87 Wn.App. 418, 423, 942 P.2d 988 (1997). Indigent persons should have equal access to the courts. *See* State v. Whitney, 107 Wn.2d 861, 869, 734 P..2d 485 (1987).

**Checklist**

* 1. Obtain client’s permission, financial declaration (use one familiar to the superior court judge)
  2. Get any necessary court records, dockets, SIR, CD; but a declaration of counsel will suffice
  3. necessary pleadings:

 IFP motion to waive filing fee

 client’s financial declaration attached to motion

 IFP order waiving the filing fee

 Application for writ (with enough copies for all parties)

 Return on the writ

 Cover letter to criminal presiding judge explaining any scheduling issues

\_\_\_ Notify prosecutor and/or court that the writ is coming, email writ if strategic

\_\_\_ Take all pleadings to criminal presiding judge to review IFP, writ application, & return on the writ (stopping to make copies of IFP order and return)

\_\_\_ Take signed IFP order and copies of application to clerk’s office

\_\_\_ Fill out case designation form (Seattle, writ)

\_\_\_ Show IFP order to clerk and ask for a cause number

\_\_\_ Clerk will assign a cause number, stamp the original application, IFP order, and return

\_\_\_ Clerk will give you the number stamp to stamp your copies of the application, return on the writ

\_\_\_ Immediately serve: the judge, the prosecutor, the jail (if necessary)

\_\_\_ Tell your client when the writ will be heard

Request interpreter or hearing device, have client “ordered” from jail, etc.

\_\_\_ Show up, argue your writ

\_\_\_ If you win, propose an order that very specifically grants the relief you want (e.g., immediate release on the case number your client is held on; new hearing on pretrial release by a date and time certain before a different judge, etc.)

\_\_\_ Obtain certified copies of the order and serve necessary parties who are directed to provide relief

**WRIT OF HABEAS CORPUS, RCW 7.36**

RCW 7.36.010 Who may prosecute writ.

Every person ***restrained*** of his liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the ***restraint***, and shall be delivered therefrom when illegal.

The right to challenge an unlawful *restraint* by writ of habeas corpus in superior court is guaranteed by the Washington Constitution, Wash. Const. art. IV, § 6, and by statute RCW 7.36. The superior courts have original jurisdiction over such writs. Wash. Const. art. IV, § 6; RCW 7.36.010. *See also* RCW 7.36.120; In re Becker, 96 Wn.App. 902, 903, 905, 982 P.2d 639 (1999). “’Whatever its other functions, the great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention.’” Toliver v. Olsen, 109 Wn.2d 607, 610, 746 P.2d 809 (1987) (quoting *Walker v. Wainwright*, 390 U.S. 335, 336, 19 L.Ed.2d 1215, 88 S.Ct. 962, reh'g denied, 390 U.S. 1036 (1968)).

The habeas petitioner need not be incarcerated to apply for habeas relief, only restrained. Born v. Thompson, 154 Wn.2d 749, 765, 117 P.3d 1098 (2005) (“Neither chapter 7.36 RCW nor the Rules of Appellate Procedure relating to personal restraint petitioners contain ‘in-custody’ language.”). In *Born,* the Supreme Court held that, while no longer in-custody, Born was subject to ***restraint*** for purposes of the habeas statute, because he ***could be detained at a later date*** based on the same factual findings that the district court had made when Born was committed for competency restoration. The Court held that Born was restrained for purposes of the habeas statute because he could be subjected to competency restoration commitment the ***next time*** he is charged with a misdemeanor. Born, 154 Wn.2d at 762-766. “Born is still sufficiently restrained of his liberty to retrieve his petition from the ‘limbo of mootness.’” Id. at 764. The court observed “’release from confinement is no longer the sole function of the writ of habeas corpus.’” Id. at 766, *quoting* In re PRP of Powell, 92 Wn.2d 882, 887, 602 P.2d 711 (1979).

This holding was applied in *Harris v. Charles, 151 Wn.App. 929, 214 P.3d 962 (2009).* Harris challenged by habeas writ a sentence that was imposed but he had yet begun to serve. The court observed

Modern cases demonstrate that, contrary to the City’s argument, being under physical restraint is not a prerequisite for obtaining habeas relief, nor is it necessary that the authority to whom the writ is issued will be in the position to physically deliver the petitioner to a place of confinement to the court.

Harris, 151 Wn.App. at 934, citing Born v. Thompson, supra. “A petitioner is under restraint when he is subject to significant adverse consequences.” Id. Thus the court held, “Harris’ sentence of 90 days in jail for DWLS Third was a certainty, not a mere possibility. He was sufficiently restrained to seek relief under the habeas statute.” Id.

*See also* Butler v. Kato, 137 Wn.App. 515, 154 P.3d 259, 261-62 (2007) (habeas writ challenged conditions of release where defendant was not in-custody and he had not yet violated conditions).

The writ of habeas corpus provides a unique judicial avenue for relief. The writ petition does not seek ***review***, but rather sets forth allegations detailing the unlawfulness of the restraint. Butler, 137 Wn.App. at 520-521; RCW 7.36.030. The court hearing the writ shall proceed “in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or continuation thereof, shall discharge the party.” RCW 7.36.120. In presiding over the writ, the judge has fairly broad powers. The writ of habeas provides, “where necessary, ‘an evidentiary hearing to resolve significant factual or legal issues.’” In re Honore v. Board of Prison Terms & Parol*e*, 77 Wn.2d 660, 663-64, 466 P.2d 485 (1970). *See also* Little v. Rhay*,* 8 Wn.App. 725, 728, 509 P.2d 92 (1973). The judge can compel the attendance of witnesses and “do all other acts necessary to determine the case.” RCW 7.36.170. The judge is also authorized to issue temporary orders regarding the cause or “disposition of the party during the progress of the proceedings that just may require,” including changing custody of the petitioner. RCW 7.36.220.

The writ of habeas corpus stands in stark contrast to mechanisms for ***review***. Certiorari is available only where there is no appeal or no “adequate remedy at law.” RCW 7.16.040; Commanda v. Carey, 143 Wn.2d 651, 655, 23 P.3d 1086 (2001). RCW 7.16.040. No such language appears in the habeas statute. In fact, the right to proceed by writ of habeas corpus may not be conditioned upon the exhaustion of any other remedy. Toliver v. Olsen, 109 Wn.2d 607, 610, 746 P.2d 809 (1987); Weiss v. Thompson, 120 Wn.App. 402, 407, 85 P.3d 944 (2004).

The habeas writ guarantees, among other things, the right to challenge a restraint imposed in violation of the applicant’s state and federal constitutional rights. In re Runyan, 121 Wn.2d 432, 441-43, 853 P.2d 424 (1993) (legislature expanded the relief available in 1947); Smith v. Whatcom County District Court, 147 Wn.2d 98, 113, 52 P.3d 485 (2002) (citing RCW 7.36.140).

But, the unlawful restraint need not be an unconstitutional restraint. Compare RCW 7.36.010 with RCW 7.36.130(1) (challenges to final judgments limited to constitutional defects). *See also* Butler v. Kato, 137 Wn.App. 515, 154 P.3d 259 (2007) (habeas writ brought to test whether conditions of pretrial release were authorized by CrRLJ 3.2). Collateral attacks on final judgments are limited to violations of state and federal constitutional rights. RCW 7.36.130(1). *See* In re PRP Runyan, 121 Wn.2d 432, 440-43, 853 P.2d 424 (1993); State v. Dallman, 112 Wn.App. 578, 50 P.3d 274 (2002); In re Becker, 96 Wn.App. 902, 982 P.2d 639 (1999), *affirmed on other grounds*, 143 Wn.2d 491 (2001); In re Palmer v. Branor, 45 Wn.2d 278, 273 P.2d (1954) (all addressing habeas as post-conviction relief). RCW 7.36.130(1) would be surplusage if the writ was available only to address constitutional violations. The writ has been used to address a number of non-constitutional issues such as illegal sentences imposed in excess of the court’s statutory authority and the application of the capital statute to bail pending appeal. *See respectively* In re Hulet, 159 Wash. 98, 292 P.2d 430 (1930) and State v. Haga, 81 Wn.2d 704, 504 P.2d 787 (1972).

A prisoner may challenge by writ of habeas corpus a sentence which is not authorized by law. In re Horner, 19 Wn.2d 51, 55-57, 141 P.2d 151 (1943). A sentence which exceeds the court's statutory sentencing authority is fundamentally defective. In re PRP of Goodwin, 146 Wn.2d 861, 876-77, 50 P.3d 618 (2002).

It is undoubtedly true that to render a judgment immune from collateral attack by a *habeas corpus* proceeding, the court must have had not only jurisdiction of the subject matter and of the person against whom the judgment is pronounced, but also authority to render the particular judgment in question.

In re Clark, 24 Wn.2d 105, 110, 163 P.2d 577 (1945) (citing *Horner*, 19 Wn.2d 51, 141 P.2d 151); *see also* In re Allen, 45 Wn.2d 25, 272 P.2d 153 (1954); In re Hulet, 159 Wash. 98, 102-03, 292 P. 430 (1930) (authority of the justice of the peace to impose sentence may be tested by habeas corpus). Any judgment issued by a court lacking in jurisdiction “is void ab initio and is, in legal effect, no judgment at all.” Wesley v. Schneckloth, 55 Wn.2d 90, 93-94, 346 P.2d 658 (1959). The lack of jurisdiction may be addressed by writ of habeas corpus. Id

**Limits on habeas relief, RCW 7.36.130**. The primary restriction is on challenges to final judgments. Those are limited to violations of constitutional rights and must be brought with the time limits for other types of collateral attacks. RCW 7.36.130(1). When the writ is used to collaterally attack a conviction, it is treated as such. State v. Dallman, 112 Wn.App. 578, 583-84, 50 P.3d 274 (2002) (habeas writs are subject to successive petition rule and must be properly perfected and supported by affidavits). If you are using a habeas writ to collaterally attack your client’s conviction, you should read *Dallman* carefully. A writ of habeas corpus also will not lie to challenge contempt of court or a warrant issued by the superior court upon indictment or information. RCW 7.36.130(2), (3).

**Appeal.** There is a right to appeal with counsel from a decision denying a writ of habeas corpus. RAP 15.2(b)(1)(e): RCW 7.36.250; In re Honore v. Board of Prison Terms and Paroles, 77 Wn.2d 660, 664, 667, 466 P.2d 485 (1970). Upon filing your notice of appeal, you can make an emergency motion for expedited review and seek a stay. RAP 18.12; RAP 17.4(b); RAP 8.3. *See also* State v. Wilks, 85 Wn.App. 303, 308-09, 932 P.2d 687 (1997), citing 3 ORLAND & TEGLAND, WASH. PRAC., RULES PRACTICE, RAP 8.3 cmt. (4th ed. 1991). Whether a stay pending appeal should be granted depends on (1) whether the issue presented by the appeal is debatable, and (2) whether the stay is necessary to preserve for the movant the fruits of a successful appeal, considering the equities of the situation. Purser v. Rahm, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985).

**When a writ might lie to provide relief**

**Challenges to conditions of pretrial release**. Butler v. Kato*,* 137 Wn.App. 515, 154 P.3d 259, 261-62 (2007)(conditions of release challenged by habeas writ). CrRLJ 3.2 is the sole authority for imposition of pre-trial release conditions in Washington courts. Such conditions must be authorized by the rule and constitutionally permissible. Butler v. Kato*,* 137 Wn.App. 515, 154 P.3d 259, 261-62 (2007); State v. Rose, 146 Wn.App. 439, 191 P.3d 83 (2008). The accused will be released without conditions if probable cause is not found. CrRLJ 3.2. Where probable cause exists, the rule presumes release without conditions. The presumption is overcome only when the court finds, upon available information, that the accused 1) will not appear as required or 2) there exists a substantial danger the accused will commit a violent crime. CrRLJ/CrR 3.2(a)(1), (2); Butler*,* 154 P.3d at 261-62; *Rose*, 146 Wn.App. at 448-453. The rule and the constitution prohibit conditions which are onerous or require the accused to trade constitutional rights for release. Id*.*  Restrictions on liberty must comply with due process. Wash. Const. Art. I, secs. 7, 3; U.S. v. Salerno, 481 U.S. 739, 754 (1987); Rose, 146 Wn.App. at 456-58.

**No timely finding of probable cause to detain without a warrant.** The Fourth Amendment requires a prompt judicial determination of probable cause to detain a person following a warrant less arrest. Gerstein v. Pugh, 420 U.S. 103, 43 L.Ed.2d 54, 95 S.Ct. 854 (1975). The deliberate, impartial judgment of "a judicial officer" is required to be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause. Wong Sun v United States, 371 U.S. 471 (1963). The determination need not be made at an adversarial hearing, but must be made upon sworn testimony. Gerstein, 420 U.S. at 117, 120. Washington’s court rule specifically requires a signed affidavit or declaration for a valid probable cause determination. CrRLJ 3.2.1(b); CrRLJ 2.2(a) (probable cause for detention and arrest must be supported by an affidavit consistent with RCW 9A.72.085).

The Washington constitution provides that no person will be disturbed in his or her private affairs without authority of law or be deprived of liberty without due process. Wash. const. art. I, §§ 7, 3. Pretrial detention must comply with due process. United States v. Salerno, 481 U.S. 739, 754, 95 L.Ed.2d 697, 107 S.Ct. 1095 (1987). In Washington, CrRLJ 3.2 and CrR 3.2 provide the only authority to impose conditions of pre-trial release. The court cannot set bail or conditions unless a finding of probable cause has been made. CrRLJ 3.2. CrRLJ 3.2.1 requires the probable cause determination to be made on at least a sworn, signed affidavit.

“Prompt” means *within* 48 hours of the arrest, inclusive of weekends and holidays. Riverside v. McLaughlin, 500 U.S. 44, 56-57, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991) (county’s policy to offer a combined probable cause and arraignment hearing within two days, exclusive of Saturdays, Sundays, or holidays, does not comport with due process). This time limit is codified in CrRLJ 3.2.1(a) (“A person who is arrested shall have judicial determination of probable cause no later than 48 hours following the persons arrest, unless probable cause has been determined prior to such arrest.”) A probable cause finding within the 48 hour time limit does not necessarily satisfy due process if the detainee can establish that the determination was “delayed unreasonably.” Riverside, 500 U.S. at 56 (unreasonable delays include “gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delays sake.”)

**Illegal sentences and probation actions**: concurrent sentences run consecutively upon revocation of suspended portion of sentence; sentenced to more than statutory maximum; judge prospectively “revoked” jail good time; suspended sentence revoked after order terminating probation, illegal conditions of probation, revocation of probation for non-willful failures to pay pursuant to *Smith v. Whatcom Cy., supra*; insufficient evidence to revoke deferred or suspended sentences; violation of appearance of fairness; violation of right to allocute; violation of due process rights per *State v. Cassill-Skilton, 122 Wn.App. 652, 656-57, 94 P.3d 407 (2004) (due process applies to revocation of dispositional agreements and was violated in this case)*, and *State v. Abd-Rahmaan,* *154 Wn.2d 280, 111 P.3d 1157 (2005)(due process provides right to confrontation at probation hearings; hearsay admissible only upon finding of good cause)*.

No court has the "inherent authority" to revise a sentence, because "a sentencing court has no such authority beyond that provided by law." State v. Gomez-Florencio, 88 Wn.App. 254, 257, 945 P.2d 228 (1997). While a court has the duty to correct an illegal sentence, In re Shriner, 95 Wn.2d 541, 544, 627 P.2d 99 (1981), a court has no authority to lengthen a sentence. Id*.*, citing *State v. Sampson*, 82 Wn.2d 663, 513 P.2d 60 (1973).

In *Shriner*, the Washington Supreme Court held that sentences that were imposed concurrently in the original judgment could not be modified to run consecutively. Id. The rule in *Shriner* and *Sampson* has also been codified in the criminal rules 7.8 regarding the vacation of judgment. See Gomez-Florencio, 88 Wn.App. at 257-58; State v. Brown, 108 Wn.App. 960, 953, 33 P.3d 433 (2001) (cases permitting the enforcement of sentences do not concern the authority to amend a sentence). A trial court may not modify a sentence based on changes in the defendant's situation since the entry of the judgment. State v. Cirkovich, 42 Wn.App. 403, 405, 711 P.2d 374 (1985).

In addition, the due process and double jeopardy clauses of the Washington and U.S. constitutions confer upon a criminal defendant the right to the finality of his or her sentence. The court has no authority to restructure the original sentence from concurrent to consecutive sentences. Both the due process and double jeopardy clauses prohibit re-sentencing where the original sentence imposed was legal and not otherwise erroneous. State v. Hardesty, 129 Wn.2d 303, 312‑13, 915 P.2d 1080 (1996), citing *United State v. DiFrancesco*, 449 U.S. 117, 136‑39, 101 S.Ct. 426, 66 L.Ed.2d 328 (1980) and *DeWitt v. Ventetoulo*, 6 F.3d 32 (1st Cir. 1993), *cert. denied*, 114 S.Ct. 1542 (1994). Re-sentencing is unconstitutional, under both clauses, when the convicted person had "an expectation of finality in the sentence." Id*.* A defendant has such an expectation where the original sentence is not illegal or erroneous and was not obtained by fraud or misconduct; where there was no appeal taken from either the conviction or sentence; where some or all of the term of confinement has been served; and where significant time has passed. State v. H.J*.,* 111 Wn.App. 298, 44 P.3d 874 (2002); U.S. v. Early, 816 F.2d 1428 (1987). In *Hardesty*, the Washington Supreme Court found that the defendant had an expectation of finality even where his "more favorable sentence was merely the product of an error, and not his fraud upon the court." *Hardesty*, 129 Wn.2d at 314.

**Fugitive issues**: The extradition statute entitles a person detained on a governor’s warrant is to test the legality of his arrest by writ of habeas corpus. RCW 10.88.290 (no person arrested upon such warrant shall be delivered to the demanding state until he is allowed time to apply for a writ of habeas corpus). Below is the basic law on the limited scope of a challenge to a governor’s warrant. But you may also challenge your client’s pre-warrant detention for failure to comply with the fugitive statute or other grounds. *See* In re Personal Restraint of Liu, 150 Wash.App. 484, 208 P.3d 1207 (2009) (alleged fugitive was required to be proven competent to assist counsel in raising or waiving the factual defenses to extradition).

The arrest and forcible transportation of a resident of one state to another state constitutes a massive intrusion of liberty, that exceeds the loss of liberty associated with a conventional arrest. As Justice Blackmun has explained:

The extradition process involves "an extended restraint of liberty following arrest" even more severe than that accompanying detention within a single State. Extradition involves, at a minimum, administrative processing in both the asylum State and the demanding State, and forced transportation in between. It surely is a "significant restraint on liberty." Michigan v. Doran, 439 U.S. 282, 295-96, 58 L.Ed.2d 527, 99 S. Ct. 530 (1978)(Blackmun, J., concurring).

Against this interest in not being forcibly incarcerated and transported hundreds of miles from one's home is the national interest, articulated in the Extradition Clause of the United States Constitution art. IV, 2, cl. 2. Extradition enables each state to bring offenders to justice as swiftly as possible and to "preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among the several states." Michigan v. Doran, 439 U.S. at 287. The Extradition Clause "creates a mandatory duty to deliver up fugitives upon proper demand with no discretion residing in the governor or courts of the asylum state." White v. King County, 109 Wn.2d 777, 780, 748 P.2d 616 (1988).

The balance between the individual rights at stake and the national interest in swift extradition is struck by giving prisoners the opportunity for judicial review in the asylum state prior to forced transportation. The prisoner has a clear right to test the validity of the arrest by petitioning for a writ of habeas corpus under RCW 10.88.290 and RCW 7.36.190. *See* White v. King County, 109 Wn.2d at 777. This is consistent with the nature of the writ. The Great Writ is essentially an extraordinary remedy which has been "inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment." Fay v. Noia, 372 U.S. 391, 401-02, 9 L. Ed. 2d 837, 83 S. Ct. 822 (1963), *overruled on other grounds by* Wainwright v. Sykes, 433 U.S. 72, 87-90, 53 L.Ed.2d 594, 97 S. Ct. 2497 (1977).

In light of this duty, the Supreme Court has struck the balance between the Extradition Clause and the right to obtain habeas review by setting up a four part test to see whether extradition is legal:

Once the governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) *whether the extradition documents on their face are in order*; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable. Michigan v. Doran, 439 U.S. at 289 (emphasis added)..

Thus, courts have granted habeas relief where the extradition documents are defective. For instance, in In re Ladd, 157 Vt. 270, 596 A.2d 1313 (1991), the Vermont Supreme Court granted a purported fugitive probationer's writ where the Florida extradition papers showed that his sentence had expired when an alleged probation violation occurred. The court noted that although the burden on the state to was "minimal, it is not nonexistent." 596 A.2d at 1314. The court continued:

We recognize that the Governor's warrant is prima facie evidence that the constitutional and statutory requirements for extradition have been met. We also recognize that legal questions about the computation of petitioner's sentence are for the demanding state to resolve. Once the State puts in evidence the supporting documents, however, we must examine them for sufficiency to determine whether they support or rebut the prima facie case. *Here, they rebut that case because they establish, if anything, an expired sentence.* The State has offered no legal theory under which the sentence could be found to be in effect when the alleged violations of probation occurred. *It is possible that the discrepancies could be explained by further documents from Florida, but that state failed to supply them.* Accordingly, the requisition documents fail to meet the minimum requirements of 13 V.S.A. 4943. 596 A.2d at 1315 (emphasis added, citations omitted).

Moreover, there is no question but that the Fourth Amendment of the United States Constitution continues to apply to extradition cases, and a court has the duty to apply the interests of this amendment when considering the interests of the Extradition Clause. Michigan v. Doran, 439 U.S. at 290-98 (Blackmun, J., concurring). As Justice Blackmun as stated, the words of the Fourth Amendment:

provide no grounds for a distinction between "seizures" of persons for extradition and seizures of persons for any other purpose. Neither do they distinguish between an extradition warrant and the usual arrest warrant. Indeed, the "security of one's privacy against arbitrary intrusion by the police -- which is at the core of the Fourth Amendment," [citation omitted], applies with undiminished force to the intrusion that occurs in the process of extradition. 439 U.S. at 295 (Blackmun, J., concurring).

**“INTERLOCUTORY” WRITS: CERTIORARI, PROHIBITION & MANDAMUS,**

**RCW 7.16**

**WRIT OF CERTIOARARI: AN INTERLOCUTORY APPEAL**

Our state constitution grants superior courts authority to issue writs created by the Legislature. Therefore the RALJ, promulgated by the Washington Supreme Court at the Legislature's direction, did not supersede the statutory writs. City of Seattle v. Hesler, 98 Wn.2d 73, 76‑80, 653 P.2d 631 (1982); RALJ 1.1. The statutory writs are the only available means of obtaining interlocutory relief in courts of limited jurisdiction. Butts v. Heller, 69 Wn.App. 263, 268, 848 P.2d 213 (1993) (writ of prohibition issued to prevent trial held in violation of speedy trial rule); City of Seattle v. Williams, 101 Wn.2d 445, 454‑56, 680 P.2d 1051 (1984) (certiorari available to review of acceptance of improper jury waivers). These must be filed within the jurisdictional time limit provided in the RALJ, within 30 days from the date of the decision of which you are seeking review. City of Seattle v. Agrellas, 80 Wn.App. 130, 134-35, 906 P.2d 995 (1995).

The writs are an extraordinary remedy. Brower v. Charles, 82 Wn.App. 53, 57-58, 914 P.2d 1202 (1996). Nonetheless, court has the authority to issue a writ of certiorari if two prerequisites are met: (1) the lower court exceeded its jurisdiction or ***acted illegally***; and (2) there is no appeal or adequate remedy at law. RCW 7.16.040. Commanda v. Cary, 143 Wn.2d 651, 657, 23 P.3d 1086 (2001). Unless both elements are satisfied the superior court has no jurisdiction for review. City of Seattle v. Holifield, 170 Wn.2d 230, 240, 240 P.3d 1162 (2010). “Acting illegally” is not limited to actions *ultra vires*, but includes errors of law. City of Seattle v. Keene, 108 Wn.App. 630, 639‑40, 31 P.3d 1234 (2001); WPEA v. Personnel Resources Bd., 91 Wn.App. 640, 652‑ 54, 959 P.2d 143 (1997).

What does “acting illegally” mean? In *Keene*, the court held that the prerequisites for interlocutory review by writ of certiorari are governed by the criteria set forth in *Bushman v. New Hollard Div. Of Sperry Rand Corp., 83 Wn.2d 429, 432, 518 P.2d 1078 (1974)* and *City of Seattle v. Williams, 101 Wn.2d 445, 455, 680 P.2d 1051 (1984*)*.*  Keene, 108 Wn.App. at 640-644. In *Bushman*, the court applied the threshold for review set forth in *State v. Whitney*: whether the alleged error is likely to recur, and whether it involves a "patently erroneous construction of the statute”. State v. Whitney, 69 Wn.2d 256, 260‑61, 418 P.2d 143 (1966). This standard for review echoes the guidelines that *Williams* adopted from *State v. Harris, 2 Wn.App. 272, 280‑81, 469 P.2d 937 (1970).* In *Harris*, the court held that the statutory writ of certiorari is available to review interlocutory orders where the lower court's error requires "unquestioned reversal." Id. It is important to note that the lower court actions in *Williams* and *Harris* involved errors that required reversal and remand for a jury trial and dismissal respectively. Williams, 101 Wn.2d at 451‑52; Harris, 2 Wn.App. at 292. The Washington supreme court settled this discussion in *Holifield*.

We hold that, for purposes of RCW 7.16.040, an inferior tribunal, board or officer, exercising judicial functions, acts illegally when that tribunal, board, or officer (1) has committed an obvious error that would render further proceedings useless; (2) has committed probable error and the decision substantially alters the status quo or substantially limits the freedom of a party to act; or (3) has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of revisory jurisdiction by an appellate court.

We borrowed this formula from our rule governing interlocutory review, see RAP 13.5(b), and that governing discretionary review of a trial court decision. See RAP 2.3(b).FN14 These standards for granting the statutory writ of review under the “acting illegally” prong lie somewhere between the standards sought by each party here. They are not so strict that the writ applies merely to cases that exceed jurisdiction. Nor are they so lax that the writ applies only to correct mere errors of law. In any event, these standards are “specific and stringent.” Geoffrey Crooks, Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure, 61 Wash. L.Rev. 1541, 1545 (1986). They are also “simple and straightforward.” Id. at 1554.

Holifield, 170 Wn.2d at 244-45.

In a criminal case, the accused’s right to appeal often provides relief for errors committed during the course of the litigation. Butts, 69 Wn.App. at 268; Moses Lake, 104 Wn.App. at 392. But that is not always the case. What constitutes a plain, speedy and adequate remedy depends on the facts of the case and rests within the sound discretion of the court in which the writ is sought. Butts, 69 Wn.App. at 266. Interlocutory review of discovery issues has been granted in criminal cases, presumably because it implicates the constitutional right to counsel. *See* State v. Boyd, 160 Wn.2d 424 (2007) (court granted defense and state requests for interlocutory review of orders restricting and granting access to child pornography evidence); State v. Pawlyk, 115 Wn.2d 457 (1990) (defense obtained discretionary review of orders requiring disclosure of defenses rejected insanity expert); State v. Carneh, 153 Wn.2d 274 (2004) (state and defense sought interlocutory review of discovery rulings related to insanity evidence). In a seminal case on writs of review, the writ was granted to review a discovery issue in a civil case. Bushman v. New Hollard Div. Of Sperry Rand Corp., 83 Wn.2d 429, 432, 518 P.2d 1078 (1974).

If the statutory prerequisites are met, the court will issue the writ to review the lower court's ruling and/or the challenged actions. The statute gives the superior court considerable latitude to determine whether and when to intervene in an ongoing prosecution. The superior courts discretion is applied to both prerequisites for issuance of the writ. Keene, 108 Wn.App. at 644‑45; Bushman v. New Hollard Div. Of Sperry Rand Corp., 83 Wn.2d 429, 431‑ 32, 518 P.2d 1078 (1974); State v. Whitney, 69 Wn.2d 256, 260‑ 61, 418 P.2d 143 (1966).

**Review of writ decision.** A decision on a writ of review is subject to further review by discretionary review only. City of Seattle v. Williams, 101 Wn.2d 445, 456, 680 P.2d 1051 (1984). As noted above, you can seek expedite review of your motion and appeal.

**Criminal Defendants Seeking Review**

But there is bad news for criminal defendants. The Washington Supreme Court appears to have limited the availability of interlocutory review to defendants in courts of limited jurisdiction in two ways. Commanda v. Carey, 143 Wn2.d 651, 23 P.3d 1086 (2001).

First, the court held that only jurisdictional questions can be addressed by interlocutory writ. Commanda, 143 Wn.2d at 657 (2001). A literal reading of *Commanda* is that errors of law cannot be reviewed by writ of certiorari. But in *Keene*, the Court of Appeals for Div. I characterized this as dicta. Keene, 108 Wn.App. at 643. As noted above, the *Keene* court, consistent with *Williams* explained that certain errors of law may be reviewed by the statutory writ. This reading of the law was recently reiterated in *Holifield,*  as case which is currently on review before the Washington Supreme Court. When you want to file a writ, you argue *Keene* which is now the controlling interpretation of *Commanda* on this point. When you are opposing a writ taken by the prosecution, see the discussion below.

Second, *Commanda* appears to hold that criminal defendants have a greatly limited access to writs of review because of their right to appeal if convicted. In *Commanda*, the defendants brought writs of certiorari to review the denial of their motion to dismiss on the ground that Spokane’s DUI ordinance violated equal protection. The Spokane Superior Court issued and then granted the writs. But the Washington Supreme Court reversed, holding that the writs should not have been issued because the criminal defendants could appeal if convicted. Commanda, 143 Wn.2d at 657. The court rejected the argument that appeal is an inadequate remedy where the defendants, if successful, could avoid unnecessary trials. This holding appears to conflict with the court’s previous decision in *City of Seattle v. Williams*, *supra*, where the court held that the writ was available to review pretrial rulings that defendants waived right to jury trial.

Upon granting a writ, the Superior Court shall determine its merits. RCW 7.16.120. The questions to be determined by the court upon the hearing are: (1) Whether the body or officer had jurisdiction of the subject matter of the determination under review; (2) Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination; (3) Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator; (4) Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination; (5) Whether the factual determinations were supported by substantial evidence.

Potential issues for interlocutory review: discovery issues; denial of constitutional rights that will cause reversal. Contempt cannot be challenged by habeas writ (RCW 7.36. 130(2)); contempt must be reviewed by writ of certiorari. *See*  City of Seattle v. Templeton, 92 Wn.App. 847 (1998**).**

**Prosecution Seeking Review**

In recent years, prosecutors have been aggressively seeking review by writ of certiorari thereby avoiding the limitations of RALJ 2.2(c) (the government “may appeal in a criminal case ***only*** from the following decisions of a court of limited jurisdiction and ***only*** if the appeal will not place the defendant in double jeopardy”: a decision which abates, discontinues, or determines the case; an order suppressing evidence if the trial court expressly finds that the practical effect of the order is to terminate the case; order arresting or vacating a judgment, or granting new trial.) If the prosecution appeals and loses, the result is dismissal. If the prosecution takes a writ and loses, the time for trial is tolled and they go back and proceed to trial. So writs are a no-lose proposition for the prosecution. What happens if your client is in-custody? I think that the government’s ability to seek review by interlocutory writ (as opposed to an appeal pursuant to RALJ 2.2) should be limited. This issue was presented to, but not decided in City of Seattle v. Clark-Munoz, 152 Wn.2d 39, 43 note 2, 93 P.3d 141 (2004). Unfortunately, the current cases have been decided against me at this point. First *Keene* and now *Holifield* have held that the prosecution can effectively decide for themselves that a writ instead of an appeal. *See* Holifield, 150 Wn.App. at 226-27 (direct appeal was not available because the City concedes they could proceed without the breath test). The supreme court took review in *Holifield* but did not decide the issue they avoided in *Clark-Munoz.*  Rather, as noted above, the court addressed only the standard for interlocutory review but not the government’s ability to do so.

In the event you are called upon to oppose a writ by the prosecution, here are some arguments and briefing you can use.

The extraordinary statutory writ of review should not be applied in a way which circumvents the well established limitations on the government's ability to obtain appellate review. The United States has an "important tradition disfavoring criminal appeals by the sovereign." Arizona v. Manypenny, 451 U.S. 233, 244, 101 S.Ct. 1657, 68 L.Ed.2d 58 (1981); State v. AMR, 147 Wn.2d 91, 51 P.3d 790, 792 (2002). The state constitution provides criminal defendants the right to appeal, but gives no corresponding right to the State. State v. Miller, 82 Wash. 477, 478, 144 P.2d 694 (1914). The courts have long held that the prosecution may not seek appellate review without express statutory authority. State v. Johnson, 24 Wash. 75, 77, 63 Pac. 1124 (1901). Formerly, the Legislature did not permit appeal by the prosecution from the justice courts. State v. Rear, 5 Wn.2d 534, 536-39, 105 P.2d 827 (1940). Consequently, the government occasionally sought writs of certiorari to review decisions which abated the prosecution. Rear, 5 Wn.2d at 536. *See also* State v. Waspir, 25 Wn.App. 457, 461, 607 P.2d 335 (1980); State v. Cascade Dist. Ct., 24 Wn.App. 522, 603 P.2d 1264 (1979). RALJ 2.2(c) provides the government an appeal from those decisions. Thus, the modern rules expanded the government's right to appeal suppression orders. RAP 2.2(b), 86 Wn.2d at 1132, 1144 (adopted 1976); RALJ 2.2(c), 108 Wn.2d 1142 (adopted 1987).

In promulgating RALJ 2.2(c), the supreme court afforded the government a right to appeal an adverse suppression decision only when the effect of the order is to terminate the case. In all other cases, the supreme court determined that the government has an adequate remedy in proceeding to trial or seeking some other disposition. Clearly, the supreme court anticipated that an acquittal might preclude review of a suppression decision. Nonetheless, the court considered that possibility and determined that a trial, even without certain evidence, sufficiently protects the government's interest.

The Supreme Court has held that the government is not the arbiter of its right to appeal. In *State v. Campbell, 85 Wn.2d 199, 201-02, 532 P.2d 618 (1975),* the Court held the government could appeal suppression orders only where the trial court determined the prosecution was effectively abated.

A critical distinction must be drawn between a suppression order which, *in the mind of the State*, makes further prosecution unfeasible, and an order, which *clearly on its face*, supported by the record, effectively abates or otherwise determines the action. The latter deals with the impartial opinion of the trial judge, while the former is predicated merely on the opinion of the State, to which the defense and the trial court might well differ. We do not deviate from the rule that jurisdiction cannot be fashioned upon the resolution of conflict in expert opinions. *Campbell*, 85 Wn.2d at 619-20. [Emphasis in original.]

Similarly, the court's jurisdiction to issue a writ of review cannot be derived solely from the Appellant’s assertion that it has no appeal. RALJ 2.2 has delegated that decision to the trial judge.

In *Whitney*, the supreme court considered the State's application for a writ at a time when the State had no right to appeal an adverse suppression decision. Whitney, 69 Wn.2d at 257-60. Even then the court was compelled to ask, "if we will not review it on appeal under our own rule, why should we review it on certiorari?"

**WRITS OF PROHIBITION & MANDAMUS: TWO SIDES OF THE SAME COIN**

A writ of prohibition will issue to restrain the actions of any tribunal, corporation, board or person acting without or in excess of the jurisdiction of such tribunal, corporation, board or person. RCW 7.16.290, .310; Brower v. Charles, 82 Wn.App.53, 57-58, 914 P.2d 1202 (1996). The writ of mandamus will issue to “compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station.” RCW 7.16.160. Like prohibition, mandamus will also issue where there is not a plain, speedy and adequate remedy at law. RCW 7.16.170. These writs are the flip side of the same coin; the former will prevent further action while the latter compels action. The provisions related to the writ of mandate also apply to the writ of prohibition. RCW 7.16.320.

The prerequisites for the writs of prohibition and mandamus are similar to those for certiorari, though less stringent on the alternative remedy prong. These writs require only that the petitioner has no plain, speedy and adequate remedy in the ordinary course of law. RCW 7.16.170, .300; City of Moses Lake v. Grant Cy. Boundary Rev. Bd., 104 Wn.App. 388, 392-93, 15 P.3d 716 (2001). The unavailability of an appeal is a factor, but not an prerequisite, for issuance of writs of prohibition or mandamus.

What constitutes a plain, speedy and adequate remedy depends on the facts of the case and rests within the sound discretion of the court in which the writ is sought. Butts v. Heller, 69 Wn.App. 263, 268, 848 P.2d 213 (1993). In a criminal case, the accused’s right to appeal often provides an relief for errors committed during the course of the litigation. Butts, 69 Wn.App. at 268. But that is not always the case. In *Butts*, a writ of prohibition was issued to prevent a trial set after the expiration of the time for trial. Also, the issues presented may evade review unless addressed by extraordinary, interlocutory writ. Westerman v. Carey, 125 Wn.2d 277, 287, 885 P.2d 827 (1994) ("the issue of bail is one which will escape review because the facts of the controversy are short lived").

If prerequisites of the writ are met, the court will issue the writ and determine the case on the merits. RCW 7.16.170. An alternative writ –or temporary restraining order-- may be issued directing respondents to immediately cease the challenged action and appear and show cause why they should not be absolutely restrained from such action. RCW 7.16.290, .310.

The writ of mandamus is the counterpart of the writ of prohibition. RCW 7.16.290. A writ of mandamus may be issued to “compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station.” RCW 7.16.160. The writ *must* issue upon the application of a person beneficially interested when there is not plain, speedy and adequate remedy at law. RCW 7.16.170. Thus, the writ will issue where the applicant establishes that the respondent is under a clear duty to act, the applicant has no plain, speedy and adequate remedy at law and the applicant is beneficially interested. Eugster v. City of Spokane, 118 Wn.App. 383, 76 P.3d 741 (2003). “The remedy by mandamus contemplates the necessity of indicating the precise thing to be done.” Clark Cy. Sheriff v. DSHS, 95 Wn.2d 445, 450, 626 P.2d 6 (1981).

While mandamus will not lie to control the exercise of discretion, it will lie to require that discretion be exercised. Bullock v. King County Superior Court, 84 wn.2d 101, 103, 524 P.2d 385 (1974) (court was directed to process each indigents’ family law case consistent with the constitutional right to access described therein); Whitney v. Buckner, 107 Wn.2d 861, 865, 869, 734 P.2d 485 (1987) (court directed to consider each petitioners request to proceed with dissolution at public expense and not just reject the ex parte applications without consideration).

Both writs may be either alternative or peremptory. RCW 7.16.180; .310. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party after receipt of the writ to do the act required or to show cause before the court why the party has not done so. RCW 7.16.180. With an alternative writ, the court issues the writ which is served upon the responding party. The responding party then chooses to either perform the action or appear in court to dispute performance of the action. The peremptory writ requires notice to the responding party prior to issuance of the writ, whereas with the alternative writ notice to the responding party is provided after the issuance.

Unlike a writ of certiorari which is decided on the record, the factual basis for writs of mandamus and prohibition may be determined by affidavits or at trial before a judge or jury. RCW 7.16.210, .250, .320.

Writs of mandamus and prohibition, unlike writs of certiorari, are reviewable by appeal. in Brower v. Charles. 82 Wn. App 53, 57, 914 P.2d 1202 (1996), *review denied*, 130 Wn.2d 1028, 930 P.2d 1231 (1997), *citing* State ex rel. Moore v. Houser, 16 Wash.App. 363, 556 P.2d (1976) *reversed on other grounds*, 91 Wash.2d 269, 588 P.2d 219 (1978). As noted above, you can seek expedited review of the denial of the writ.