WASHINGTON STATE SUPREME COURT

TEMPLE OF JUSTICE

No. 90076-1

THE STATE OF WASHINGTON

Respondent

vs.

RODNEY STEVEN MITUNIEWICZ

Petitioner

PETITION FOR REVIEW
INTERPRETATION OF CrR 3.3

RODNEY STEVEN MITUNIEWICZ
DOC#912672, C-B-18-APA cell
COYOTE RIDGE CORRECTIONS CENTER
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Law — Pages

CONTINUE TABLE OF AUTHORITIES

CONTINUE TABLE OF AUTHORITIES

A. IDENTITY OF PETITIONER

The Petitioner, Rodney Steven Mituniewicz, asks this Court to accept review of the Court of Appeals Division Two decisions terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISIONS

Mituniewicz seeks review of: SPEEDY TRIAL part of the decision of the Court of Appeals, filed on February 11, 2014, as attached at Appendix "I" page -1- through -8- pages; and the order denying motion for reconsideration filed on March 10, 2014, as attached at Appendix "II" page -1- of -1- page.

C. ISSUES PRESENTED FOR REVIEW

1). CrR 3.3 demands a due diligence standard within key terms of the different provisions which involves a substantial public interest, that our trial courts promotes integrity and impartiality of the accure's right to a dignify speedy trial is a question of law that should be determined by the Supreme Court, RAP 13.4 (b)(4)

a) Honorable Johnson's untenable reasons "excludes 60 days of DOC sanction" under CrR 3.3?

b) Honorable Wulle's untenable grounds "Next Court Appearance 1-5-12 Time 1 30" under CrR 3.3?

c) Honorable Stahnke's manifestly

unreasonable "to reset commencement date to 11/28/11, and the elapsed time 56 days" under CrR 3.3?

D. STATEMENT OF CASE AND PROCEDURE

On September 14, 2011, at 9:00 pm Mituniewicz was arrested for two PV warrants; and two new charges of: DCS-Heroin and UPF in 1° - P. 380 pistol. That DOC sanction PV time started; commencement for pending charge started (RP at 12-13, 24, 29, 31, 33-34, 46-47); and Court of Appeals decision-as are periods of incarceration on unrelated charges. (Appendix "I" at p. 7); and J&S 152 days CTS (CP, 67)(RP at 865).

On September 15, 2011, at 9:00am, Honorable Stahnke reads into the record probable cause; appointed Indigent Defense Contractor (IDC) Therese M. Lavallee; and presence Deputy Prosecuting Attorney (DPA) Michael B. Dodds, (CP, 11M-3).

On September 19, 2011, DPA Randolph J. St. Clair filed charging information #11-1-01530-1 PCS w/Intent to Del.-Heroin, UPF in 2° - P. 380 pistol, with two PV community placement #92-1-00148-9 and 10-1-00077-1 included within all Mituniewicz's criminal history. (CP, 4) henceforth incorporated by reference as if fully set forth herein.

On September 22, 2011, DOC hearings officer

found Mituniewicz guilty of PVs, thus sentencing 60 days CTS with 1/3 good time 40 days sanction in Clark County Jail. DOC Order of Confinement, Defense Exhibit #1 (CP, 22M)(RP at 46-47)(CP, 11).

On September 29, 2011, at 9:48 am, Honorable Collier question: to both counts in the information PCS w/Intent to Del.- Heroin and UPF in 2°, how do you plead? Mituniewicz answered: not guilty Honorable Collier enquires: So we'll set an in-custody date, a PV plan track with -- to himself review charging information #11-1-01530-1 mandates that criminal history was proof by a preponderance of the evidence standard to determine that Mituniewicz received legal notice of two PV's community placement embody charging information #11-1-01530-1 (CP, 4) handed to Mituniew (RP at 1-2). IDC Lavallee contend: the two PV are one actual violation by DOC; and the other one is LFO #300.00 payment resolve that issue. (RP at 3). DPA Dodds goes into criminal history. Mituniewicz has been very non-compliant with requirements of the sentences that have done and in regards to Mituniewicz's supervision by DOC. (RP at 4).

Honorable Collier question: PV tracking with the trial date, Is that the plan, IDC Lavallee? PV to track with? IDC Lavallee answered: Yes, please. DPA Dodds

no objections, (RP at 5).[1] Honorable Collier

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fn. #1 State v. White, 94 Wn.2d 498, 503, 617 P.2d 998 ("The selection of a proper trial date is a mutual task with ultimate responsibility in the court"). Under GR 9 states: "The purpose of rules of court is to provide necessary governance of court procedure and practice governance and to promote justice by ensuring a fair and expeditious process. In promulgating rules of court, the Washington Supreme Court seeks to ensure that: (1)-(8) Rules of court are clear and definite in application." Thus, under CrR 3.3(d)(3) states: "Objection to trial setting. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall loses the right to object that a trial commenced on such a date is note within the time limits prescribed by this rule." The 2003 revised version of CrR 3.3(d)(3) has not altered the burden on public defender's objection within 10 day period or loses the right to object, see White at fn. 2, for IDC Lavallee's breach of RPC 3.3(a)(3).

ruled: Judge Stahnke's Dept #1 case, 11/14/11 at 9:00 trial date, 46 days elapsed, 11/10/11 at 1:30 readiness hearing. (RP at 6)(CP, 6). Court of Appeals decision — CrR 3.3 provides that a defendant who is detained in jail shall be brought to trial within 60 days of his arraignment. CrR 3.3 (b)(1)(i), (c)(1). Appendix "I" at p. 6.

On October 24, 2011, Clark County Jail released Mituniewicz's DOC sanction/sentencing served. The trial courts discussion for pending charges to set commencement date at 10/24/11 (RP at 13-14, 26, 33-34).

On November 7, 2011, the Clerk's Office of the Superior Court filed three pro se motions, Mituniewicz's mind was clearly focus: to return personal property CrR 2.3(e). (CP, 8); prosecutors misconduct CJC 2.15(B)(D). (CP, 9); and suppression CrR 3.6. (CP, 10).

On November 10, 2011, scheduled readiness hearing Honorable Johnson in the arraignment courtroom, heard IDC Lavallee's motion to continue the trial date. (CP, 11). Based on that court excludes 60 days of DOC sanction and finds good cause for continuance written upon a new scheduling order, includes trial date 1/9/12 at 9:00, 46 days elapsed, readiness hearing 1/5/12 at 1:30, and motions hearing 12/28/11 at 9:00 (RP at 8-12) (CP, 12).

On November 15, 2011, under the 10 days due diligence objection described in CrR 3.3(d)(3)-(h) pro se motion for dismissal with prejudice in the conclusion the suggested remedy anew 30 day buffer period CrR 3.3(b)(5), Placed into the Clark County Jail's legal mail system in accordance with GR 3.1(c); and CrR 3.3(d)(3)-(h) Affidavit of Mailing (CP, 13), Notice for Motion Docket (CP, 14) and Motion to Dismiss (CP, 15).

On December 28, 2011, at 9:00 am, mere docket congestion in the arraignment courtroom assigned to Honorable Wulle and the unavailability of trial judge Stahnke to hear the motion for dismissal with prejudice (CP, 15) next court appearance 1-5-12 time 1:30 (CP, 17M).

On December 30, 2011, the clerk's office of the Superior Court filed Mituniewicz's Amended Motion for Dismissal with Prejudice (CP, 20).

On January 5, 2012, at 1:40 through 2:46 pm, Honorable Stahnke ruled: exclude 60 days from speedy trial, so the new commencement date 11/28/11 would be when the 60 days would have run from the DOC hold. (RP at 28). Honorable Stahnke does not find reasons under RPC 1.2(a), 8.4(c) inappropriate in this file (CP, 20) Judge Johnson found good cause to continue based on IDC Lavallee's motion (CP, 11) the scheduling

order (CP, 12) signed by Judge Johnson on 11/10/11, motion to dismiss with prejudice (CP, 15&20) is denied as Mituniewicz was within speedy trial and good cause was found by Judge Johnson brings speedy trial to 1/27/12. (RP at 48) (CP, 22M). As to motion to return personal property CrR 2.3(e) to aid Mituniewicz's payment of LFO is a premature and denied at this time. (RP at 71)(CP, 22M). Anew commencement date 11/28/11, trial date 1/23/12 at 9:00 am, 56 days elapsed (CP, 24), Mituniewicz's banker money transfered the $300.00 LFO warrant payment #7610461 Superior Court Clerk Dawn, as charging information #11-1-01530-1 the criminal history DCS/PCS #92-1-00148-9 same criminal conduct (CP, 4). Honorable Stahnke ruled: Prosecutors make the decision within the filed information #11-1-01530-1 about crimes to charged in this State. (RP at 75)(CP, 4).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1). CrR 3.3 demands a due diligence standard within key terms of the different provisions which involves a substantial public interest, that our trial courts promotes integrity and impartiality of the accure's right to a dignify speedy trial is a question of law that should be determined by the Supreme Court. RAP 13.4(b)(4)

STANDARD OF REVIEW

Usually this court review a trial court's order denying a motion to dismiss for speedy trial purposes for manifest abuse of discretion City of Seattle v. Guay, 150 Wn.2d 288, 295, 76 P.3d 231 (2003). As a preliminary matter, the "manifestly unreasonable" and "untenable reasons" tests require this court to determine a legal standard to use. State v. Dye, 178 Wn.2d 541, —, 309 P.3d 1192, 1196 (2013). Discretion also is abused when it is exercised contrary to law. State v. Tobin, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007). Issues of statutory construction and interpretation are questions of law, reviewed de novo. This court interprets court rules as though they were drafted by the legislature. As with statutes, this court gives effect to the plain language of a court rule, as discerned by reading the rule in its entirety and harmonizing all of its provisions. State v. George, 160 Wn.2d 727, 735, 158 P.3d 1169 (2006) (citations omitted).

a) Honorable Johnson's untenable reasons "excludes 60 days of DOC sanction" under CrR 3.3?

IDC Lavallee contend: Mituniewicz was arrested for the PCS w/Intent to Del.-Heroin and UPF in 2° P.380 pistol on 9/14/11 along with outstanding PV warrant community placement PCS #10-1-00077-1 CrR 3.3(a)(3)(v) excludes the DOC sentencing 60 days imposed on 9/22/11 from speedy trial any custody

period where Mituniewicz is detained for an unrelated charge or is serving an unrelated sentence (RP at 10)(CP, 11).

Court of Appeals decision — On November 18, both parties requested a continuance and observed that Mituniewicz's 60 days of incarceration on another matter should not be included in his speedy trial calculation. The trial court agreed and granted a 60-day continuance both because of that incarceration and for good cause shown. Appendix "I" at p. 7. Honorable Johnson ruled: excludes the 60 days of DOC sanction, would be one approach to analyzing that. (RP at 12)(CP, 12). Actually, found a good cause to continue the case in any event. (RP at 14)(CP, 11M, 12). Honorable Johnson's decision — "the facts do not meet the requirements of the correct standard." Dye, supra. CrR 3.3(f)(2), "as to why the various causes proffered for the continuances" under CrR 3.3(a)(3)(v), (e)(2), both of these provisions enforced ambiguities and "were not necessary to 'the administration of justice.'" State v. Johnson, 132 Wn.App. 400, 413, 132 P.3d 727 (2006)

Mituniewicz contends in the task force, final report, specifically addresses judicial interpretation of CrR 3.3, and the task force members' intent to eliminate ambiguity. "Task force members

are concerned over the degree to which the time-for-trial standards have become less governed by the express language of the rule and more governed by judicial opinions. Wash. Courts Time-For-Trial Task Force, Finial Report I.B.1 at 3 Appendix "IV", Court of Appeals decision — State v. Bobenhouse, 143 Wn. App. 315, 329, Appendix "I" at p. 7,

Under the plain language of CrR 3.3(a)(3)(v), "Detained in jail" means held in the custody of a correctional facility pursuant to the pending charge. Such detention excludes any period in which a defendant is on electronice home monitoring, is being held in custody on an unrelated charge or held or is serving a sentence of confinement. Appendix "II" at p. 1.

Honorable Johnson ruled: DOC 60 day sentence served from 9/14/11. Forty days confinement would take it to 10/24/11, (RP at 13), "is [not] serving a sentence of confinement" under CrR 3.3(a)(3)(v).

Honorable Johnson ruled: Mituniewicz is released from DOC sanction, but if bail is posted, put it on for conditions, (RP at 15), "is [not] being held in custody on an unrelated charge" under CrR 3.3(a)(3)(v).

"To address this concern, the task force has tried to fashion a rule that is simpler, has fewer ambiguities, and covers more of the field of time-for-trial issues,

with the hope that a reader of the rule will have a better understanding of the overall picture than currently exists."
Wash. Courts Time-For-Trial Task Force, Final Report I.B.1. at 3. Appendix "IV"

Court of Appeals decision — If a period is excluded, the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period. CrR 3.3(b)(5). Appendix "I" at p. 7. "It is one thing to affirm a lower court decision on an alternative theory in which there is no dispute; it is quite another to use an alternative theory for which there is no authority." State v. Adamski, 111 Wn.2d 574, 581, 761 P.2d 621 (1988). Court of Appeals decision — Continuances are excluded from speedy trial calculations, as are periods of incarceration on unrelated charge. CrR 3.3(e)(2), (3). Appendix "I" at p. 7.

CrR 3.3(e)(2), the provision is ambiguous with respect to whether it excludes only the time actually spent in trial or the entire time in custody pending the disposition of other charge." George, 160 Wn.2d at fn. 3. Mituniewicz's DOC hearing 60 day sentencing on 9/22/11. (RP at 10, 12)(CP, 11). "Key terms are defined in order to reduce ambiguity" Wash. Courts Time-For-Trial Task Force, Final Report I.B.1 at p. 2.

Appendix "IV". "This court has consistently interpreted CrR 3.3 so as to resolve ambiguities in a manner which supports the purpose of the rule in providing a prompt trial for the defendant once prosecution is initiated." State v. Harris, 130 Wn.2d 35, 43, 921 P.2d 1052 (1996).

Under the plain language of CrR 3.3(e)(3), "[a]rraignment, pre-trial proceedings, trial and sentencing on an unrelated charge." George, 160 Wn.2d at 739. In the case at bar, the effect of Mituniewicz's DOC hearing 60 day sentencing on 9/22/11. (RP at 10, 12) (CP, 11). That "sentencing" means to pronounce punishment upon, Webster's New World Dictionary and Thesaurus, at p. 581 (2d Ed. 2002). "Because there was no tenable basis for finding that the continuance was 'required in the administration of justice', the trial court's decision to delay the trial was an abuse of discretion." State v. Nguyen, 131 Wn. App. 815, 821, 129 P.3d 821 (2006).

IDC Lavallee don't believe my client is wanting a continuance of the trial date. Mituniewicz certainly will not waive his right to a speedy trial under the court rule. (RP at 11) (CP, 11). "Under RPC 1.2(a), 'a lawyer

shall abide by a client's decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." Because "the client controls the goals of litigation," where the client's goal is to go to trial" State v. Saunders, 153 Wn. App. 209, 217-18, fn. 9, 220 P.3d 1239 (2009)("the defendant objects to a continuance that will delay trial - that the State agrees to such a continuance does not relieve the trial court of its burden. CrR 3.3(f)(2); see CJC 3(C)(2); RPC 1.2(a), 8.4(a)".)

IDC Lavallee contend: the trial judge Stahnke Dept. #1 case, they have a motion date of 12/28/11, where they have all day available for motions on this case. DPA Carmena want to set it at 9:00 am (RP at 10-11, 14) (CP, 12). "Of course, the fundamental principle that the State must exercise due diligence in bring a defendant to trial continues in force. However, in refining the rule, the task force intended to embody the State's due diligence obligations in the express requirements of the rule itself." George, 160 Wn.2d at 738.

b) Honorable Wulle's untenable grounds "next court appearance 1-5-2012 time 1:30" under CrR 3.3?

Within five days after 11/10/11, Honorable Johnson's scheduling order (CP, 12), Mituniewicz on 11/15/11 log-in at the Clark County Jail Legal Mail System GR 3.1(c) Affidavit of Mailing (CP, 13); Notice for Motion Docket in accordance with local Rule CrR 3.3(d)(3) (CP, 14); and Motion to Dismiss w/prejudice, the Objection within conclusion suggested remedy anew 30 days buffer period. CrR 3.3(b)(5), (h). See George, 160 Wn.2d at 732-33.

Honorable Wulle's decision: next court appearance 1-5-2012 time 1:30 (CP, 17M) "that is, the factual findings are unsupported by the record." Dye, supra.

This court has observed in another context, if "administration of justice" can be invoked at any time to grant a continuance, then "there is little point in having the speedy trial rule at all." Adamski, 111 Wn.2d at 588. Honorable Wulle's failing to justify the delaying of Mituniewicz's right to a timely trial on (CP, 17M) an adequate basis appearing in the record, the result is the same. See RPC 1.2(a)("a lawyer shall abide by a client's decisions concerning the objectives of representation"); State v. Kenyon, 167 Wn.2d 130, 138-39, 216 P.3d

1024 (2009)(dismissing charges based on a trial court's failure to document an adequate basis for continuances beyond speedy trial limits); State v. Cross, 156 Wn.2d 580, 613, 132 P.3d 80 (stating that client control litigation goals but not strategy).

c) Honorable Stahnke's manifestly unreasonable "to reset commencement date to 11/28/11, and the elapsed time 56 days" under CrR 3.3?

On December 30, 2011, the Clark County Superior Court Clerk's Office filed Mituniewicz's amended motion for dismissal w/prejudice under CrR 3.3(h). (CP, 20). Court of Appeals decision — Mituniewicz does not appear to challenge the court's second continuance of the trial date to 1/23/12. Appendix "I" at p. 6. Because Mituniewicz "was not brought before the court until after the time for trial period had elapsed, he cannot be deemed to have waived his objection." State v. Greenwood, 120 Wn.2d 585, 594, 606, 845 P.2d 971 (1993)("CrR 1.1 is also relevant for our analysis of CrR 3.3. CrR 1.1 provides the criminal rules 'shall be interpreted and supplemented in light of ... the decisional law of this state").

Honorable Stahnke lacking authority to reset

anew commencement date to 11/28/11, trial date set to 1/23/12, time elapsed 56 days (RP at 28, 31, 40) scheduling order (CP, 24). "There is a point at which the length of the continuance would be unreasonable." State v. Flinn, 154 Wn.2d 193, 201, 110 P.3d 748 (2005). CrR 3.3(c)(2), in explaining the purpose of this provision, the Time-For-Trial Task Force stated:

> "Subsection (c)(2) specific the circumstances under the time-for-trial clock is reset to zero and establishes the corresponding 'restart' date. Many of the circumstances spelled out in subsection (c)(2) were moved here from the current rule's section on extensions of time, the task force concluding that these circumstances are better handled by restarting the clock."

Wash. Courts Time-For-Trial Task Force, Final Report II.B. at 4. Appendix "IV". George, 160 Wn.2d at 739-40 ("to reset time for trial was error because that provision does not apply when a defendant is incarcerated on unrelated charge"). Mituniewicz's DOC hearing 60 day sentencing on 9/22/11. (RP at 25)(CP, 11), as shown within DOC Order of Confinement, the Defense Exhibit #1. (RP at 45-47)(CP, 22M). Prior to Honorable Collier's scheduling order date of commencement: 9/29/11. (CP, 6)(RP at 28, 31, 33-34).

Honorable Stahnke's abused his discretion to reset anew commencement date to 11/28/11, trial date 1/23/12, and the elapsed time 56 days. (RP at 28, 31, 40)(Cf, 24) "that is, it falls outside the range of acceptable choices, given the facts and the applicable legal standard." Dyer, supra. Absent "written waiver" mandatory in the provisions of CrR 3.3(c)(2)(i), (f)(1). Appendix "III". CrR 3.3 (f)(1), in explaining the purpose of this provision, the Time-For-Trial Task Force stated;

"This subsection slightly modifies the current rule to require that the continuance be to a date-certain. The task force also discussed the current (and recently adopted) provision's requirement that the agreement must be signed by the defendant, and not just the defendant's attorney. Members noted in their discussion that under some circumstances such as when a defendant's medical condition prevents him or her from attending a hearing, the defendant's signature might not be available even though good reason exists to grant a continuance. The task force decided, however, that under these circumstances a continuance could instead be addressed under a separate provision — subsection (f)(2), which authorizes continuances on the motion of the Court. In

light of the importance of securing the defendant's signature to these agreements, the task force proposes that the current signature requirement be retained. This same rationale applies equally to the provision earlier in the rule requiring defendants to personally sign waivers."

Wash. Courts Time-For-Trial Task Force, Final Report II.B at 5-6.

"The rules were intended 'to cover all the reasons why a case should be dismissed under the rule' and no reasons should be read into the rule beyond those that are expressly stated. Task Force, Final Report § I.B.1 at 6."

State v. Chavez-Romero, 170 Wn.App. 568, 578, 285 P.3d 195 (2012).

F. CONCLUSION

This Court should reverse and remand for entry of an order dismissing with prejudice under CrR3.3(h) and remand back to the trial court for an evidentary hearing for return of Mituniewicz's personal property #2,313.00, Apple iPhone, and 1996 Nissan Pathfinder under CrR2.3(e).

Thank You for your time and consideration in this matter.

Respectfully submitted this 24th day of April, 2014.

Rodney Steven Mituniewicz
DOC # 912672, CRCC

APPENDIX

"I"

Court of Appeals Decision

"II"

Denial of Reconsideration

"III"

Cr.R 3.3 Time-For-Trial Rules

"IV"

Cr.R 3.3 Task Force, Final Report I.B.

Cr.R 3.3 Task Force, Final Report II.B.

APPENDIX "I"

Court of Appeals Decision

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RODNEY S. MITUNIEWICZ, Appellant.	No. 43110-6-II UNPUBLISHED OPINION

PENOYAR, J. — Rodney S. Mituniewicz appeals his convictions of possession of heroin with intent to deliver while armed with a firearm and within 1,000 feet of a school bus stop, and second degree unlawful possession of a firearm. Mituniewicz argues that the evidence is insufficient to support the firearm enhancement and, in a pro se statement of additional grounds (SAG), contends that the trial court's violation of his speedy trial rights under CrR 3.3 requires the dismissal of his convictions. Because the evidence was sufficient to prove that Mituniewicz was armed and because defense counsel requested the continuance of Mituniewicz's trial, we affirm.

FACTS

As part of an investigation into heroin distribution, Clark County Sheriff's Detective Bill Sofianos asked the occupant of an apartment he had searched to set up a drug deal requesting $1,000 worth of heroin. Sofianos listened and watched as the occupant made the phone call setting up the deal. Mituniewicz arrived at the apartment later that evening.

When Mituniewicz knocked, Detective Sofianos opened the door. Mituniewicz had a locked metal security box in one hand and a set of keys in the other. Sofianos took the box and the keys and arrested Mituniewicz. After handcuffing him, Sofianos put the keys in

Mituniewicz's pocket and walked him out of the house. Detective Tom Yoder then took custody of the box and keys after he removed the latter from Mituniewicz's pocket.

Jennifer Thomas, Mituniewicz's community corrections officer, used one of the keys to open the metal box. Inside, she found a handgun, a digital scale with residue on it, a magnifying glass, baggies containing suspected heroin, several syringes, a lighter, a razor blade, and a knife. Although the gun contained a magazine, it was not loaded. There was no ammunition in the box or on Mituniewicz's person. A search of Mituniewicz produced $2,313 in cash and two golf ball sized balls of suspected heroin wrapped in aluminum foil. One of the balls and some of the baggies later tested positive for heroin.

During the September 29 arraignment, the trial court set November 14 as the trial date. On November 10, the State moved for a continuance because the assigned prosecutor would be in trial through November 14 or 15. Defense counsel also requested a continuance over Mituniewicz's objection because she needed additional time to conduct discovery and to file a suppression motion. Defense counsel observed that her client had been serving a Department of Corrections (DOC) sanction of 60 days on an unrelated matter since September 22. The trial court granted a continuance to January 9.

After filing a pro se motion to dismiss based on the alleged violation of his speedy trial rights, Mituniewicz argued his motion before a different judge on January 5. Mituniewicz contended that because he had received good conduct time on the DOC sanction, his incarceration ended on October 23, and the 60-day speedy trial period expired on December 22. The trial court observed that the previous continuance was based on the DOC sanction as well as good cause. The trial court denied the motion to dismiss and, at both parties' request and with Mituniewicz's acquiescence, set a new trial date of January 23.

After the trial court upheld the search of the security box, Mituniewicz's CCO and the detectives testified to the facts set forth above.[1] Detective Sofianos added that mid-to-higher level drug dealers often carry firearms to keep their drugs from being stolen. Another officer testified that he had test fired the firearm found in the security box and had found it functional. Mituniewicz sought reconsideration of the speedy trial ruling, which the trial court denied.

The jury found Mituniewicz guilty as charged. At the beginning of his sentencing hearing, Mituniewicz again moved unsuccessfully for dismissal based on the violation of his speedy trial rights. The trial court imposed a standard range sentence of 194 months. Mituniewicz appeals.

ANALYSIS

I. FIREARM ENHANCEMENT

Mituniewicz argues initially that the evidence was insufficient to prove that he was armed with a firearm at the time he possessed the heroin with intent to deliver.

A firearm enhancement must be proved beyond a reasonable doubt. *State v. Tongate*, 93 Wn.2d 751, 754, 613 P.2d 121 (1980). To meet that burden, the State had to establish that the firearm was easily accessible and readily available for offensive or defensive purposes and that a nexus existed between Mituniewicz, the crime, and the firearm. *State v. Barnes*, 153 Wn.2d 378, 383, 103 P.3d 1219 (2005).

Mere proximity or constructive possession is insufficient to show that a defendant was armed at the time the crime was committed. *State v. Gurske*, 155 Wn.2d 134, 138, 118 P.3d 333 (2005). Instead, the firearm must be easy to get to for use against another person, whether to

[1] The trial court found that the CCO had reasonable cause to believe that Mituniewicz had violated his probation conditions by engaging in criminal activity.

facilitate the commission of the crime, escape from the scene, protect contraband, or prevent investigation, discovery, or apprehension by the police. *Gurske*, 155 Wn.2d at 138-39.

Mituniewicz does not challenge the evidence establishing the nexus requirement, which is clearly ample in this case. He was found holding the box and the key that unlocked it, and the gun was in the box with other "tools of the trade." 4B Report of Proceedings at 652. Mituniewicz argues instead that the evidence was insufficient to prove his close proximity to the firearm and the fact that it was easily accessible and readily available for use.

As support, he relies on this court's statement that "Washington courts have found that a defendant is not 'armed' even though he, presumably, could have obtained a weapon by taking a few steps." *State v. Ague-Masters*, 138 Wn. App. 86, 104, 156 P.3d 265 (2007). In *Ague-Masters*, deputies arrested the defendant outside his front door and then found a methamphetamine lab in a detached shed and unloaded firearms locked in a safe inside the house. 138 Wn. App. at 104. We rejected the argument that the defendant could have easily accessed the firearms and observed that none were found in the shed. *Ague-Masters*, 138 Wn. App. at 104. We distinguished a case where the presence of a loaded pistol outside a methamphetamine lab as well as other loaded guns on the premises was sufficient to support a firearm enhancement. *State v. Simonson*, 91 Wn. App. 874, 877-83, 960 P.2d 955 (1998).

To support our decision that the defendant in *Ague-Masters* was not armed, we cited three cases where weapons were found on the premises following a defendant's arrest on drug charges. *See State v. Valdobinos*, 122 Wn.2d 270, 282, 858 P.2d 199 (1993) (defendant was not armed where an unloaded rifle was found under a bed); *State v. Johnson*, 94 Wn. App 882, 894-97, 974 P.2d 855 (1999) (defendant was not armed where a gun was found inside a closed cabinet five to six feet away after he was handcuffed); *State v. Call*, 75 Wn. App. 866, 869, 880

P.2d 571 (1994) (defendant was not armed where guns were found in a dresser drawer and tool box inside his bedroom after he entered the bedroom to retrieve identification and emerged unarmed).

While acknowledging these holdings, we observe that being armed is not confined to those defendants with a deadly weapon actually in hand or on their person. *Gurske*, 155 Wn.2d at 138. With the enactment of the firearm enhancement statute, the legislature has expressly recognized that individuals engaged in criminal conduct might use a firearm for reasons that include forcing the victim to comply with their demands, injuring or killing anyone who tries to stop the criminal acts, and aiding the criminal in escaping. *Gurske*, 155 Wn.2d at 139 (citing LAWS OF 1995, ch. 129, §1(1)(a) (Initiative Measure No. 159)). As Detective Sofianos testified, drug dealers often carry firearms to keep their drugs from being stolen.

Here, the defendant was carrying the locked box containing a firearm when he was arrested for possession of heroin with intent to deliver. The box also contained scales and other tools belonging to the drug trade. Mituniewicz was carrying the keys to the box as if intending to open it when he arrived at the delivery site. When viewed in the light most favorable to the State, the evidence shows that the gun was easily accessible and readily available for use for offensive or defensive purposes. *Gurske*, 155 Wn.2d at 143. The fact that the gun was not loaded is not determinative; it still could have been used to threaten, deter, or aid in an escape. *See Simonson*, 91 Wn. App. at 883 (gun's loaded or unloaded condition is one of many factors to consider when deciding whether the gun was readily available for use during the crime's commission). We hold that the evidence was sufficient to prove that Mituniewicz was armed with a firearm when he possessed heroin with intent to deliver.

II. SPEEDY TRIAL

Mituniewicz argues in his pro se SAG that the trial court violated his right to a speedy trial under CrR 3.3. He makes several assertions of error related to the trial court's decision to continue the trial to January 9, but he does not appear to challenge the court's second continuance of the trial date to January 23.

CrR 3.3 provides that a defendant who is detained in jail shall be brought to trial within 60 days of his arraignment. CrR 3.3(b)(1)(i), (c)(1). The purpose of this rule is to protect the defendant's constitutional right to a speedy trial and to prevent undue and oppressive incarceration before trial. *State v. Kingen*, 39 Wn. App. 124, 127, 692 P.2d 215 (1984). Nevertheless, the constitutional right to a speedy trial does not mandate trial within 60 days. *State v. Torres*, 111 Wn. App. 323, 330, 44 P.3d 903 (2002). CrR 3.3(f)(2) permits the trial court to continue the trial past 60 days when necessary in the "administration of justice and the defendant will not be prejudiced in the presentation of his or her defense." The rule adds that "[t]he bringing of such motion by or on behalf of any party waives that party's objection to the requested delay." CrR 3.3(f)(2). The decision to grant a continuance under CrR 3.3 rests in the sound discretion of the trial court and will not be disturbed unless the trial court grants the continuance for untenable reasons. *State v. Nguyen*, 131 Wn. App. 815, 819, 129 P.3d 821 (2006). A trial court may grant a continuance to allow defense counsel more time to prepare for trial, even over the defendant's objection, to ensure effective representation and a fair trial. *State v. Flinn*, 154 Wn.2d 193, 200, 110 P.3d 748 (2005); *State v. Campbell*, 103 Wn.2d 1, 15, 691 P.2d 929 (1984).

Continuances are excluded from speedy trial calculations, as are periods of incarceration on unrelated charges. CrR 3.3(e)(2), (3); *State v. Bobenhouse*, 143 Wn. App. 315, 329, 177 P.3d 209 (2008), *affirmed on other grounds*, 166 Wn.2d 881, 214 P.3d 907 (2009). If a period is excluded, the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period. CrR 3.3(b)(5).

On November 10, both parties requested a continuance and observed that Mituniewicz's 60 days of incarceration on another matter should not be included in his speedy trial calculation. The trial court agreed and granted a 60-day continuance both because of that incarceration and for good cause shown.

Because his attorney requested the continuance, most of Mituniewicz's current claims of error are waived. Given his assertion that both defense counsel and the prosecuting attorney engaged in misconduct that violated his speedy trial rights, however, we briefly address his claims. Defense counsel sought a continuance so that she could engage in further discovery and file a motion to suppress. The prosecutor sought a continuance because he was in trial. As stated, allowing counsel time to prepare for trial is a valid basis for continuance, and scheduling conflicts also may be considered in granting continuances. *Flinn*, 154 Wn.2d at 200. We see no prejudice to the presentation of Mituniewicz's case and nothing untenable about the trial court's decision to grant the requested continuance. Consequently, we reject Mituniewicz's alternative claim that he received ineffective assistance of appellate counsel because his attorney failed to raise the speedy trial issue in the opening brief. *See In re Pers. Restraint of Maxfield*, 133 Wn.2d 332, 344, 945 P.2d 196 (1997) (claim of ineffective assistance of appellate counsel requires showing that legal issue counsel failed to raise had merit and that counsel's failure to raise issue was prejudicial).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Maxa, J.

Lee, J.

APPENDIX "II"

Denial of Reconsideration

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RODNEY S. MITUNIEWICZ,

Appellant.

No. 43110-6-II

ORDER DENYING MOTION FOR RECONSIDERATION

APPELLANT, pro se, moves for reconsideration of the Court's **February 11, 2014** opinion. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 10th day of March, 2014.

FOR THE COURT:

PRESIDING JUDGE

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APPENDIX "III"

CrR 3.3 Time-For-Trial Rules

Rule 3.3. Time for trial.

(a) *General provisions.*

(1) *Responsibility of court.* It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

(2) *Precedence over civil cases.* Criminal trials shall take precedence over civil trials.

(3) *Definitions.* For purposes of this rule:

(i) "Pending charge" means the charge for which the allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately filed in the superior court.

(iii) "Appearance" means the defendant's physical presence in the adult division of the superior court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) "Arraignment" means the date determined under CrR 4.1(b).

(v) "Detained in jail" means held in the custody of a correctional facility pursuant to the pending charge. Such detention excludes any period in which a defendant is on electronic home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

(4) *Construction.* The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) *Related charges.* The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) *Reporting of dismissals and untimely trials.* The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(b) *Time for trial.*

(1) *Defendant detained in jail.* A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified under subsection (b)(5).

(2) *Defendant not detained in jail.* A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(3) *Release of defendant.* If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) *Return to custody following release.* If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is

reset following a new commencement date, the 60-day limit shall apply.

(5) *Allowable time after excluded period.* If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

(c) *Commencement date.*

(1) *Initial commencement date.* The initial commencement date shall be the date of arraignment as determined under CrR 4.1.

(2) *Resetting of commencement date.* On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) *Waiver.* The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) *Failure to appear.* The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) *New trial.* The entry of an order granting a mistrial or new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) *Appellate review or stay.* The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the superior court of the mandate or written order terminating review or stay.

(v) *Collateral proceeding.* The entry of an order granting a new trial pursuant to a personal restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the superior court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) *Change of venue.* The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) *Disqualification of counsel.* The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(d) *Trial settings and notice - Objections - Loss of right to object.*

(1) *Initial setting of trial date.* The court shall, within 15 days of the defendant's actual arraignment in superior court, or at the omnibus hearing, set a date for trial which is within the time limits prescribed by this rule, and notify counsel for each party of the date set. If a defendant is not represented by counsel, the notice shall be given to the defendant and may be mailed to the defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment and the date set for trial.

(2) *Resetting of trial date.* When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a new commencement

date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for trial which is within the time limits prescribed and notify each counsel or party of the date set.

(3) *Objection to trial setting.* A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

(4) *Loss of right to object.* If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) *Excluded periods.* The following periods shall be excluded in computing the time for trial:

(1) *Competency proceedings.* All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) *Proceedings on unrelated charges.* Arraignment, pre-trial proceedings, trial and sentencing on an unrelated charge.

(3) *Continuances.* Delay granted by the court pursuant to section (f).

(4) *Period between dismissal and refiling.* The time between the dismissal of a charge and the refiling of the same or related charge.

(5) *Disposition of related charge.* The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in superior court on a related charge.

(6) *Defendant subject to foreign or federal custody or conditions.* The time during which a defendant is detained in jail or prison outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington.

(7) *Juvenile proceedings.* All proceedings in juvenile court.

(8) *Unavoidable or unforeseen circumstances.* Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) *Disqualification of judge.* A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

(f) *Continuances.* Continuances or other delays may be granted as follows:

(1) *Written agreement.* Upon written agreement of the parties, which must be signed by the defendant or all defendants, the court may continue the trial date to a specified date.

(2) *Motion by the court or a party.* On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of

his or her defense. The motion must be made before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) *Cure period.* The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

(h) *Dismissal with prejudice.* A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

APPENDIX "IV"

Cr R 3.3 Task Force, Final Report I.B.

Cr R 3.3 Task Force, Final Report II.B.

Time-for-Trial Final Report

B. Overview of Recommendations

The Task Force is recommending a broad range of revisions to the court rules affecting time-for-trial[1] issues. The recommendations include rewriting the existing court rules on time-for-trial (**CrR 3.3**, **CrRLJ 3.3**, and **JuCR 7.8**) and moving the existing time-for-arraignment provisions into the arraignment rules (**CrR 4.1** and **CrRLJ 4.1**). All task force members support these recommendations.

The Task Force was unable to reach full agreement on perhaps the most significant issue: how to handle *Striker/Greenwood*'s due-diligence standards. By a final vote of 14 to 2, the task force approved a proposal to address the *Striker/Greenwood* issues by amending **CrR 2.2**, thereby incorporating a revised set of due-diligence standards into the requirements for issuing an arrest warrant. A minority report (supported by 4 members)[2] is being submitted with a counter-proposal, which addresses *Striker/Greenwood* in **CrR 4.1** (the arraignment rule), rather than **CrR 2.2**. Both proposals are summarized later in this Overview.

1. Summary of Consensus Recommendations.

The following recommendations are supported by the entire task force. These recommendations are intended to address many different issues. We will summarize these changes according to the respective issues being addressed.

- ***Changes to address court congestion:***

  - A proposed *cure period* would give courts an additional but brief period of time, after the defendant's 60/90-day period has expired, with which to get a case heard. The cure period provides courts with greater flexibility for handling the peaks of their heavy trial calendars. While the cure period is not intended for everyday use, and while the motion to cure must be brought in a timely manner, the cure period will provide relief as a matter of last resort.

  - A proposed 30-day *buffer period* would ensure that there will always be at least a 30-day period in which to get a case heard following an excluded period of time. This will allow the parties to get their cases ready for trial and the courts to get the case heard even in those instances when an excluded period terminates immediately before the expiration of the 60/90-day time-for-trial period. The current rule does not provide sufficient flexibility for handling these difficult circumstances.

- ***Changes to ensure that relatively minor and inadvertent violations of the time-for-trial rules do not lead to dismissal with prejudice:***

  - According to the best available information, time-for-trial problems arise

most frequently due to violations of the *Striker/Greenwood* standards rather than violations of express provisions of **CrR 3.3**.[3] Accordingly, if the Task Force's *Striker/Greenwood* revisions described later in this overview are adopted, a large percentage of time-for-trial dismissals with prejudice could be avoided.

- The proposed *cure period* would also serve this purpose. The cure period is not limited to instances of court congestion. Rather, it is broadly written to apply regardless of the reason why the defendant's 60/90-day time period was exceeded. The cure period gives the judicial system added flexibility to bring cases to trial that otherwise would be subject to dismissal under the current rule, as long as the motion to cure is brought no later than five days after the expiration of the defendant's time-for-trial period. These cases would be dismissed with prejudice only when good reason exists for the dismissal.

- The proposed *30-day buffer period* following an excluded period of time would address a category of cases that is particularly susceptible to time-for-trial problems and dismissal under the current rule.

- Several changes are designed to simplify and clarify the rule (see examples listed below), especially with regard to the calculation of time. A simpler and clear rule would create less confusion and fewer mistaken calculations, thereby reducing the number of cases that become subject to dismissal with prejudice.

- ***Changes for clarification and simplification:***

  Many of the proposed changes are intended to clarify and simplify the rule so that it is easier to apply and will provide greater certainty. Examples include:

  - Beginning and ending points for various time periods are stated more simply and more specifically;

  - The separate category of "extensions" of time is eliminated;

  - Key terms are defined in order to reduce ambiguity;

  - The rule is re-organized to follow a more logical structure and to keep distinct issues that need to be kept distinct; and

  - The **proposed CrR 3.3** is more than 25% shorter than the existing rule, even though several new provisions have been added.

- ***Change to increase accountability:***

  The Task Force recommends that the trial courts be required to report each time that a case is dismissed under **CrR 3.3** and each time that a cure period is applied to a case. The required reporting will make the judicial system more accountable to the public in this area of great public interest.

- ***Change to enable better-informed decisions in the future on time-for-trial issues:***

This requirement for reporting cases would also provide valuable information, currently lacking, as to the frequency with which criminal cases run into time-for-trial problems. This information should greatly assist the development of policy and the allocation of scarce resources in this area of the law.

- ***Changes to address judicial interpretation of CrR 3.3:***

  Task Force members are concerned over the degree to which the time-for-trial standards have become less governed by the express language of the rule and more governed by judicial opinions. To address this concern, the task force has tried to fashion a rule that is simpler, has fewer ambiguities, and covers more of the field of time-for-trial issues, with the hope that a reader of the rule will have a better understanding of the overall picture than currently exists. The Task Force also recommends adopting a provision in **CrR 3.3** expressly stating that the rule is intended to cover all the reasons why a case should be dismissed under the rule. Courts should not read into the rule any other reasons beyond those that are expressly stated in the rule. Any other reasons should be analyzed under the corresponding constitutional provisions (Wash. Const. Art. I, § 22, and U.S. Const., Amend. 6).

Finally, it should be noted that the task force has chosen to retain several fundamental aspects of the current rule that are working well. The task force agrees that the trial courts should retain responsibility for assuring timely criminal trials, that criminal cases should take precedence over civil cases, that the underlying 60/90-day time periods (with excluded periods of time) should be retained, and that the remedy of dismissal with prejudice should be kept in order to retain the incentive for ensuring that cases are heard in a timely manner.

2. Task Force Recommendation Regarding *Striker/Greenwood* and Due-diligence.

The task force's recommendation for addressing *Striker/Greenwood* and due-diligence is supported by a majority, but not all, of the task force members.[4] (The minority position will be summarized in the ensuing section.)

Under *Striker*[5], *Greenwood*[6], and related cases, the state is required to act with due-diligence in locating a defendant and notifying him or her of the pending criminal charges. Although these standards serve a good purpose, they create unnecessary traps for law enforcement agencies. The *Striker/Greenwood* standards are vague and case-specific, making it difficult for the state to know with any degree of certainty whether it has satisfied the due-diligence requirements in a particular case. The problem is heightened because the judicial determination of due-diligence is made so late in the case that the State no longer has an opportunity to correct any deficiencies in its efforts to find the defendant. If the State guesses wrong as to whether it has satisfied the vague standards of due-diligence, the entire case is lost. These harsh results can be avoided without undermining the purpose of the *Striker/Greenwood* standards.

The task force recommends addressing *Striker/Greenwood* by revising **CrR 2.2** (on the issuance of warrants) to create new standards and procedures under which due-diligence in searching for a defendant's address would be determined before an arrest warrant is issued. This would ensure that due-diligence is determined early in the case, when the State still has an opportunity to correct any deficiencies in their attempts to locate the defendant.

3. Minority Recommendation Regarding *Striker/Greenwood* and Due-diligence.

The *Striker/Greenwood* decisions allow courts to enforce a requirement for prompt arraignment by threatening dismissal of charges if defendants are not arraigned within 90 days of the filing of the charges. This creates a problem in cases where the defendant has failed to appear pursuant to summons.

Merely issuing a warrant for arrest is no guarantee that the defendant will be arrested or otherwise given notice of a pending charge. Service of arrest warrants is presently selective and dependent upon the perceived gravity of the offense or risk of re-offending. A minority group of members disagree with the task force's approach because it completely abrogates *Striker/Greenwood*. Moreover, in these cases, the majority approach not only eliminates any incentive for prompt arraignments but also sidesteps the due process issue of notifying defendants of the pending charges.

These members instead propose amending the arraignment rules (**CrR 4.1** and **CrRLJ 4.1**) to incorporate a different approach to ensuring due-diligence requirements. Under the minority proposal, the prosecution establishes due-diligence by showing that an attempt was made to serve an arrest warrant on the defendant within 60 days after the charge was filed. The minority group's due-diligence requirements differ depending on whether the defendant is charged with a felony crime against children or other persons. For such defendants, the State would need to prove an attempt was made to serve an arrest warrant at the defendant's last known residence. For other defendants, the State would be required to prove only that notice of the warrant was mailed to the defendant's last known residence.

The minority group argues that their proposal, which enforces the requirement for notice as well as for prompt arraignment by requiring proof of attempted service, is a pragmatically effective way of ensuring due-diligence, to the benefit of all.

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[1] This report uses the term "time-for-trial" instead of "speedy trial" with regard to the court rules. This usage emphasizes the distinction between the "time-for-trial" provisions in the court rules and the "speedy trial" provisions in the state and federal constitutions. See Wash. Const. Art. I, § 22; U.S. Const., Amend. 6.

[2] Although only 2 members voted against the proposal to amend **CrR 2.2**, a total of 4 members voted in favor of the minority counter-proposal for **CrR 4.1**.

[3] See Appendix D for a discussion of the limited statistics that are available as to the frequency of *Striker/Greenwood* problems.

[4] See footnote 2 and accompanying text.

[5] *State v. Striker*, 87 Wash.2d 870, 557 P.2d 847 (1976).

[6] *State v. Greenwood,* 120 Wash.2d 585, 845 P.2d 971 (1993).

What Must a District Court Say in Order for a Continuance under the Ends of Justice Provision to Be Excludable Time Under the Speedy Trial Act?

This article addresses a problem that attorney Tracy Hightower-Henne and I have noticed when reviewing federal criminal dockets. We noticed that district courts are continuing trials well beyond the time limit established by the Speedy Trial Act. And they are doing so under the ends of justice exception without actually following the requirements of that provision.

Here are the basics. Under the Act, a district court must try a defendant within 70 days from the indictment filing date or from the arraignment date, whichever date occurs later. 18 U.S.C. § 3161(c). The Act mandates the exclusion of certain periods of time, such as delay reasonably attributable to any proceeding concerning the defendant that "is actually under advisement by the court." § 3161(h)(1)(J). The Act also permits the exclusion of days resulting from the granting of a motion to continue, "if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(A)(8). The Act provides a number of factors a court "shall consider" when considering an "ends of justice" continuance, such as whether a failure to grant the continuance "would unreasonably deny the defendant . . . continuity of counsel" or "would deny counsel for the defendant . . . the reasonable time necessary for effective preparation." § 3161(h)(8)(B)(iv).

Federal trial judges are now routinely continuing trials beyond the 70-day limit without making any findings or giving any reasons why taking such action outweighs the public's and defendant's interest in a speedy trial. They get away with this because defense attorneys do not challenge the trial court by filing a motion to dismiss, and several federal courts of appeals countenance this approach by failing to reverse the trial judge on appeal.

Emboldened by the Supreme Court's reversals in *Zedner v. United States* and *Bloate v. United States* several circuit have been putting the teeth back into the Speedy Trial Act.

But that is not the case everywhere. Emboldened by the Supreme Court's reversals in *Zedner v. United States*, 547 U.S. 489 (2006), and *Bloate v. United States*, 130 S.Ct. 1345 (2010), several circuits have been putting the teeth back into the Speedy Trial Act. In *United States v. Larson*, 627 F.3d 1198, 1203 (10th Cir. 2010), the Tenth Circuit noted that the ends of justice exception was "meant to be a rarely used tool for those cases demanding more flexible treatment." When a judge continues a trial under the ends of justice provision, the record must "clearly establish" that the court considered the appropriate factors. And although a court "need not articulate facts which are obvious and set forth in the motion for the continuance itself," the court cannot rely upon "short, conclusory statements lacking in detail . . . ." *Id.* at 1204.

Other courts have also required district courts to make "express" findings before an ends of justice continuance is excludable. *See, e.g., Zedner*, at 506; *United States v. Henry*, 538 F.3d 300, 306 (4th Cir. 2008); *United States v. Suarez-Perez*, 484 F.3d 537, 541 (8th Cir. 2007); *United States v. Bryant*, 523 F.3d 349, 361 (D.C. Cir. 2008); *United States v. Williams*, 314 F.3d 552, 557 (11th Cir. 2002).

If the trial judge continued your trial on the basis of the ends of justice provision (regardless of whether your attorney requested the continuance), read through the continuance hearing transcripts and the docket sheet to see if the judge actually gave reasons. From our experience, most judges simply recite the statute and see that an ends of justice continuance is needed without giving "express" reasons. If that occurred and your attorney did not challenge it, you may have a viable claim on ineffective assistance of counsel. Good luck.

Shon R Hopwood

Time-for-Trial Final Report

B. Discussion of Consensus Recommendations.

- **Terminology**
- **The Dilemma - Flexible Rule Versus Strict Rule**
- **Proposed Subsection (a)(1) (Responsibility of Court)**
- **Proposed Subsection (a)(2) (Precedence of Criminal Trials)**
- **Proposed Subsection (a)(3) (Definitions) (new provision)**
- **Proposed Subsection (a)(4) (Construction of Rule) (new provision)**
- **Proposed Subsection (a)(5) (Related Charges) (new provision)**
- **Proposed Subsection (a)(6) (Reporting of Dismissals and Untimely Trials) (new provision)**
- **Proposed Subsections (b)(1) through (b)(4) (Time Periods for Bringing Cases to Trial)**
- **Proposed Subsection (b)(5) (Allowable Time After Excluded Period) (new provision)**
- **Proposed Section (c) ("Commencement Date") (new provision)**
- **Proposed Section (d) (Trial Settings and Notice-Objections-Loss of Right to Object)**
- **Proposed Section (e) (Excluded Periods)**
- **Proposed Subsection (f)(1) (Continuance-Written Agreement)**
- **Proposed Subsection (f)(2) (Continuance-Motion By the Court or a Party)**
- **Proposed Section (g) (Continuance-Cure Period) (new provision)**
- **Proposed Section (h) (Dismissal with Prejudice)**
- **Other Proposed Changes for CrR 3.3.**
- **Changes Proposed for CrR 4.1**

Terminology. For ease of discussion, this report will discuss the time-for-trial rules by referring to the superior court rule, **CrR 3.3**. The task force's recommendations for **CrRLJ 3.3** and **JuCR 7.8** are essentially the same as for CrR 3.3.[1]

The Dilemma - Flexible Rule Versus Strict Rule. Throughout our deliberations, the task force had to balance two competing issues underlying our time-for-trial rules. The rules need to be flexible enough for the judicial system to be able to handle a heavy load of criminal cases and to reach just results, yet the rules need to be strict enough to continue to serve as the "hammer" ensuring that the judicial system will promptly resolve criminal cases.

Full recognition of these competing interests is necessary to any meaningful dialogue over proposals for change. Readers will note the interplay of these two competing issues throughout the following discussion.

Proposed Subsection (a)(1) (Responsibility of Court). The task force began its consideration of CrR 3.3 by re-affirming the policy contained in subsection (a)(1). The responsibility for ensuring the timeliness of criminal trials is best placed on the courts. This provision has been in place since the adoption of the original rule in 1973, and the

task force recommends that it not be changed.

Proposed Subsection (a)(2) (Precedence of Criminal Trials). The task force also re-affirmed the policy that criminal trials take precedence over civil trials. The task force did consider proposals to provide greater specificity on this point. For example, members discussed whether the rule should specify that courts do not need to interrupt an on-going civil trial in order to begin a criminal trial. The task force ultimately decided, however, that this provision of the rule should be retained in its current form, leaving the resolution of more specific issues to the discretion of the courts.

Proposed Subsection (a)(3) (Definitions) (new provision). The task force recommends adding definitions of particular key terms for greater clarity and certainty in the rule's application. The definition of "appearance" in subsection (iii) is proposed in order to specify when a defendant's presence in court on another charge may be counted as an appearance for purposes of the current charge. The definition of "detained in jail" in subsection (v) expressly excludes electronic home monitoring. Although case law holds that a defendant on electronic home monitoring is "in custody" for other purposes of the criminal law, including the calculation of credit for time served, the task force believes that for the purpose of time-for-trial calculations such a defendant is more properly treated as a defendant not detained in jail. Other definitions will be discussed later in this discussion along with the substantive provision to which they relate.

Proposed Subsection (a)(4) (Construction of Rule) (new provision). Task force members are concerned that appellate court interpretation of the time-for-trial rules has at times expanded the rules by reading in new provisions. The task force believes that the rule, with the proposed revisions, covers the necessary range of time-for-trial issues, so that additional provisions do not need to be read in. Criminal cases should be dismissed under the time-for-trial rules only if one of the rules' express provisions have been violated; other time-for-trial issues should be analyzed under the speedy trial provisions of the state and federal constitutions.

Proposed Subsection (a)(5) (Related Charges) (new provision). The task force recommends adding a new provision stating directly that the computation of the time-for-trial period applies equally to related charges. The proposed definition for "related charge" is limited to a charge that is based on the same conduct as the pending charge and that is ultimately filed in superior court (see subsection (a)(3)(ii)).

Proposed Subsection (a)(6) (Reporting of Dismissals and Untimely Trials) (new provision). The task force recommends that the trial courts be required to report particular time-for-trial problems to the Administrative Office of the Courts. Under the proposal, courts would need to report each case that is dismissed under the time-for-trial rule and any case for which the cure period is invoked.

These reports will serve several functions. First, the reports will provide an additional incentive to the trial courts to hear their criminal cases in a timely manner. The task force considers this to be an important function, given the greater flexibility that the task force is recommending for the rule. Requiring these reports will also provide a centralized collection of statistics to guide future decisions about time-for-trial policies and resource allocations. Currently, statistics on how often cases are dismissed under CrR 3.3 are not collected anywhere around the state. The task force sent state-wide queries to court administrators, judges, defense counsel, prosecuting attorneys, and the Administrative Office of the Courts, and found only anecdotal information. Responding to the lack of statistical data, the Snohomish County Prosecutor's Office undertook a survey of their adult felony cases that were closed in 2001. Their survey revealed that 17 of these cases had been reduced, dismissed, or declined on time-for-trial grounds. Thirteen of these

cases involved *Striker/Greenwood* issues. We include the results of this survey in **Appendix D**.

Proposed Subsections (b)(1) through (b)(4) (Time Periods for Bringing Cases to Trial). These proposed subsections consolidate and simplify the existing provisions of CrR 3.3 establishing the 60-day and 90-day time periods for bringing defendants to trial.

The task force decided not to recommend changing the underlying time-for-trial time periods: 60 days for defendants detained in jail and 90 days otherwise. Members discussed the possibility of extending these deadlines, noting that most other states have time periods longer than ours, especially in those states that require dismissal with prejudice for rule violations[2]. The task force examined the average length of time that superior courts currently need to get criminal cases to trial, and found that the state-wide averages significantly exceed 60 or 90 days, given the application of various exclusions of time, extensions of time, waivers, and continuances.[3]

The task force concluded, however, that lengthening the time periods would serve little purpose. Although such a change could give more time for cases to be readied for trial, the timing of most cases going to trial is driven in large part not by the 60/90 day deadlines, but by the various exclusions, extensions, waivers, and continuances. As a result, changing the underlying time period would not necessarily result in any significant change in how long cases take before they get to trial. Further, lengthening the time periods runs counter to society's and victims' interests in having criminal trials be timely held and it does nothing to ease court congestion (the same number of cases would still have to be heard regardless of the length of the time periods).

The task force proposes rephrasing this part of the rule to more clearly distinguish between defendants who are subject to the 60-day period and those who are subject to the 90-day period. We recommend sharpening this distinction by providing a definition for the key phrase "detained in jail." See proposed CrR 3.3(a)(3)(v). We also propose specifying the time-for-trial time period for those defendants who begin serving time in custody but are released before trial, as well as for defendants who are initially released but later placed in pre-trial custody.

Proposed Subsection (b)(5) (Allowable Time After Excluded Period) (new provision). This subsection proposes a significant change from the current rule - a 30-day buffer period to follow any excluded period of time. The current rule does not provide adequate time for preparing and trying cases in which an excluded period of time runs out shortly before the expiration of a defendant's 60/90-day time period.

For example, consider a defendant whose competency to stand trial needs to be evaluated on the 58th day of a 60-day time-for-trial period. Under the existing rule's provisions, the time-for-trial "clock" would stop on Day 58 pending the final determination of competency. Once competency is determined, however, the clock restarts at Day 58, leaving only two days with which to begin the defendant's trial. The attorneys are left with insufficient time to complete their final trial preparations, including subpoenaing their witnesses, and the courts have problems with scheduling the case for trial on short notice.

Accordingly, the task force proposes a new subsection (b)(5) ensuring that there will always be at least 30 days, following the conclusion of any excluded period of time, within which a trial may be started. This new provision will not necessarily change the expiration of the defendant's 60/90-day time period. The additional 30 days come into play only if there are fewer than 30 days remaining in the defendant's 60/90-day time period. In other words, if there are 10 days remaining in the time-for-trial period, then the new

provision would extend the time-for-trial period by only 20 days.

The task force recognizes that in most instances the courts will not need all, or even most, of the 30-day period to get the case set for trial. Indeed, as is recognized elsewhere in the rule, the courts may direct the parties, when appropriate, to remain in attendance or be on-call for trial assignment in order for the trial to be held within a relatively short period of time.

Proposed Section (c) ("Commencement Date") (new provision). The task force has created a separate subsection (c) devoted solely to specifying the starting date for the 60/90-day time period under different circumstances.

Under proposed subsection (c)(1), the time-for-trial period commences on the date of the defendant's arraignment, as determined under CrR 4.1. By using this date, the proposal departs from the existing rule with regard to cases that are initially filed in juvenile court or district court. Under the existing rule, when a case is moved from juvenile court or district court to superior court, time that the case spent in juvenile court or district court is counted toward the superior court time-for-trial deadline, shortening the time in superior court for getting the case ready to be heard. See existing CrR 3.3(c)(2) through (c)(6). Under the task force's proposal, these complicated provisions from the existing rule are deleted. Doing so ensures that cases will have adequate time to be prepared for trial in superior court and reduces the possibility of coordination problems between different court levels.

Subsection (c)(2) specifies the circumstances under which the time-for-trial clock is reset to zero and establishes the corresponding "restart" date. Many of the circumstances spelled out in subsection (c)(2) were moved here from the current rule's section on extensions of time, the task force concluding that these circumstances are better handled by restarting the clock.

Two aspects of subsection (c)(2) should be mentioned. New to CrR 3.3 is subsection (c)(2)(v), which restarts the time-for-trial clock when a new trial is granted as the result of a collateral proceeding. The task force intends the term "collateral proceeding" to include not only the hearing on the collateral matter but also any additional appellate review of the initial decision. Also, in subsection (c)(2)(vii), the task force has added language relating to the disqualification of defense attorneys (the corresponding provision in existing law refers only to the disqualification of judges and prosecuting attorneys). The task force believes that the same standards for restarting the clock should apply whether the disqualification is of a defense attorney, a prosecuting attorney, or a judge. In this regard, the task force has intentionally retained the existing "disqualification" terminology - the task force does not intend this provision to apply more broadly to all "substitutions" of defense counsel.

Proposed Section (d) (Trial Settings and Notice-Objections-Loss of Right to Object). The changes being proposed to section (d) are largely for the purposes of clarification. Subsection (d)(4) is a new provision specifying the effect on the time-for-trial period when a defendant loses the right to object to a trial date.

Proposed Section (e) (Excluded Periods). The task force recommends numerous changes to section (e):

- Subsection (e)(1) clarifies excluded period for competency proceedings. The competency proceeding must be for the pending charge, which is defined earlier in the rule to mean the charge for which the time-for-trial period is being computed. The proposal also clarifies the beginning date for this excluded period.

- Subsection (e)(2) (addressing an excluded period for proceedings on unrelated charges) has been rewritten in several regards. First, the task force proposes specifying that the provision applies to arraignment, pre-trial proceedings, trials, and sentencing on unrelated charges, replacing less specific language from the existing rule. The biggest change here is the addition of language on sentencing matters. The task force believes that the underlying policy considerations are the same with regard to sentencing as with regard to the other listed proceedings: the time-for-trial clock should stop when a defendant and the defendant's counsel are occupied with addressing charges that are unrelated to the case at hand. With regard to "pre-trial proceedings," the task force intends the term to apply to proceedings on substantive motions that need a judge's time to resolve, such as motions under CrR 3.5 or 3.6, but not to apply to simple motions such as the exclusion of witnesses. Finally, the proposal uses (and defines) the term "unrelated charge" rather than "another charge" in order to distinguish the issues from those set forth in (e)(5) ("Disposition of Related Charge").

- Subsection (e)(4) specifies that the period between dismissal and refiling is excluded even with respect to a related charge.

- Subsection (e)(5) is new, creating an excluded period that applies when a defendant is being tried on related charges. This provision addresses appellate opinions that have incorporated a strict version of mandatory joinder analysis into CrR 3.3. The task force proposes that this mandatory joinder analysis not be included in the time-for-trial rules.

Another aspect of section (e) merits special attention. Subsection (e)(8), creating a new excluded time period for unavoidable or unforeseen circumstances, incorporates language and concepts from the existing rule's provision on five-day extensions. The new provision differs from the current rule in that the new exclusion is not necessarily limited to five days in length. Additionally, the new exclusion does not apply after the expiration of the time-for-trial period, although the proposed cure period can apply in this manner. See the discussion of the proposed cure period below.

By phrasing subsection (e)(8) in terms of existing language from another part of the current rule, the task force intends that appellate interpretations of that language continue to apply. The term "unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or the parties" should continue to include, for example, unexpected illnesses of defendants, attorneys, and judges, as well as natural disasters and other events requiring evacuation or closing of the courthouse. Routine instances of court congestion would not be covered by this provision, but could instead be addressed with the proposed cure period.

Proposed Subsection (f)(1) (Continuance-Written Agreement). This subsection slightly modifies the current rule to require that the continuance be to a date-certain. The task force also discussed the current (and recently adopted) provision's requirement that the agreement must be signed by the defendant, and not just the defendant's attorney. Members noted in their discussion that under some circumstances, such as when a defendant's medical condition prevents him or her from attending a hearing, the defendant's signature might not be available even though good reason exists to grant a continuance. The task force decided, however, that under these circumstances a continuance could instead be addressed under a separate provision - subsection (f)(2), which authorizes continuances on the motion of the court. In light of the importance of securing the defendant's signature to these agreements, the task force proposes that the current signature requirement be retained. This same rationale applies equally to the

provision earlier in the rule requiring defendants to personally sign waivers.

Proposed Subsection (f)(2) (Continuance-Motion By the Court or a Party). This subsection is adapted from the existing provision authorizing continuances when required in the administration of justice and when the defendant will not be prejudiced. Two changes to the existing language are being proposed. The continuance should be to a date-certain, and the provision should be phrased in terms of whether the defendant is prejudiced, rather than "substantially prejudiced," by the continuance.

Proposed Section (g) (Continuance-Cure Period) (new provision). The task force recommends creating a cure period that is designed to operate as a final "safety net." The cure period would provide one final opportunity (a period of up to 14 days for defendants detained in jail, and up to 28 days for other defendants) to bring the case to trial.

Importantly, this cure period may be invoked even after the regular time-for-trial period has already expired, although the motion must be made no later than five days after this time has expired. For example, if a motion to cure is made four days after the defendant's 90-day time-for-trial period has expired, the defendant would be entitled to dismissal with prejudice only under the following scenario: (1) the court would hold a hearing, at which the judge would have discretion whether to impose the cure period; (2) if the judge determines that a cure period is not appropriate, then the case would be dismissed with prejudice at that point, but if the cure period is invoked, then the court would grant a continuance for up to 14 or 28 days; (3) the cure period could be lengthened for unavoidable or unforeseen circumstances under proposed subsection (e)(8); and (4) if the cure period expires before the defendant is brought to trial, then the defendant would be entitled to dismissal with prejudice.

The proposed cure period is broadly drafted. It is not limited to particular fact patterns or categories of cases. The task force considered alternative proposals for a cure period, including proposals that would have limited the cure period to instances of court congestion. Ultimately, however, the members concluded that a broad cure period best satisfied the needs for a safety net, with judges being granted discretion to apply it as they deem appropriate.

The cure period need not delay the trial for the full duration of the 14- or 28-day period. In an appropriate case, the court may order a shorter cure period or may order the full cure period but set a trial date before the ending date. The court may even direct the parties to remain in attendance or on-call in a case that is ready for trial on short notice.

Finally, courts may use the cure period to ease the very real problem of court congestion. The cure period will give courts greater flexibility to handle their peak periods of case activity without greatly impinging on defendants' rights to a timely trial. The task force crafted the cure period with an eye toward retaining a sufficient "hammer" - the ultimate remedy of dismissal with prejudice - to ensure that criminal cases are promptly readied for trial and heard.

The cure period, however, is not intended for everyday use. It should be used more as a measure of last resort, such as for addressing urgent periods of peak activity on criminal calendars. Over-use of the cure period should serve as a warning signal that the system is not working as intended, and that changes need to be made. Accordingly, the task force recommends that the trial courts be required to file a public report each time that a cure period is invoked as well as each time that a case is dismissed under the time-for-trial rule. See Proposed CrR 3.3(a)(6). This will ensure that the cure periods are closely monitored and will deter courts from using them too frequently.

Proposed Section (h) (Dismissal with Prejudice). In light of the recommendation that CrR 3.3 be made more flexible in several regards, the task force proposes retaining the "hammer" of dismissal with prejudice. This strict remedy, coupled with the proposed creation of a reporting requirement, is needed to ensure that criminal cases will be promptly prepared for trial and heard. The proposal also directs the State to provide notice of dismissal to the victim and provides an opportunity, at the court's discretion, for the victim to address the court regarding the impact of the crime.

Other Proposed Changes for CrR 3.3. In addition to the changes described above for new or amended provisions in CrR 3.3, the task force proposes deleting some of the rule's existing provisions. Because these changes involve deletions from the existing rule, they are more evident in the "legislative bill" format version of our proposals in Part III rather than in the "clean" version presented in **Appendix G**.

The task force proposes moving arraignment provisions from current CrR 3.3 to the court rule that already addresses arraignment issues, CrR 4.1. This approach clarifies the distinction between time-for-trial issues and time-for-arraignment issues.

Additionally, the task force recommends eliminating from CrR 3.3 the concept of "extensions" of time. See existing CrR 3.3(d). These provisions are more simply included elsewhere in the rule. Some have been redrafted as excluded time periods, under proposed CrR 3.3(e), and others as grounds for starting the time-for-trial clock anew, under proposed CrR 3.3(c)(2).

In sum, the task force believes that its proposal for revising CrR 3.3 strikes an appropriate balance between the need for a flexible rule that allows for the sensible administration of justice and the need for a strict rule that compels the timely hearing of criminal cases (to the benefit of all).

Changes Proposed for CrR 4.1. The task force members agree that the time-for-arraignment provisions currently existing in CrR 3.3 should be moved to the rule that already specifically addresses arraignments, CrR 4.1.[4] Other aspects of the proposed revisions for CrR 4.1, however, are not consensus recommendations, but are discussed below with regard to the *Striker/Greenwood* recommendations.

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[1] The substantive differences for these two other rules are few. The draft of CrRLJ 3.3 includes an additional basis for restarting the time-for-trial clock - deferred prosecutions. See **proposed CrRLJ 3.3**(c)(2)(viii). The draft of JuCR 7.8 employs different lengths of time for the buffer period as well as for one aspect of the cure period, and it includes motions for revision of a court commissioner's ruling as a basis for an excluded period of time. See **proposed JuCR 7.8**(b)(5) and (e)(8). Other changes include terminology that is specific to the particular level of court (for example, JuCR 7.8 uses the terms "adjudicatory hearing" rather than "trial").

[2] See **Appendix F** for a chart prepared by the Washington Association of Prosecuting Attorneys summarizing the time-for-trial statutes and court rules used in all 50 states and in the federal court system.

[3] See **Appendix E** for a summary of these statistics.

[4] A similar recommendation is made for the corresponding provisions of the limited jurisdiction court rules, **CrRLJ 3.3** and **CrRLJ 4.1**. The task force decided that a similar recommendation was not necessary for the juvenile court rule, **JuCR 7.6**, given the cross-reference in that rule to the superior court rule, CrR 4.1.

State v. Mituniewicz

No. 90076-1

Declaration of Mailing

I, Rodney Steven Mituniewicz, declare that, on April 24, 2014, I deposited the foregoing Petition for Review Interpretation of CrR 3.3, in the Coyote Ridge Corrections Center Law Library, legal mail system and made arrangement for postage, addressed to:

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I, declare under penalty of perjury under the law of the State of Washington that the foregoing is true and correct.

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