Supreme Court No. 90068-0
(COA No. 69368-9-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

RYAN PEELER,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SKAGIT COUNTY

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

A. IDENTITY OF RESPONDENT 1

B. COURT OF APPEALS DECISION 1

C. ISSUES PRESENTED FOR REVIEW 1

D. STATEMENT OF THE CASE 3

E. ARGUMENT 5

The unpublished Court of Appeals opinion relies on this Court's precedent to construe a statute and there is no conflict or constitutional infirmity requiring review 5

1. The Court of Appeals opinion is based on undisputed facts and the plain language of the governing statute as consistently interpreted and applied by other courts 5

2. Even the State concedes the statutory language is not ambiguous 11

3. As the Court of Appeals correctly held, the State had ample opportunity to seek a continuance under RCW 9.98.010 and its failure to do so does not demonstrate a policy reason to redefine the essential terms of the intrastate detainer statute . 12

F. CONCLUSION 14

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

State v. Delgado, 148 Wn.2d 723, 63 P.3d 792, 795 (2003) 6

State v. Gray, 174 Wn.2d 920, 280 P.3d 1110 (2012) 12

State v. Jacobs, 154 Wn.2d 596, 115 P.3d 281 (2005) 6

State v. Morris, 126 Wn.2d 306, 892 P.2d 734 (1995) 6, 9

State v. Sutherby, 165 Wn.2d 870, 204 P.3d 916 (2009) 7

Washington Court of Appeals Decisions

State v. Bishop, 134 Wn.App. 133, 139 P.3d 363 (2006), *rev. denied*, 159 Wn.2d 1023 (2007) 10

State v. Slattum, 173 Wn.App. 640, 295 P.3d 788 (2013), *rev. denied*, 178 Wn.2d 1010 (2013) 9

Statutes

RCW 9.100.010 9

RCW 9.98.010 ..... 2, 4, 5, 6, 7, 8, 9, 10, 11, 12

RCW 9.98.020 ..... 2, 4, 6, 8, 12, 13

RCW ch. 9.100 9

Court Rules

RAP 13.3(a)(1) 1

RAP 13.4(b) 1, 5

A. IDENTITY OF RESPONDENT

Ryan Peeler, respondent here and appellant below, asks this Court to deny the request to review the Court of Appeals decision terminating review pursuant to RAP 13.3(a)(1) and RAP 13.4(b).

B. COURT OF APPEALS DECISION

The unpublished Court of Appeals opinion was issued on February 24, 2014, and neither party filed a motion for reconsideration. A copy is attached to the State's petition for review.

C. ISSUES PRESENTED FOR REVIEW

1. Based on the plain language of the intrastate detainer act, undisputed facts, and settled law, the Court of Appeals held that the State did not adequately comply with Mr. Peeler's written request that he be bought to trial on a charged offense. The Court of Appeals opinion is not published. The prosecution asks this Court to take review by asserting there is substantial public interest in review. Where the Court of Appeals applied clear statutory language to undisputed facts in an unpublished decision, has the State shown substantial public interest merits review?

2. Throughout its response brief and its petition for review, the State describes the "plain language" of the statute as governing this

case. Incongruously, it identifies an issue presented for review as whether the statutory language that a defendant is "under a term of imprisonment" is ambiguous. Having apparently conceded that the statutory language is clear, is there reason to grant review based on the unexplained assertion that the language is ambiguous?

3. It is undisputed that Mr. Peeler was serving a term of imprisonment when he filed the required formal request that the State commence prosecution of an untried charged from Skagit County. The State asserts that Mr. Peeler was no longer in the "custody" of the Department of Corrections when the county received his request because the state had temporarily transferred him to a different facility. Despite this temporary transfer, Mr. Peeler returned to his initial state prison facility, and was transported to Skagit County, all before the expiration of the 120-day time for trial allowed by RCW 9.98.010. Consequently, the prosecution could have complied with the statute if it had set a trial date or persuaded the trial court there was good cause for a continuance before the 120-day period expired. Did the Court of Appeals correctly apply established legal principles to rule that the State's unexcused failure to set a trial date within 120 days of receiving

a valid request to be brought to trial violates RCW 9.98.010 and RCW 9.98.020?

D. STATEMENT OF THE CASE

The Skagit County prosecutor charged Ryan Peeler with second degree assault on January 28, 2011, based on an incident that occurred 13 days earlier. CP 4, 23. When it filed the charge, it knew Mr. Peeler was in the custody of its neighboring county, Snohomish, awaiting trial on other charges. CP 4, 23. It made no effort to bring Mr. Peeler to Skagit County while he was held in Snohomish County. CP 23. There is no evidence that the State even informed Mr. Peeler of the Skagit County charge against him.

Mr. Peeler remained at the Snohomish County jail for eight more months, until he was sent to the Department of Corrections (DOC) to serve a prison sentence on September 20, 2011. CP 33, 36.

On October 7, 2011, Mr. Peeler filed a formal request for the State to prosecute the untried information in the Skagit County case. CP 18. DOC sent Mr. Peeler's written request and the necessary certification of inmate status to Skagit County, which it received on October 26, 2011. CP 18. In response, the prosecution asked DOC to transport Mr. Peeler to Skagit County, but in the interim, DOC had

transferred Mr. Peeler to King County on another matter. CP 39, 44. DOC informed the Skagit County prosecution of this transfer and the prosecution took no further steps to prosecute Mr. Peeler until he filed a second request with Skagit County on January 20, 2012. CP 21, 44.[1] After this second request, he was brought to Skagit County and arraigned. CP 23-24.

Mr. Peeler moved to dismiss the untried Skagit County charge due to the violation of the time for trial requirements set forth in RCW 9.98.010 and RCW 9.98.020. CP 13. The trial court ruled that even though the State received notice that Mr. Peeler was requesting prosecution on October 26, 2011, it was not required to bring him to trial because by the time Skagit County requested his transfer, he had been taken from his DOC facility to King County. 8/22/12RP 32-33. The court's conclusion was premised on its belief that RCW 9.98.010 only applied when an accused person was physically held in a state prison, and therefore any time Mr. Peeler was in a jail, as opposed to a state prison, the State had no obligation to act on an inmate's request to be tried. 8/22/12RP 32.

[1] Mr. Peeler returned to DOC from King County on December 30, 2011. CP 33.

The Court of Appeals ruled that the State's failure to bring Mr. Peeler to trial within 120 days of receiving his request to be tried violated the plain terms of RCW 9.98.010. Slip op. at 7-10. It reversed the ruling of the trial court based on the plain language of the statute governing intrastate detainers, RCW 9.98.010. *Id.* The State filed a petition for review.

E. ARGUMENT.

The unpublished Court of Appeals opinion relies on this Court's precedent to construe a statute and there is no conflict or constitutional infirmity requiring review

1. *The Court of Appeals opinion is based on undisputed facts and the plain language of the governing statute as consistently interpreted and applied by other courts.*

The Court of Appeals relied on this Court's precedent and settled principles of statutory construction to apply RCW 9.98.010 to the case at bar. Its analysis and the holding of the unpublished decision do not merit review under RAP 13.4(b).

RCW 9.98.010 states that when a person has "entered upon a term of imprisonment in a penal or correctional institution of this state," and he faces untried charges in this state, he may request that the State bring him to trial. RCW 9.98.010 explains the procedure for an accused

person to request that the State commence an untried prosecution. Under RCW 9.98.010, when the State does not bring the person to trial in 120 days of receiving the inmate's request, the court loses jurisdiction and must dismiss the case with prejudice. RCW 9.98.020; *State v. Morris*, 126 Wn.2d 306, 310-11, 892 P.2d 734 (1995).

Under established principles of statutory construction, courts interpreting a penal statute must "give it a literal and strict interpretation." *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792, 795 (2003). A penal statute must be construed in the defendant's favor when ambiguous. *State v. Jacobs*, 154 Wn.2d 596, 601, 115 P.3d 281 (2005). The court may not "add words or clauses to an unambiguous statute when the legislature has chosen not to include that language." Slip op. at 5 (*quoting Delgado*, 148 Wn.2d at 727).

As the Court of Appeals explained, the language of RCW 9.98.010 is plain and unambiguous. Slip op. at 6-8. It applies to any person who has "entered upon a term of imprisonment in a penal or correctional institution of this state." RCW 9.98.010(1). Mr. Peeler had been sentenced to a term of imprisonment and was serving this term when he requested to be brought to trial on the untried Skagit County

charge. CP 36. He had "entered upon a term of imprisonment," as required to trigger RCW 9.98.010.

RCW 9.98.010(1) further applies "whenever during the continuance of the term of imprisonment" there is an untried charge pending in this state. The term "whenever" is expansive and this phrase indicates that any time, "during the continuance of the term of imprisonment," a prisoner may validly request trial on an uncharged crime. *See State v. Sutherby*, 165 Wn.2d 870, 880, 204 P.3d 916 (2009) (expansive dictionary definition of word "any" shows intent for broad application of phrase). Mr. Peeler's term of imprisonment was on-going when he made his request to bring an untried charge to trial, which is all the statute requires.

As the Court of Appeals stated, the facts are undisputed. Slip op. at 2. While serving a state prison sentence, Mr. Peeler filed the necessary formal request for the State to prosecute the untried information that had been filed in Skagit County. CP 18. Skagit County received the required DOC certification on October 26, 2011. CP 18.

When the Skagit County prosecutor asked DOC to transport Mr. Peeler to Skagit County, it learned that DOC had recently received an order to transport Mr. Peeler to King County on another matter. CP 39,

44. DOC informed the Skagit County prosecution that it had moved Mr. Peeler to the King County jail. CP 23. The prosecution took no further steps to prosecute Mr. Peeler until he filed a second written request to Skagit County on January 20, 2012. CP 21, 44. After the second request, Mr. Peeler was brought to Skagit County and arraigned on this charge. CP 23-24. The State did not set a trial before February 23, 2012, when the 120-day period permitted under RCW 9.98.010 expired. CP 14; RCW 9.98.020.

The State tries to avoid the application of RCW9.98.010 by claiming that an inmate's request to be tried is nullified if he is moved from one state prison to a different facility within the state before the prosecution tries to transport him. The Court of Appeals refused to read this requirement into the statute. Slip op. at 6-7. The "statute's plain text" does not require that the person "must be available for transport on the date the prosecuting attorney and superior court receive" a disposition request. Slip op. at 8.

Had the legislature intended to limit an inmate's ability to be brought to court for an untried charge based on his or her location, it would have said so. Slip op. at 7. Instead, the legislature used broad

language that triggers the statute's application whenever a person is serving a term of imprisonment within this state. RCW 9.98.010(1).

The statute requires only that a person is serving a "term of imprisonment in a penal or correctional institution of this state." This language "is not qualified by specific location." *State v. Slattum*, 173 Wn.App. 640, 655, 295 P.3d 788 (2013), *rev. denied*, 178 Wn.2d 1010 (2013). The statute was written to parallel the interstate detainer statute, RCW ch. 9.100, which sets forth the obligations of this state to bring a person to trial when being held in another state. *Morris*, 126 Wn.2d at 310; *see* RCW 9.100.010 (Article III). The requirement that a person is held in a facility "of this state" in RCW 9.98.010(1) was intended to differentiate the intrastate statutory scheme from the interstate requirements of RCW ch. 9.100. If the Legislature had intended that the statute only applied when a person is confined in a certain "state correctional facility" it would have said so. *Slattum*, 173 Wn.App. at 655. Rather than limiting its application to a person confined inside a particular facility, RCW 9.98.010 applies to a person in a "penal or correctional" institution within the state, signaling legislative intent to include "penal" facilities without limitation to one location.

Furthermore, the State's effort to inject a single-location requirement is contrary to the statute's purpose. Inmates have no control over the facilities in which they serve their sentences and they may be moved without advanced notice. On the other hand, both DOC and the prosecution have a ready ability to determine the location of a person serving a prison sentence within this state. Mr. Peeler was moved from one DOC facility to the King County jail based on a request outside his control and likely without his knowledge. CP 39. The purpose of the intrastate detainer act is to provide a mechanism for incarcerated people to settle unresolved charges, which helps the inmate's eligibility for institutional programs and fewer security restrictions while serving a sentence and helps the prosecution resolve unsettled charges. *State v. Bishop*, 134 Wn.App. 133, 139, 139 P.3d 363 (2006), *rev. denied*, 159 Wn.2d 1023 (2007).

As written, RCW 9.98.010 does not limit the accused person's location other than requiring that the person has entered upon a term of imprisonment in a penal or correctional institution of this state. Mr. Peeler was within this state, serving a state sentence, and his whereabouts were always known or readily discoverable by the

prosecution. The Court of Appeals correctly applied the statute to the case at bar and there is no broader public interest in granting review.

2. *Even the State concedes the statutory language is not ambiguous.*

The State lists one issue presented as whether the language of RCW 9.98.010 is ambiguous in its description of when is person is serving a term of imprisonment. But in its argument, it refers to the "plain language" of the statute. It made the same "plain language" argument in the Court of Appeals and never asserted that there was ambiguity in the statute. And it never mentions governing rule of lenity, so that if the statute is ambiguous, it would be construed in the light most favorable to the accused.

The Court of Appeals relied on and agreed with the State's insistence that the statute was unambiguous. Slip op. at 6-7. The Court of Appeals rejected the State's analysis, explaining that "The State argues RCW 9.98.010's 'plain language' applies. We agree. The problem with the State's 'plain language' argument is it reads into the statute language that appears nowhere in the statute." Slip op. at 6 (internal citation omitted).

A statute is ambiguous when it is "susceptible to two or more reasonable interpretations" but not "merely because different interpretations are conceivable." Slip op. at 5 (quoting *State v. Gray*, 174 Wn.2d 920, 927, 280 P.3d 1110 (2012)). The State does not identify differing reasonable interpretations of the statute and the Court of Appeals saw no ambiguity. This Court should deny the State's petition for review.

3. *As the Court of Appeals correctly held, the State had ample opportunity to seek a continuance under RCW 9.98.010 and its failure to do so does not demonstrate a policy reason to redefine the essential terms of the intrastate detainer statute*

The State's petition for review ignores a central premise of the Court of Appeals holding. Even if Mr. Peeler's temporary transportation from state prison to county jail made it difficult for the State to secure Mr. Peeler's presence in Skagit County, the statute provides an avenue for relief that the State ignored. Slip op. at 9-10. Mr. Peeler's second request to be brought to trial resulted in his presence in Skagit County before the expiration of the 120-day time for trial under RCW 9.98.010. Slip op. at 2, 9. Yet the State neither sought a continuance within the 120-day period nor set the case for trial within the 120-day period. Slip op. at 9. Had it done so, it would have

complied with the requirements of RCW 9.98.010 and would not have lost jurisdiction under RCW 9.98.020. *Id.*

This Court does not need to consider any of the excuses raised by the prosecution for its failure to bring Mr. Peeler to trial after his request to be prosecuted. As the Court of Appeals held, "Our record fails to show why the State took no further action," after it received Mr. Peeler's first request and learned he had been taken to King County jail for resolution of another charge. Slip op. at 9. The State could have complied with the statute had it tried to do so, and its lack of compliance caused the court to lose jurisdiction under RCW 9.98.020.

The Court of Appeals decision rests on firm reasoning and settled law. Finally, there are remaining unresolved issues that also require reversal of Mr. Peeler's conviction that the Court of Appeals did not reach. Slip op. at 10 n.8. These issues remain part of the appeal and would require remand for further consideration.

F. CONCLUSION.

Respondent Ryan Peeler respectfully requests that the Court deny the petition for review.

DATED this 16th day of April 2014.

Respectfully submitted,

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DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 90068-0**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ petitioner Erik Pedersen, DPA
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Date: April 16, 2014

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Please accept the attached document for filing in the above-subject case:

Answer to State's Petition for Review

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