

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

WESTON GARRETT MILLER

Appellant.

No. 81391-9-I

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. — Miller appeals the trial court’s denial of his motion to compel the incomplete version of his client file held by his former attorney. We reverse and remand.

FACTS

In 2013, Miller was convicted of murder in the first degree and four counts of unlawful possession of a firearm in the second degree. His conviction was affirmed on appeal. State v. Miller, No. 44966-8-II, slip op. at *8 (Wash. Ct. App. Dec. 2, 2014) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2044966-8-II%20Unpublished%20Opinion.pdf>.

In March 2015, Miller reached out to his trial counsel, Joseph Enbody, to acquire his client file and discovery materials. Enbody informed Miller that he had destroyed much of his file after the conclusion of his case. Enbody suggested that Miller could

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obtain much of the material he sought by filing records requests to the Lewis County Superior Court and the Lewis County Prosecutor's Office.

On December 10, 2018, Miller filed a motion to compel production of his client file and discovery materials in Lewis County Superior Court. Miller, Enbody, and the Lewis County Prosecutor's Office participated in a hearing on the matter. Miller explained that he wanted Enbody to turn over his file and that he needed a judicial determination concerning any portions that were destroyed. Enbody explained at the hearing that his records related to Miller were incomplete, saying that he had "portions of it . . . but they are not complete."

The trial court denied Miller's motion. In its oral ruling, the court explained it would not compel Enbody to provide "incomplete documents."

Miller appeals.

DISCUSSION

Miller contends that the trial court must order Enbody to turn over his file under CrR 4.7(h)(3) and RPC 1.16(d).

The professional conduct rules require defense counsel to "surrender papers and property to which the client is entitled" unless retention is "permitted by other law." State v. Padgett, 4 Wn. App. 2d 851, 854, 424 P.3d 1235 (2018) (quoting RPC 1.16(d)). The Washington State Bar Association issued an ethics advisory opinion interpreting RPC 1.16(d) to mean that absent an express agreement to the contrary, the file generated in the course of representation, with limited exceptions, must be turned over to the client at

the client's request at the conclusion of representation. Wash. State Bar Ass'n Rules of Prof'l Conduct Comm., Advisory Op. 181 (1987, amended 2009). CrR 4.7(h)(3) authorizes defense counsel to provide to the defendant any discovery materials received from the prosecution "after making appropriate redactions which are approved by the prosecuting authority or order of the court."

The fact that disclosure of discovery contained in the file is subject to redactions approved by the prosecuting authority or order of the court demonstrates the rule contemplates surrender to the client of even a partially preserved file. CrR 4.7(h)(3). Enbody may redact discovery materials. Id. He may also withhold certain materials if doing so would not prejudice Miller. Padgett, 4 Wn. App. 2d at 854-55 (counsel may withhold drafts of papers, duplicate copies, photocopies of research material and the lawyer's personal notes containing subjective impressions such as comments about identifiable persons). But, Miller is entitled to any portion of the file in Enbody's possession that is not subject to redaction or recognized exclusion. Disputes over redaction or exclusion are subject to trial court review.

Miller has also requested written findings of fact and conclusions of law for the order denying his motion to compel. He cites no authority that would require the trial court to enter such findings in an order denying a motion to compel. The pleadings, evidence, report of proceedings, and order are public records available to Miller to document what was sought and what was granted.

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We reverse the trial court's denial of Miller's motion to compel. We remand for production of Miller's client file, subject to appropriate redaction.

Lippelwick, J.

WE CONCUR:

Brunner, J.

H. E. J.