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Division II
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Supreme Court No. 96809-8
(COA No. 50759-5-II)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN AMBLE,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

John Amble, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B pursuant to RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Mr. Amble seeks review of the Court of Appeals decision dated January 3, 2019, a copy of which is attached as Appendix A.

C. ISSUE PRESENTED FOR REVIEW

Did the trial court violate Mr. Amble's right to a speedy trial when it granted the prosecution's request for a good cause continuance outside the time for trial, based on a breakdown in plea negotiations and for other insufficient reasons?

D. STATEMENT OF THE CASE

The court arraigned Mr. Amble for the charge of assault of a child in the third degree on April 14, 2017. CP 38. A trial date was set for June 26, 2017. CP 38. The last allowable day for trial was July 13, 2017. RP 48.

Mr. Amble never asked for a continuance. On June 8, 2017, he attempted to enter into a diversion agreement, but told the court he

would not be able to complete it because he lacked the money to pay for an anger evaluation. RP 15.

On June 20, 2017, the parties announced that they had reached a resolution in the case. RP 19. By June 22, 2017, it was clear the plea could not go forward, because the prosecutor insisted Mr. Amble pay for an anger evaluation that he was unable to fund. RP 23, 25.

When Mr. Amble attempted to plead guilty to the charge with an agreed recommendation on June 26, 2017, it was called off because of the inability of the parties to agree to a sentence recommendation. RP 22.

When plea negotiations broke down, 73 days had passed from Mr. Amble's arraignment. CP 38, 44, 48. This left 17 days for trial. RP 48. Mr. Amble asked that his trial be set within that time period. RP 48.

The prosecutor asked for a trial date outside of the time allowed for trial. RP 48. He stated he had two other cases set for trial within that time period. RP 45. He also stated he had a training he wanted to attend, although it did not begin until July 17, 2017, after Mr. Amble's speedy trial period expired. RP 48.

No inquiry was made into whether the prosecutor's other cases would actually go to trial or how long they would take. The court also

made no inquiry into whether the prosecutor's witnesses would be available within the time set for trial. Instead, the court found good cause and set the trial for July 24, 2017, ten days after the expiration of speedy trial. RP 48.

The trial court's stated reason for granting the continuance was that good cause existed "because there was a meeting of the minds that there was to be a plea entered today, and that there was an agreement regarding that." RP 48. The court allowed the continuance because the requested continuance was "a matter of only ten days beyond his current right to a speedy trial." RP 48.

Mr. Amble renewed his objection in written form, in order to allow the court to correct its error. CP 36-37. He then moved to dismiss the case when it proceeded to trial on July 24, 2017. RP 57. Mr. Amble's motion was again denied. RP 61.

E. ARGUMENT

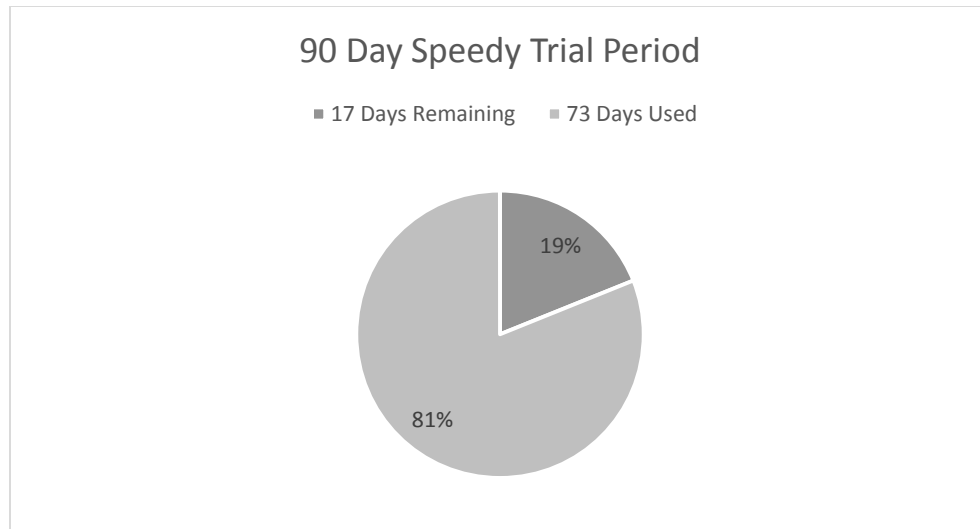
The speedy trial rule requires that an accused who is not detained must be brought to trial within 90 days of arraignment. CrR 3.3(b)(2)(i); CrR 3.3(c)(1). This Court has consistently held that trial courts have a responsibility to ensure a trial is held within the time allowed by CrR 3.3(a)(1). *State v. Kenyon*, 167 Wn.2d 130, 136, 216

P.3d 1024 (2009). Unless the rule is strictly applied, “the right to a speedy trial as well as the integrity of the judicial process, cannot be effectively preserved.” *Id.* (quoting *State v. Striker*, 87 Wn.2d 870, 877, 557 P.2d 847 (1976)). Because the Court of Appeals decision is not in accordance with this Court’s interpretation of the speedy trial rule, review should be granted. RAP 13.4(b).

1. Mr. Amble had the right to have his trial held within 90 days of his arraignment.

When Mr. Amble agreed to plead guilty, he conditioned his guilty plea on the prosecutor agreeing not to argue for an anger management evaluation, which Mr. Amble knew he could not afford. RP 23. When the prosecutor refused to agree to this condition, Mr. Amble felt compelled to go to trial. RP 25.

Mr. Amble notified the prosecutor of his conditions for pleading guilty on June 22, 2018, four days before the plea date had been set. RP 23, 25. At this point, there were 21 days left before speedy trial expired. When Mr. Amble appeared in court and it was clear the government would not plead guilty without an agreed recommendation, 17 days were left before speedy trial expired. CP 38, RP 44, 48. Nearly 20 percent of the time for trial remained.



For the speedy trial rule to be meaningful, it must contemplate time for plea negotiations. When those negotiations break down, trial must be set within the time allowed for trial. That is especially true in circumstances such as these, where there was no allegation of bad faith or manipulation. It was clear from the start that Mr. Amble could not agree to completing an anger evaluation, when he lacked the funds to pay for one. RP 23, 25.

Without the defendant's consent, a trial should only be set outside of the time provided for by CrR 3.3 in rare circumstances. *State v. Flinn*, 154 Wn.2d 193, 199, 110 P.3d 748 (2005). Certain periods are excluded when computing the time for a speedy trial and justifiable continuances granted by the court may also be excluded. CrR 3.3(e)(3), (f). In addition, delays caused by “[u]navoidable or unforeseen

circumstances affecting the time for trial beyond the control of the court or of the parties” are excluded. CrR 3.3(e)(8). If any period of time is excluded under CrR 3.3(e), the speedy trial period extends to “30 days after the end of that excluded period.” CrR 3.3(b)(5).

When a defendant objects to a continuance, the court may not continue the trial date unless it “is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense.” CrR 3.3(f)(2). If the court determines that the time for trial has passed and the objection was properly raised, then the court has no discretion in deciding whether to dismiss the charges. *State v. Swenson*, 150 Wn.2d 181, 186-87, 75 P.3d 513 (2003).

2. A breakdown in plea negotiations is not good cause to continue a case beyond the maximum date allowed for trial.

The prosecutor’s rejection of Mr. Amble’s conditions for pleading guilty does not qualify as good cause for a continuance. CrR 3.3(f)(2). Mr. Amble never requested a continuance or suggested that he could not be ready for trial within the time set for trial. He acted expeditiously in trying to negotiate a settlement with ample time left for the parties to prepare for trial if negotiations broke down before the time for trial expired. CP 38, RP 44, 48. Twice, he tried to settle the matter, but both times, he could not pay for the evaluation the

prosecutor wanted Mr. Amble to complete. RP 9, 25. This was not Mr. Amble's fault. Mr. Amble's rejection of a settlement did not mean that Mr. Amble gave up his speedy trial right. He should not be penalized for trying to settle his case, as happened here.

The Court of Appeals found that scheduling conflicts justified moving Mr. Amble's case outside of the time for trial. Slip Op. at 5. But here, the record only established the prosecutor had two cases set for trial during the time remaining to try Mr. Amble's case. RP 45. No inquiry was conducted into whether these cases would actually go to trial or how much time remained to try them. In addition, there is no record of whether this case, which was not complicated, could be assigned to a different prosecutor. *See State v. Heredia-Juarez*, 119 Wn. App. 150, 154, 17 P.3d 648 (2001). Without this record, the Court of Appeals should have found, in accordance with their jurisprudence, that the trial court abused its discretion in granting a continuance outside the time for trial. *Id.* at 154-56.

3. Review should be granted to confirm that CrR 3.3 requires trial to be held within 90 days, when a defendant never moves for a continuance and good cause does not exist to extend time for trial beyond the time provided by CrR 3.3.

The Court of Appeals relies on *State v. Flinn* and *State v. Chicester* in affirming Mr. Amble's conviction. Slip Op. at 5 (citing

Flinn, 154 Wn.2d at 200, *State v. Chichester*, 141 Wn. App. 446, 454, 170 P.3d 583 (2007)). These cases do not justify the continuance that was granted here. The conflict between those cases and the decision here also warrants review. RAP 13.4(b).

Flinn was a complicated case that had been continued numerous times at the defendant's request to prepare a diminished capacity defense. *Flinn*, 154 Wn.2d at 201. When the court granted the continuance, it advised the parties that they should accelerate the matter if the parties could be ready for trial sooner. *Id.* The primary purpose of setting the date outside of speedy trial was to ensure no further continuances were necessary. *Id.*

In *Chichester*, this Court affirmed the trial court's dismissal where the prosecution stated it was not ready for trial. *Chichester*, 141 Wn. App. at 448. *Chichester* recognizes a continuance for good cause should be rarely granted and when based on the unavailability of the prosecution, only when they are actually in trial, sick, have a pre-scheduled vacation or training, or when there is an unavoidable circumstance. *Id.* at 454. *Chichester* also recognizes that where the original prosecutor is not available, the case can be reassigned to ensure a defendant's right to a speedy trial. *Id.*

Like *Chichester*, no circumstances existed here to warrant a continuance outside of the time for trial. Here, the prosecutor made statements about other trials he had pending, but provided no affirmative evidence these cases would actually go forward. RP 45. The trial court accepted the assertion without any further inquiry. RP 48. The inquiry by the trial court into the unavailability of the prosecutor was inadequate and Mr. Amble's motion to dismiss should have been granted.

The prosecutor also argued he would have a hard time getting his witnesses together for a trial set within the speedy trial period. RP 45. Although the unavailability of a material government witness may be a valid ground for continuing a criminal trial, the record must show there is a valid reason for the witness's unavailability and the witness will become available within a reasonable time. *State v. Nguyen*, 68 Wn. App. 906, 914, 847 P.2d 936 (1993). But here, the trial court did not inquire into whether the witnesses who had been scheduled to testify were not available. *See State v. Day*, 51 Wn. App. 544, 549, 754 P.2d 1021 (1988). This is also an insufficient record to justify a continuance outside the time allowed for trial.

Finally, this Court should accept review to examine whether the trial court's stated reason for granting the continuance: that there had been a breakdown in plea negotiations is sufficient justification for a good cause continuance. RP48. CrR 3.3 does not provide for an exception to the speedy trial rule to allow the government additional time because of a breakdown in negotiations. *See State v. Saunders*, 153 Wn. App. 209, 220, 220 P.3d 1238 (2009). Instead, this Court has been clear that unless the speedy trial rule is strictly applied, the right to a speedy trial as well as the integrity of the judicial process, cannot be effectively preserved. *Kenyon*, 167 Wn.2d at 136.

Ten days may not have sounded like a significant time period to the trial court, but it amounts to an 11 percent increase in the time the prosecutor had to try Mr. Amble's case. RP 48. This is not acceptable. The trial court's stated reason for continuing the case: that "there was a meeting of the minds that there was to be a plea entered today" cannot justify allowing the prosecutor this additional time. RP 48.

When the accused is not brought to trial within the time limit provided by the speedy trial rule, the charge must be dismissed with prejudice. CrR 3.3(h). Maintaining a plea of not guilty is not an "unavoidable" or "unforeseen" circumstance that justifies an exclusion

from the speedy trial rule. CrR 3.3(e)(8). Review should be granted to correct this error.

F. CONCLUSION

Based on the foregoing, Mr. Amble respectfully requests this that review be granted. RAP 13.4(b).

DATED this 1st day of February, 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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APPENDIX

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January 3, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOHN ARTHUR AMBLE,

Appellant.

No. 50759-5-II

UNPUBLISHED OPINION

SUTTON, J. — John Arthur Amble appeals his conviction for third degree assault of a child. He contends that the trial court (1) abused its discretion when it granted the State’s request for a continuance, and (2) violated CrR 3.3—the time for trial rule—when it set his case for trial beyond the maximum allowable date for trial. We hold that the trial court did not abuse its discretion by granting a continuance for good cause; thus, it did not violate the time for trial rule under CrR 3.3. We Affirm.

FACTS

The State charged Amble with third degree assault of a child on March 17, 2017. He was released on his personal recognizance pending trial. He was arraigned on April 14, at which time his trial was set for June 26 which was within 90 days of his arraignment. A status conference was set for May 25. On April 28, the State offered Amble a plea agreement that was set to expire on June 1. At the omnibus hearing on June 8, the parties confirmed that they were prepared for a CrR 3.5 hearing on June 20. At a CrR 3.5 hearing on June 20, Amble informed the court that “we’ve

reached a resolution with this case. . . . We need to set it for a change of plea and sentencing.” Verbatim Report of Proceedings (VRP) (June 20, 2017) at 19. Both parties agreed that the initial trial date of June 26 should be converted to a plea and sentencing hearing. The court agreed and subsequently struck the trial date and set the plea and sentencing hearing.

Following the CrR 3.5 hearing at the end of business on June 22, Amble sent the State a change of plea form with changes to the terms, “specifically regarding legal financial obligations and whether [Amble] will participate in anger management treatment.” VRP (June 26, 2017) at 22-23. Because Amble altered the terms of the plea agreement, the State was unable to agree. As a result, the prosecutor requested a trial continuance for good cause due to scheduling conflicts because he had two trials set to begin on July 10 and he would need to ensure his witnesses were available again for this trial.

Amble objected to the continuance, arguing that good cause did not exist. The court granted the continuance after finding that good cause existed because (1) the parties were no longer in agreement as to the terms of the plea agreement, (2) the prosecutor had two other trials scheduled for July 10 which made him unavailable for trial before July 13, and (3) the new date for trial was set only 11 days after the initial trial date and thus, Amble was not prejudiced.

Amble stipulated to a bench trial and on July 24, the trial court found Amble guilty of third degree assault of a child. Amble appeals.

ANALYSIS

Amble argues that the trial court abused its discretion by granting a continuance beyond the maximum allowable time for trial and thus, his time for trial was violated under CrR 3.3. Because the new trial date of July 24 was within the maximum allowable time for trial under

CrR 3.3, the trial court had good cause to continue the trial in the administration of justice, and Amble was not prejudiced by the continuance. Thus, we hold that the time for trial rule was not violated and the trial court did not abuse its discretion.

I. STANDARDS OF REVIEW

We review an alleged violation of the time for trial rule de novo. *State v. Kenyon*, 167 Wn.2d 130, 135, 216 P.3d 1024 (2009). However, we review the trial court's decision to grant a continuance under CrR 3.3(f)(2) for an abuse of discretion. *Kenyon*, 167 Wn.2d at 135. Additionally, once a continuance is properly granted, the trial court has discretion in selecting the new trial date. *State v. Flinn*, 154 Wn.2d 193, 200–01, 110 P.3d 748 (2005). A court abuses its discretion if its decision is manifestly unreasonable, based on untenable grounds, or based on untenable reasons. *Kenyon*, 167 Wn.2d at 135.

CrR 3.3 governs a defendant's right to be brought to trial in a timely manner. The purpose of this rule is to protect a defendant's constitutional right to a timely trial. *Kenyon*, 167 Wn.2d at 136. The right to a timely trial “must sometimes yield to considerations of judicial economy.” *State v. Nguyen*, 131 Wn. App. 815, 820, 129 P.3d 821 (2006). A charge not brought to trial within the time limits of CrR 3.3 generally must be dismissed with prejudice. CrR 3.3(h).

CrR 3.3(b)(2) provides that “[a] defendant who is not detained in jail shall be brought to trial within the longer of . . . 90 days after the commencement date (the arraignment date) specified in this rule, or . . . the time specified in subsection (b)(5).” CrR 3.3(b)(2)(i), (ii). CrR 3.3(e) provides that certain time periods are excluded in computing the time for trial, including continuances granted under CrR 3.3(f) and “[u]navoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties.” CrR 3.3(e)(3); CrR 3.3(e)(8).

Under CrR 3.3(f), the trial court may continue the trial date on motion of the court or a party “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.” CrR 3.3(f)(2). In granting a motion for a continuance, “[t]he court must state on the record or in writing the reasons for the continuance.” CrR 3.3(f)(2). Under CrR 3.3(f), “[s]cheduling conflicts may be considered in granting continuances.” *State v. Flinn*, 154 Wn.2d at 200. “When a prosecutor is unavailable due to involvement in another trial, a trial court generally has discretion to grant the State a continuance unless there is substantial prejudice to the defendant in the presentation of his defense.” *State v. Chichester*, 141 Wn. App. 446, 454, 170 P.3d 583 (2007).

II. ABUSE OF DISCRETION

Amble argues that the trial court abused its discretion by granting a continuance from July 13 to July 24 when good cause did not exist and the new trial date was beyond the maximum allowable time for trial. We disagree.

A trial court may grant the State’s motion for a continuance when “‘required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense.’” *State v. Saunders*, 153 Wn. App. 209, 217, 220 P.3d 1238 (2009) (quoting CrR 3.3(f)(1), (2)). The decision to grant a continuance under CrR 3.3 rests within the sound discretion of the trial court and will not be disturbed unless the trial court grants the continuance for untenable reasons. *State v. Ollivier*, 178 Wn.2d 813, 822-23, 312 P.3d 1 (2013).

Here, Amble’s trial was scheduled for June 26, 2017, and the initial time for trial deadline was July 13. Based on defense counsel’s representation that the parties had reached a plea agreement, the trial court struck the initial trial date of June 26 and at converted that hearing to a

plea and sentencing hearing at the parties' request. At the June 26 hearing, the parties advised the court that they could not reach an agreement because Amble altered the terms of the plea agreement after initially agreeing to them.

The State then moved for a trial continuance under CrR 3.3(f) arguing that there was good cause for a continuance. Specifically, the State requested a continuance for good cause because (1) the parties were no longer in agreement as to the terms of the plea agreement, (2) the prosecutor had two cases set for trial on July 10, and (3) he needed to ensure his witnesses were available again. The trial court ruled that there was good cause, granted the motion, and set a new trial date for July 24, the earliest date the prosecutor was available for trial.¹

Under CrR 3.3(f), “[s]cheduling conflicts may be considered in granting continuances.” *State v. Flinn*, 154 Wn.2d at 200. “When a prosecutor is unavailable due to involvement in another trial, a trial court generally has discretion to grant the State a continuance unless there is substantial prejudice to the defendant in the presentation of his defense.” *Chichester*, 141 Wn. App. at 454.

Here, there was good cause for a trial continuance based on the administration of justice. The parties were no longer in agreement as to the terms of the plea agreement. Further, due to Amble's altered terms to the plea agreement, the prosecutor had scheduling conflicts because he had two other trials scheduled for July 10, which made him unavailable for trial before July 13. Additionally, Amble fails to show any prejudice from the continuance because the July 24 trial

¹ Amble fails to address the application of the rule under CrR 3.3(b)(5), that once a continuance is granted, the delay caused by the continuance is not included in the allowable time for trial deadline. Thus, here, the new allowable time for trial was August 24, 30 days after July 24.

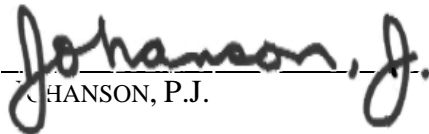
date was only 11 days later, and the new trial date was within the maximum allowable time for trial under CrR 3.3.

Given the trial court's broad discretion in granting a continuance and the absence of any prejudice, we hold that the trial court did not abuse its discretion in granting a continuance based on the prosecutor's unavailability. Because the trial court did not abuse its discretion in granting the State's continuance, we hold that the trial court did not violate Amble's time for trial right. We affirm Amble's conviction for third degree assault of a child.

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.


SUTTON, J.

We concur:


JOHANSON, P.J.


BJORGE, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 50759-5-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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- petitioner
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: February 1, 2019

WASHINGTON APPELLATE PROJECT

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