900068-0

NO. _____
COA No. 69368-9-I

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON

Petitioner

v.

RYAN JAMES PEELER,

Respondent.

PETITION FOR REVIEW

SKAGIT COUNTY PROSECUTING ATTORNEY
RICHARD A. WEYRICH, PROSECUTOR

By: ERIK PEDERSEN, WSBA#20015
Senior Deputy Prosecuting Attorney
Office Identification #91059

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I. IDENTITY OF PETITIONER

The petitioner, State of Washington, the respondent below, by and through Erik Pedersen, Senior Deputy Prosecuting Attorney for Skagit County, petitions this Court to review the decision of the Court of Appeals in *State v. Peeler*, COA no. 68368-9-I filed February 24, 2014.

II. COURT OF APPEALS DECISION

The Court of Appeals filed an opinion reversing the defendant's conviction and ordering that the trial court dismiss the case with prejudice pursuant a finding of a violation of RCW 9.98.020. This opinion is a decision terminating review permitting review under RAP 13.3(a)(1). A copy of the decision is attached hereto as appendix A.

III. ISSUES PRESENTED FOR REVIEW

1. Is the interpretation of the intrastate detainer act to a defendant who has pending charges in multiple counties an issue of substantial public interest that should be determined by the Supreme Court?

2. Is the language of RCW 9.98.010 ambiguous where there is no definition providing when a defendant is under a "term of

imprisonment" and no provisions address a defendant requesting multiple trials in multiple jurisdictions?

3. Where a defendant was no longer in the Department of Corrections at the time his demand for disposition on an untried indictment under RCW 9.98.010 was the notice effective?

4. Where a defendant was no longer in the custody of the Department of Corrections, was the defendant's notice and the certificate of inmate status indicating the defendant was still in the Department of Corrections proper?

IV. STATEMENT OF THE CASE

1. Court of Appeals Decision

The Court of Appeals reversed Ryan Peeler's conviction for Assault in the Second Degree despite Peeler no longer being in the custody of the Department of Corrections when his demand for untried indictment was processed by the Department of Corrections and received by the prosecutor. *State v. Peeler*, COA no. 68368-9-I (slip op. at pages 1, 10).

The Court of Appeals decision held the demand for untried indictment was effective from the date of receipt by the prosecutor of October 27, 2011, and the statutory period expired 120 days thereafter on February 23, 2012. *State v. Peeler*, COA no. 68368-9-I 9 (slip op. at pages 1, 3).

The State contends since Peeler was in another county jail and not in the Department of Corrections when the certificate of inmate status was completed and demand was filed, the Court of Appeals decision is inconsistent with the language of the statute.

2. Conviction.

Ryan Peeler was convicted of Assault in the Second Degree with an aggravating factor for a significant injury for striking the manager of a motel causing unconsciousness and significant facial fractures. CP 111, 112. Peeler was sentenced to an exceptional sentence of 100 months and his sentence was ordered to run concurrent to his convictions in other counties. CP 270-2, 9/28/12 RP 37, 50-2, 59.

3. Proceedings bringing the defendant to trial.

On January 28, 2011, Ryan Peeler was charged with Assault in the Second Degree in Skagit County. CP 1. Peeler had multiple cases pending

in Snohomish, King and Skagit Counties. CP 5. Peeler was in the Snohomish County Jail when the case was filed. CP 5, CP 284.

On September 12, 2011, Peeler was sentenced on the Snohomish County matters. CP 84. The Certificate of Inmate Status of Octobe r24, 2011, shows that Peeler had 246 days credit on the Snohomish County case showing he had been in custody for that period of time.

On September 28, 2011, King County obtained a transport order to bring Peeler to King county. CP 84.

On October 7, 2011, Peeler dated a Notice of Place of Imprisonment and Request for Untried Indictment claiming he was at that point a prisoner in the Washington State Corrections Center in Shelton. CP 84, 283. That notice signed by Peeler that day indicated "A Certificate of Inmate Status completed by the Washington State Corrections Center Records staff is attached." Peeler signed the document October 7, 2011. CP 283. However, the attached Certificate of Inmate Status from the Department of Corrections was dated October 24, 2011. CP 284.

On October 18, 2011, Peeler was transported from the Department of Corrections to King County. CP 84 (Finding 4).

On October 26, 2011, Peeler filed a Notice of Place of Imprisonment and Request for Final Disposition of Untried Indictment, Information or

Complaint (RCW 9.98.010) in Skagit County. CP 283-4. The notice from the Department of Corrections indicated that Peeler was being held on a Snohomish County case and would be eligible for parole on July 18, 2012. But as noted previously, Peeler was no longer in the Department of Corrections since he had been transported to King County to deal with another pretrial case in that jurisdiction. CP 84 (Finding 4), 85 (Finding 8).

On October 27, 2011, the State prepared an order for transport for a hearing in Superior Court for November 17, 2011. CP 85 (Finding 7), 285. Peeler was not in the Department of Corrections. CP 85 (Finding 8).

On December 23, 2011, Peeler pled guilty to the King County charges. CP 85 (Finding 9). Peeler was returned to prison.

On January 30, 2012, Peeler filed a Notice of Place of Imprisonment and Request for Final Disposition of Untried Indictment, Information or Complaint (RCW 9.98.010) in Skagit County. CP 286-7. That notice indicated that he was then being held on both a Snohomish County case and three King County cases and would be eligible for parole on March 6, 2013. CP 287.

On February 2, 2012, the State prepared an order for transport for a hearing in Superior Court for February 16, 2012. CP 288, 289.

On February 16, 2012, Peeler was arraigned and a trial date was set. CP 290. Based upon arraignment, time for trial was calculated as April 16, 2012. CP 290. Thereafter, the case and trial date was continued at defense request. CP 86 (Finding 16).

On August 17, 2012, Peeler filed a motion to dismiss pursuant to RCW 9.98.010 and RCW 9.98.020, alleging he was not brought to trial within 120 days of his request for disposition of the untried indictment. CP 13-22.

On August 22, 2012, the trial court heard a motion to dismiss based upon a violation of RCW 9.98.0110 for failing to bring Peeler to trial within 120 days after a demand for extradition was filed. 8/22/12 RP 23[1].

The trial court concluded that for RCW 9.98.010 to apply a defendant must be imprisoned and available for transport and that Peeler was not available for transport in October of 2011. 8/22/12 RP 32-3, CP 86 (Conclusion 1). The trial court found Peeler available for transport in January of 2012, and that he was arraigned timely on February 16, 2012. CP 86.

[1] The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number.

V. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

1. The interpretation of the demand for untried indictments is an issue of substantial public interest of law that should be determined by the Supreme Court.

This Court has recognized that the constitutional right to speedy trial and time for trial issues are significant issues of law that should be addressed by the Supreme Court. See Supreme Court Order Creating the Time for Trial Task Force dated March 11, 2002 (located at the court's website at: http://www.courts.wa.gov/programs_orgs/pos_tft/index.cfm?fa=pos_tft.reportDisplay&fileName=appendixA).

This case presents an interpretation of the language of RCW 9.98.010 first enacted in 1959. Laws of Washington, 1959 c 56 § 1. The only two subsequent changes to the statute have been technical corrections dealing with registered versus certified mail and gender neutrality changes. Laws of Washington, 2011 c 336 § 345, Laws of Washington, 1999 c 143, § 33.

This Court has previously examined RCW 9.98.010 and interpreted the language of that statute in *State v. Morris*, 126 Wn.2d 306, 892 P.2d 734 (1995) (reviewing a Court of Appeals decision regarding the effective date for the notice sent by the defendant to the prosecutor).

2. RCW 9.98.010 has a physical location requirement based upon whether a defendant is under a "term of imprisonment" in the facility from which the demand is made.

The Court of Appeals decision herein is predicated upon the determination that the defendant was serving a "term of imprisonment" while he was being held in custody in another county.

> RCW 9.98.010(1) unambiguously applies to a prisoner who is serving a sentence in a state prison and during this imprisonment, has an untried indictment, information, or complaint pending in Washington. The statute imposes no physical location requirement. If the legislature had intended this result, it could have easily drafted the statute to include it.

State v. Peeler, COA no. 68368-9-I (slip op. at pages 6-7).

The pertinent portion of the statute read as follows:

> RCW 9.98.010. Disposition of untried indictment, information, complaint--Procedure--Escape, effect
> (1) Whenever a person has **entered upon a term of imprisonment in a penal or correctional institution** of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, **he or she shall be brought to trial within one hundred twenty days after he or she shall have caused to be delivered to the prosecuting attorney and the superior court of the county in which the indictment, information, or complaint is pending written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the indictment, information, or complaint**: PROVIDED, That for good cause shown in open court, the prisoner or his or her counsel shall have the right to be present, the court having jurisdiction of the matter may

> grant any necessary or reasonable continuance. **The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner,** stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board relating to the prisoner.
> (2) **The written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the prisoner to the superintendent having custody of him or her, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by certified mail, return receipt requested.**

RCW 9.98.010 (emphasis added, sections (3) and (4) omitted).

Contrary to the Court of Appeals decision, the statute provides three limitations on the demand based upon the physical location of the defendant. First, "written notice of the place of his or her imprisonment" is required to be given in the notice sent to the prosecutor and filed with the Court. RCW 9.98.010(1). Second, the written notice must be given "to the superintendent having custody of him or her." And third, the "written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the prisoner to the superintendent having custody of him or her." RCW 9.98.010(2).

Although Peeler was in the custody of the Department of Corrections when he dated his initial notice on October 7, 2011, by

October 18, 2011, he had been transported from the Department of Corrections. So by the time the Department of Corrections completed his Certificate of Inmate Status on October 24, 2011, Peeler was no longer in the location where he provided the "written notice of the place of his or her imprisonment" and was no longer available to have a proper request from "the superintendent having custody of him or her."

Contrary to the Court of Appeals decision, RCW 9.98.010 provides limitations on the locations from which a defendant can make a demand.

3. The defendant was no longer in the custody of the Superintendent of the Department of Corrections but in pretrial custody of another county making the notice ineffective.

Peeler contended in the Court of Appeals that "he was temporarily held in a county jail while serving his DOC sentence." Appellant's Opening Brief at page 21. Thus, the State contends that Peeler conceded he was in fact in another county on pretrial status on another case and not in the custody of the superintendent of the Department of Corrections when his demand was received by Skagit County.

The 120 period set by the statute has been held to apply from the time the prosecuting attorney received notice of the request.

> Accordingly, we hold that actual receipt by the prosecuting attorney and superior court of the county in which the

> indictment, information, or complaint is pending commences the 120-day period.

State v. Morris, 126 Wn.2d 306, 313, 892 P.2d 734 (1995

Thus, at the point that the State received the demand, Peeler was no longer under "a term of imprisonment in a penal or correctional institution." He was on pretrial status in King County on their charges. CP 85. His notice was also incorrect since his "notice of the place of his or her imprisonment" was no longer in the custody of the Department of Corrections, but instead was in King County. Peeler did not submit a request for untried indictment while in King County. Had he attempted to do so, he would have been ineligible since he was not under a "term of imprisonment" in that county.

Compliance with the requirements of RCW 9.98.010 is required in order to claim the benefit of the 120-day time period. State v. Young, 16 Wn. App. 838, 840, 561 P.2d 204 (1977), *citing* State v. Rising, 15 Wn. App. 693, 552 P.2d 1056 (1976).

Applying the plain language of RCW 9.98.010, Peeler's notice received October 26, 2011, was incorrect and as such was ineffective. He was neither serving a term of confinement nor in the facility from which he made the demand.

4. The Department of Corrections notice was inappropriate since the defendant was no longer in the custody of the superintendent at the time the Certificate of Inmate Status was completed.

The Court of Appeals also erroneously concluded that Peeler's demand was accurate.

> Peeler's first disposition request stated, "I am a prisoner at the Washington Corrections Center, P.O. Box 900, Shelton, WA." This statement was accurate when made.

State v. Peeler, COA no. 68368-9-I (slip op. at pages 7-8). The State contends this statement is erroneous given the full language of Peeler's demand. See CP 283-4. Appendix B. That demand read as follows:

> I am a prisoner confined at the Washington State Corrections Center, P.O. Box 900, Shelton, WA. I hereby request a final disposition of the following untried indictment(s) information or complaint pursuant to RCW 9.98.010
>
> | Cause Nunmber | Offense |
> |---|---|
> | 111000906 | ASSAULT 2 |
>
> A Certificate of Inmate Status completed by the Washington Corrections Center Record Staff is attached.
>
> DATE: 10-7-11 Signature: /s/ Ryan Peeler

CP 283. Although dated October 7, 2011, there was no Certificate of Inmate Status attached since it was not completed until October 24, 2011. The demand has to include the required certificate of inmate status from the Department of Corrections and was thus incomplete when Peeler made the

demand and would not have been effective until that demand was attached. RCW 9.98.010(1).

The trial court determined that Peeler was transported to King County on October 18, 2011. CP 84. That was not contested. Thus, the Department of Corrections could not have properly issued Peeler's Certificate of Inmate Status on October 24, 2011, because Peeler was no longer in the Department of Corrections but was in King County. Thus, the Certificate of Inmate Status was in error.

After October 18, 2011, Peeler was not serving a term of imprisonment and RCW 9.98.010 was unavailable to him until his return to the Department of Corrections.

VI. CONCLUSION

For the reasons set forth in this petition, this Court should accept review and reverse the Court of Appeals opinion with direction for the Court of Appeals to address Peeler's other unresolved claims. RAP 13.6.

DATED this 24th day of March, 2014.

Respectfully submitted,

By: _____

ERIK PEDERSEN, WSBA#20015
Senior Deputy Prosecuting Attorney
Attorney for Petitioner, State of Washington
Office Identification #91059

DECLARATION OF DELIVERY

I, Karen Wallace, declare as follows:

I sent for delivery by; [ ]United States Postal Service; [ ]ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Nancy Collins, addressed as Washington Appellate Project, 1511 3rd Ave STE 701, Seattle, WA 98101-3635. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 24th day of March, 2014.

Karen R Wallace

DECLARANT

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 69368-9-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
RYAN JAMES PEELER,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: February 24, 2014
	)	

LAU, J. — "Our system assigns to the prosecutor, not the court, the responsibility of ensuring that defendants are timely brought to trial." State v. Morris, 126 Wn.2d 306, 314, 892 P.2d 734 (1995). Under the intrastate detainers act, chapter 9.98 RCW, a prisoner who has been sentenced to a term of imprisonment in a penal or correctional institution of this state must be brought to trial within 120 days after the State receives a prisoner's valid request for speedy disposition of an untried indictment, information, or complaint, unless the court grants a continuance. Because the State failed to bring Ryan Peeler to trial timely, the trial court erred in denying Peeler's motion to dismiss the second degree assault charge. We reverse the conviction and judgment and remand to the trial court with instructions to dismiss with prejudice pursuant to RCW 9.98.020.

FACTS

Because the parties do not dispute the procedural facts and the principal issue implicates the timing of events, we summarize the following chronology:

Jan. 28, 2011	Skagit County charges Peeler by information with second degree assault. At the time, Peeler is in Snohomish County Jail on an unrelated charge.
Sept. 12, 2011	Peeler is sentenced to a term of imprisonment on the Snohomish County charge.
Sept. 20, 2011	Peeler commences his prison term at the Washington Corrections Center (WCC) in Shelton.
Oct. 7, 2011	While at the WCC, Peeler initiates his first request for speedy disposition of the untried Skagit County charge under RCW 9.98.
Oct. 18, 2011	WCC transports Peeler to King County pursuant to a September 28, 2011 transport order.
Oct. 24, 2011	A WCC official signs a certificate of inmate status attesting that Peeler is a prisoner at that institution.
Oct. 26, 2011	The Skagit County prosecuting attorney and superior court receive Peeler's request and the certificate of inmate status.
Oct. 27, 2011	The Skagit County Superior Court orders the Department of Corrections (DOC) to transport Peeler to the Skagit County Jail "as soon as possible." Between October 27, 2011, and November 17, 2011, DOC advises the Skagit County Prosecuting Attorney's Office by telephone that it cannot comply with the transport order because Peeler is in the King County jail.
Dec. 23, 2011	Peeler pleaded guilty and is sentenced to a term of imprisonment on the King County case.
Dec. 30, 2011	Peeler is transported from the King County jail to the WCC.
Jan. 20, 2012	Peeler initiates his second request for speedy disposition of the untried Skagit County charge. A WCC official signs a second certificate of inmate status.
Feb. 2, 2012	The Skagit County Superior Court issues a transport order for Peeler and the deputy prosecuting attorney notes a hearing for February 16, 2012.
Feb. 14, 2012	DOC transports Peeler to the Skagit County Jail.

Feb. 16, 2012 The Skagit County Superior Court arraigns Peeler on the second degree assault charge and sets the initial trial date for April 9, 2012.

Feb. 23, 2012 The 120-day deadline based on Peeler's first request for speedy disposition expires.

Aug. 17, 2012 Peeler moves to dismiss the Skagit County charge with prejudice for violation of the 120-day speedy disposition deadline under RCW 9.98.010(1).

Aug. 22, 2012 The Skagit County Superior Court denies Peeler's motion.

Aug. 27, 2012 Trial commences over 10 months after the prosecutor and court receive Peeler's first speedy disposition request.

The trial court's August 22, 2012 order denying Peeler's motion to dismiss stated:

1. For RCW 9.98.010 to apply the person must be imprisoned and available for transport.
2. Upon the first request for final disposition in October of 2011, the defendant was not available for transport and therefore the 120-day clock could not start.

A jury convicted Peeler of second degree assault and returned a special verdict finding that the victim's injuries substantially exceeded the level of bodily harm necessary to constitute substantial bodily harm. The trial court imposed an exceptional 100-month sentence. Peeler appeals.

ANALYSIS

This case involves the proper interpretation of Washington's intrastate detainers act. At issue are RCW 9.98.010 and RCW 9.98.020.

RCW 9.98.010 provides:

> (1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he or she shall be brought to trial within one hundred twenty days after he or she shall have caused to be delivered to the prosecuting attorney and the superior court of the county in which the indictment, information, or complaint is pending written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of

> the indictment, information, or complaint: PROVIDED, That for good cause shown in open court, the prisoner or his or her counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board relating to the prisoner.
>
> (2) The written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the prisoner to the superintendent having custody of him or her, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by certified mail, return receipt requested.
>
> (3) The superintendent having custody of the prisoner shall promptly inform him or her in writing of the source and contents of any untried indictment, information, or complaint against him or her concerning which the superintendent has knowledge and of his or her right to make a request for final disposition thereof.

RCW 9.98.020 provides:

> In the event that the action is not brought to trial within the period of time as herein provided, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Peeler contends that the State violated his right to a timely trial under chapter 9.98 RCW despite his compliance with the requirements of RCW 9.98.010. The State claims Peeler's first request for disposition was void because Peeler was in King County jail on the date of receipt. It argues that a request is effective only if, on the date of receipt, the prisoner is (1) physically located at a state prison and (2) available for transport. As discussed below, nothing in the plain text of the intrastate detainers act supports the State's interpretation.

> The meaning of a statute is a question of law we review de novo. In interpreting a statute, our fundamental objective is to ascertain and carry out the legislature's intent. Statutory interpretation begins with a statute's plain meaning. Plain meaning "is to be discerned from the ordinary meaning of the language at

> issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009). If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end. A statute is ambiguous when it is "'susceptible to two or more reasonable interpretations,' but 'a statute is not ambiguous merely because different interpretations are conceivable.'" Estate of Haselwood v. Bremerton Ice Arena, Inc., 166 Wn.2d 489, 498, 210 P.3d 308 (2009) (quoting State v. Hahn, 83 Wn. App. 825, 831, 924 P.2d 392 (1996)).

State v. Gray, 174 Wn.2d 920, 926-27, 280 P.3d 1110 (2012) (citations omitted).

"We cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language." State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). This rule holds even if we believe "the Legislature intended something else but failed to express it adequately."[1] State v. Chester, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997). In sum, when analyzing an unambiguous statute, we assume that the legislature "'means exactly what it says.'" Delgado, 148 Wn.2d at 727 (quoting Davis v. Dep't of Licensing, 137 Wn.2d 957, 964, 977 P.2d 554 (1999)).

Under the act, if a prisoner "has entered upon a term of imprisonment in a penal or correctional institution of this state" and during this imprisonment has an untried indictment, information, or complaint pending in Washington, he may request a final disposition of the untried charge within 120 days by delivering a written notice and request to the prosecuting attorney and superior court where the untried charge is pending. The notice must identify the place of imprisonment. The superintendent with custody over the prisoner must notify the prisoner in writing of any known untried indictment, information, or complaint. The notice must include the prisoner's right to

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[1] Division Three of this court has concluded, "The legislative history of RCW 9.98.010 is nonexistent." State v. Morris, 74 Wn. App. 293, 297, 873 P.2d 561 (1994), aff'd on other grounds, 126 Wn.2d 306, 892 P.2d 734 (1995).

request a final disposition of the charge. The superintendent must promptly forward the prisoner's notice and request together with the superintendent's notice of inmate status to the appropriate prosecuting attorney and superior court. If the untried charge is not tried within 120 days, the court loses jurisdiction and the untried indictment, information, or complaint must be dismissed with prejudice. This mandatory 120-day rule is subject to the trial court's grant of any necessary or reasonable good cause continuance. "[A]ctual receipt by the prosecuting attorney and superior court of the county in which the indictment, information, or complaint is pending commences the 120-day period." Morris, 126 Wn.2d at 313.

RCW 9.98.010(1) casts the 120-day deadline in absolute terms by employing the term "shall." See Erection Co. v. Dep't of Labor & Indus., 121 Wn.2d 513, 518, 852 P.2d 288 (1993) ("It is well settled that the word 'shall' in a statute is presumptively imperative and operates to create a duty."). Emphasizing the mandatory nature of the statute, our Supreme Court explained, "The whole thrust of the statute is to ensure that once the period properly commences, the prisoner 'shall be brought to trial' within 120 days." Morris, 126 Wn.2d at 314 (quoting RCW 9.98.010(1)).

The State argues RCW 9.98.010's "plain language" applies. Resp't's Br. at 28. We agree. The problem with the State's "plain language" argument is it reads into the statute language that appears nowhere in the statute. The State claims that an otherwise valid disposition request is rendered a nullity if the prisoner is located in a county jail instead of a state prison on the request receipt date. The State cites no controlling authority. RCW 9.98.010(1) unambiguously applies to a prisoner who is serving a sentence in a state prison and during this imprisonment, has an untried

indictment, information, or complaint pending in Washington.[2] The statute imposes no physical location requirement. If the legislature had intended this result, it could have easily drafted the statute to include it.

On September 12, 2011, the Snohomish County Superior Court sentenced Peeler to a 24-month term of imprisonment. He was serving this prison term at WCC, a state prison facility, when he initiated his first disposition request on October 7, 2011, for the Skagit County charge. The Skagit County prosecuting attorney and superior court received Peeler's disposition request on October 26, 2011, while he was still serving his term of imprisonment.[3] Accordingly, we conclude under the statute's plain language that Peeler's first request was effective to trigger the 120-day disposition rule.

In a related argument, the State claims Peeler's request was void because it misidentified Peeler's place of imprisonment on the date of receipt. The State argues, "[Peeler's] notice was also ineffective since his 'notice of the place of his or her imprisonment' was also incorrect since he was no longer in the custody of the department of corrections, but instead was in King County." Resp't's Br. at 28. We are not persuaded by this undue, hypertechnical argument. Peeler's first disposition

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[2] Indeed, the State acknowledges this point: "The State contends that by the plain language of the statute providing for request for disposition for untried indictment applies when a person is serving a term of imprisonment." Resp't's Br. at 25.

[3] In State v. Bishop, 134 Wn. App. 133, 139 P.3d 363 (2006), the court rejected the State's contention that the defendant was not serving a sentence when she instituted a request under the interstate agreement on detainers (IAD), chapter 9.100 RCW, but merely awaiting resentencing after her drug rehabilitation program was revoked. The court held that the defendant's removal from the drug program did not remove her from her original sentence. She was still under her term of imprisonment when she requested disposition of the Washington charges under the IAD. Bishop, 134 Wn. App. at 139.

request stated, "I am a prisoner at the Washington Corrections Center, P.O. Box 900, Shelton, WA." This statement was accurate when made. The State acknowledges, "Peeler was in the Department of Corrections at the time he submitted the notice and request for final disposition." Resp't's Br. at 27.

The State also argues that Peeler's first request is void because a prisoner must be available for transport on the date the prosecuting attorney and superior court receive his or her disposition request. This unsupported argument is not persuasive for several reasons. First, nothing in the statute's plain text imposes such a limitation. We decline to either omit language that is in the statute or add language that the legislature did not intend.[4]

Next, noticeably absent from the State's briefing is any discussion on the statute's continuance provision quoted above.[5] This provision confers on the court broad discretion to grant, for good cause shown, "any necessary or reasonable continuance." RCW 9.98.010(1). We acknowledge the State's legitimate concern that Peeler was unavailable for transport due to a conflicting King County transport order. There is no dispute that the State never sought a continuance under this provision at any time despite its concern. See State v. Syrotchen, 61 Wn. App. 261, 810 P.2d 64

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[4] Following oral argument in this case, the State filed a RAP 10.8 statement of additional authorities citing State v. Alexus, 91 Wn.2d 492, 588 P.2d 1171 (1979), State v. Slattum, 173 Wn. App. 640, 295 P.3d 788 (2013), State v. Peterson, 137 Idaho 255, 47 P.3d 378 (Ct. App. 2002), State v. Foster, 107 Or. App. 481, 812 P.2d 440 (1991), and State v. Julian, 244 Kan. 101, 765 P.2d 1104 (1988). These cases do not control.

[5] "Provisos operate as limitations upon or exceptions to the general terms of the statute to which they are appended and as such, generally, should be strictly construed with any doubt to be resolved in favor of the general provisions, rather than the exceptions." State v. Wright, 84 Wn.2d 645, 652, 529 P.2d 453 (1974).

(1991) (good cause existed for granting continuance in order to obtain presence of defendant incarcerated by federal government in another state for purpose of determining whether speedy trial requirements of interstate agreement on detainers had been met).[6] Our record fails to show why the State took no further action to transfer Peeler to Skagit County after he pleaded guilty to the King County charges on December 23, 2011, two months before the 120 days expired on February 23, 2012. Nothing in our record indicates the State contacted King County to determine Peeler's availability for transport to Skagit County after the guilty plea. The record shows a second Skagit County transport order on February 2, 2012, and arraignment scheduled on February 16, 2012, 7 days before expiration of the 120 days. At Peeler's arraignment, the parties apparently agreed to an April 9, 2012 trial date.[7]

> The whole thrust of the statute is to ensure that once the period properly commences, the prisoner "shall be brought to trial" within 120 days. RCW 9.98.010(1). Our system assigns to the prosecutor, not the court, the responsibility of ensuring that defendants are timely brought to trial. See generally U.S. Const. amend. 6 ("[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial"); RCW 9.98.020 ("[i]n the event the action is not brought to trial within the period of time as herein provided, no court of this state shall any longer have jurisdiction thereof").

Morris, 126 Wn.2d at 314 (alterations in original).

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[6] The continuance provision language in the intrastate detainers act and the interstate agreement on detainers (IAD) is nearly identical. Division Three of this court has noted, "RCW 9.98.010 serves the same purpose for intrastate detainers as the IAD does for interstate detainers. The purpose of both acts is 'to encourage the expeditious and orderly disposition of . . . charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints.'" Morris, 74 Wn. App. at 297 (quoting RCW 9.100.010, art. I), aff'd on other grounds, 126 Wn.2d 306, 892 P.2d 734 (1995).

[7] The record shows several trial continuances after the April 9, 2012 trial date.

For the reasons discussed above, the trial court erred when it denied Peeler's motion to dismiss the charge for violation of his right to a timely trial under chapter 9.98 RCW. The State failed to bring Peeler to trial within 120 days after it received his timely and valid disposition request under RCW 9.98.010. Because RCW 9.98.020's mandatory language requires the dismissal with prejudice of an information if the defendant is not brought to trial within 120 days of a valid disposition request, and because no continuances have been granted, we reverse Peeler's conviction and judgment and remand to the trial court with instructions to dismiss the charge with prejudice.[8]

WE CONCUR:

[8] Given our disposition, we need not address Peeler's remaining contentions.

KarenWallace

From: Moore, Lori <lori.moore@courts.wa.gov>
Sent: Monday, February 24, 2014 9:42 AM
To: 'wapofficemail@washapp.org'; ErikPedersen; skagitappeals; 'nancy@washapp.org'; Richard A. Weyrich
Subject: COURT OF APPEALS 69368-9-I State of Washington, Respondent v. Ryan J. Peeler, Appellant
Attachments: 69368-9-I.Opinion Letter.pdf; 69368-9-I.Opinion.pdf

Importance: High

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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The attached opinion is being transmitted to counsel electronically. No hard copy will follow.

Thank You!!

Lori Moore
Case Manager
Court of Appeals Division One
e-mail: lori.moore@courts.wa.gov
tel: 206-464-5892

APPENDIX B

Washington Corrections Center
P. O. Box 900
Shelton, WA 98584

TO: SKAGIT County Superior Court and Prosecuting Attorney
State of Washington

FROM: NAME: PEELER, RYAN
DOC#: 751418

SUBJECT: Notice of Place of Imprisonment and Request for Final Disposition of Untried Indictment, Information or Complaint (RCW 9.98.010)

I am a prisoner confined at the Washington Corrections Center, P. O. Box 900, Shelton, WA. I hereby request a final disposition of the following untried indictment(s) information or complaint pursuant to RCW 9.98.010:

2

Cause Number	Offense
111000906	ASSAULT 2

A Certificate of Inmate Status completed by the Washington Corrections Center Records staff is attached.

DATE: 10-7-11 Signature: Ryan Peeler

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

CERTIFICATE OF INMATE STATUS

RE:	PEELER, Ryan J. INMATE	751418 DOC NUMBER	
	WCC-RC INSTITUTION	Shelton LOCATION	

The (custodial authority) hereby certifies:

1. The term of commitment under which the prisoner above-named is being held: 10-1-01811-0-Snohomish 24 months
2. The time already served: 246 days
3. Time remaining to be served: 267 days
4. The amount of good time earned: 81 days
5. The date of parole eligibility of the prisoner: 7/18/2012
6. The decisions of the Indeterminate Sentence Review Board relating to the prisoner: N/A
7. Maximum expiration date under present sentence: 2/19/2013

CORRECTIONAL RECORDS MANAGER II SIGNATURE	DATE
Julia Legg for	10/24/11

CUSTODIAL AUTHORITY

NAME		INSTITUTION	
Scott J. Russell		WCC-RC	
STREET ADDRESS	CITY	STATE	ZIP
P.O. BOX 900	Shelton	WA	98584
TELEPHONE NUMBER			
(360) 426-4433			