

FILED
COURT OF APPEALS
DIVISION II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY _____
DEPUTY

DIVISION TWO

NO. 36249-0-II

STATE OF WASHINGTON

Respondent,

V.

HOZIE LEE HOLLEY,

Appellant.

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

The Honorable Ronald E. Culpepper, Judge

STATEMENT OF ADDITIONAL GROUNDS

LISE ELLNER

Attorney for Appellant

COMES NOW, **The Defendant**, contenting that his speedy trial (rights) was violated, by the use of eight (8) unlawful orders on continuing trial over his objecting. Some 375 days went by before defendant Holley was brought to trial, violating State v. Greenwood. In the Greenwood case, a leading case on speedy trial rights, it states that a defendant must be brought before trial no later than 120 days, after arraignment if out of custody, and 90 days out of custody. (State v. Greenwood, 120 Wn.2d 585, 845 P.2d 971 (1993)).

The trial court has the responsibility of ensuring to each defendant a trial in accordance with CrR 3.3(a). In order for the trial court to carry out its responsibilities, objections pursuant to CrR 3.3 must be specific enough to alert the court of the type of error involved. (See State v. Bernhard, 45 Wn.App 590, 600, 726 P.2d 991 (1986)).

Here in Defendant Holley's case, he too made enough specific objections to alert any court to the type of error involved a speedy trial violation pursuant to CrR 3.3. Despite his continuing complaints of these (8) or more contentions (to) CrR 3.3(f), did over Defendant Holley's objections. However, the State still failed to take any action on this information until over a year had passed.

The State have not shown any act of due diligence in bringing the Defendant to trial in a timely manner, which is a requirement of CrR 3.3. Because of these violations of his speedy trial rights this case must be dismissed with prejudice. The Washington Supreme Court ruled that this case must be dismissed under Greenwood, also my attorney's lack of a well settled law, did violate my Six Amendment right to have a counsel that would (effectively) defend me, (in regards to this matter). (See Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052; Wash Const. art I§22; U.S. Const amend 6.)

Any delay caused by the defendants FAULT or inconvenience is also excluded from a defendant's time for trial calculation. (see Striker at 872) The State cannot argue that of any delay in this case was caused by any fault or any inconvenience on Holley's part. In fact, the RECORD reflects Mr. Holley even objected many times to the prosecutor and courts at some point hoping that during this 300 day delay to request that the prosecutor and/or his (trial) lawyer to take some action on his case. Under these circumstances, the court can only conclude the entire 300 day period remains a part of Mr. Holley's time for trial calculation, as the courts did in Weylands.

A defendant must state an objection to the timeliness of his arraignment. (State v. Bernhard, 45 Wn. App 590, 600, 726 P.2d 991(1986)).

Mr. Holley contends the State did not act with due diligence because it did not bring him to trial in a timely manner under the CrR 3.3 60-day timeline. The (state) knew Holley's whereabouts. the 300 or more days of delay in this case is sufficient to consider whether strike and CrR 3.3 the court to establish a constructive arraignment date. The courts must now determine whether any part of the 300 days of delay should not be excluded from Holley's time for trial period in order to determine whether an undue delay actually occurred in this case. Striker, does not apply to any period of delay resulting from any fault or inconvenience on the part of the defendant. (Striker, at 872; State v. Nelson, 47 Wn.App. 579, 583, 736 P.2d 686, review denied, 108 Wn.2d 1024 (1987)).

The Court of Appeals held the delay in this case did not result from any fault or inconvenience on Landey's part. (State v. Landey, 57 Wn.App. 527, 530, 789 P.2d 314 (1990)). The State has not sought review of this conclusion, and the question is thus not before the court RAP 13.7(b). (See State v. Peterson, 90 Wn.2d 423, 428, 585 P.2d 66 (1978)).

The prosecution could not be deemed to have exercised good faith and due diligence if the Defendant's whereabouts were known to the prosecution, and reasonable efforts were not taken to obtain his or her presence before the Court. (Peterson, at 428.)

Here, Defendant Holley had a "liberty interest" under CrR 3.3(b). (1) reads: **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 the time specified under subsection (b)(5). As in Defendant Holley's case, the prosecution could not be deemed to have exercised good faith and due diligence for a delay of trial for over 300 days. Not even the Greenwood case was allowed that much time without violating a Speedy Trial Rule. Here once again Holley had a "liberty interest" under his Sixth Amendment right to have his lawyer to at least object to some of the delays and inform the courts of violations of CrR 3.3. (Wash. Const. art I§22; U.S. Const amend 6).

The AMERICAN BAR ASSOCIATION stated the Fundamental Element of Competent Representation, of any client is the establishment of trust and confidential relationship. (ABA Standard, 4-3.1(a)). This is especially true in Criminal Defense. Defendant Holley should of got an objection from his attorney but instead Mr. Holley was forced to object in trying to protect his rights to CrR 3.3 rules.

The Courts also has the power to vacate judgement under CrR 7.8; and/or CrR 8.3(b) (State v. Breazeale, 99 Wn.App. 400 994 P.2d at 412)

On Motion and upon such terms as are just, the court may relieve a party from a Final Judgement for any reason justifying relief, unless the adverse party can show cause why the relief asked for, should not be granted. (CrR 7.8(c)(2); CrR 7.8 (b)(5); and under CrR 3.3 timelines.)

In Re Personal Restraint of Fowseca, (No. 23740-I-Wash. App. Div III, 04/11/2006.) citing Strickland, also that his counsel was ineffective for failing to object to the evidence was not insufficient to prove that a violation of CrR 3.3 took place. Also in Strickland, that this deficient performance prejudiced Mr. Holley for not objecting to the 300 or more days of delay of trial was a show of ineffective assistance of counsel. (see Glover v. U.S., 121 S. Ct. 696, (1001). The Supreme Court clarified the standard for establishing prejudice, thus where a lawyer fails to make an objection which results in an increase in the offense level, prejudice will be established.

Mr. Holley humbly request the reasons set forth in this S.A.G, this case should be dismissed with prejudice for its violations of his procedural rights in CrR 3.3 on rules for Speedy trial. (Wash const. art I§3; U.S. Const. Amend 14).

The ABA Standard 4-3.2(a) at p. 433; and Harris, 853 F.Supp at 1255, stated, "The lawyer who is ignorant of facts of the case cannot serve the client effectively..." In a few instances, courts require a more demanding standard, such as clear and convincing evidence. (Hill v. City of Lincoln, 249 Neb. 88, 541 N.W.2d 655 (1996)).

In Holley's case there is no more c clear and convincing evidence than his attorney being "inconsiderate" to his Speedy Trial rights, how his attorney stands by and never object to any wrongful violations of CrR 3.3. By "any" standard of constitutional due process rights and the Sixth Amendment protections surrounding Mr. Holley, such concerned violations to his case must be dismissed. The purpose behind Striker, CrR 3.3 and the Superior Criminal Court Rules (as a whole), the standard ensures a defendant who is amenable to process will be brought before the Court in a timeley manner to answer for the charge. There was a lack of good faith and due diligence on the prosecutor's behalf. This case Must be dismissed with prejudice in respect of Holley's

State and Federal constitutional rights. (CrR 3.3; CrR 7.8; CrR 8.3(b); Wash. Const. art I§3; §22; U.S. Const amend. 6;14.)

RELIEF

This Honorable Court should grant the Appellant's supplication to dismiss this case with prejudice in respect of the Appellant's State and Federal due process rights. Dismissal under CrR 8.3(b) in considering such supplication to set aside a default judgement, the primary duty of the Courts is to inquire and if it it is clearly appearing that a strong defense exists, the court will inquire closely into the reasons resulting in the entry of the default.

The Appellate Rule regarding motions on the merits (RAP 18.14(c)) provides: "A Motion on the merits will be granted in whole or in part..." In making these determinations the Judge or the Commissioner will consider all relevant factors including whether the issues on review:

- 1). Are clearly controlled by settled Law;
- 2). Are factual and supported by the evidence;
- 3). Are matters of judicial discretion;
- 4). The decision was clearly within the discretion of the trial court.

Therefore, such relief shall be granted accordingly....

Respectfully Subitted on this 7 day of MARCH, 2008.

Hozie L. Holley

Hozie Lee Holley, Appellant.

DOC# _____

WASHINGTON STATE PENITENTIARY, WALLA WALLA
WASHINGTON, 99362

CASE # Agg. 10
Cont - P

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
Holley, Mozie)
Defendant)

Cause No. 06-1-000503

ORDER CONTINUING TRIAL

This motion for continuance is brought by state defendant court.

upon agreement of the parties pursuant to CrR 3.3(f)(1) or

is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

for administrative necessity

Reasons: more time is needed to investigate / negotiate case.

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

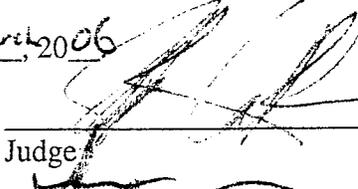
IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>3/2/06</u>	IS CONTINUED TO: <u>4-27-06 @ 8:30 am Room CDPJ</u>			

Expiration date is: 5-27-06 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 1st day of March, 2006

X Defendant's signature to 5:30
Defendant


Judge

Attorney for Defendant/Bar # 16912

Prosecuting Attorney/Bar # 29255

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
Hozel Hickey,)
Defendant)

Cause No. 06-1-00050-3

ORDER CONTINUING TRIAL
(2ND CONTINUANCE)

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: More time is needed to investigate case on both sides, including DNA work & witness interviews.

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING	<u>May 19, 06</u>	<u>8:30am</u>	<u>CDPT 211A</u>	<u>1516785</u>
<input checked="" type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>4/17/06</u>	<u>1516785 IS CONTINUED TO: 5 June 06 @ 8:30 am Room 211 A</u>			

Expiration date is: 7/5/06 (Defendant's presence not required) TFT days remaining: 30 S.F.

DONE IN OPEN COURT this 21 day of April, 2006

[Signature]
Defendant
Attorney for Defendant/Bar # 16710

[Signature]
Judge
Prosecuting Attorney/Bar #

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
 Plaintiff)
 vs.)
Holley, Hilde)
 Defendant)

Cause No. 06-1-0050-3

ORDER CONTINUING TRIAL

Case Age 375 Prior Continuances 8

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: Defense Atty is finishing trial today.

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

<input type="checkbox"/> OMNIBUS HEARING <input type="checkbox"/> STATUS CONFERENCE HEARING <input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE	DATE	TIME	COURT ROOM	ID NUMBER
THE CURRENT TRIAL DATE OF: <u>1/30/07</u>	IS CONTINUED TO: <u>1/31/07 @ 8:30 am Room 214A</u>			

Expiration date is: 3/2/07 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 30 day of Jan, 2007

Object - present
 Defendant
[Signature]
 Attorney for Defendant/Bar # 9298

[Signature]
 Judge
[Signature]
 Prosecuting Attorney/Bar # 24255

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

 Interpreter/Certified/Qualified
 Pierce County, Washington

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
 Plaintiff)
 vs.)
Hollen, Hozie)
 Defendant)

Cause No. 06 1 000 30 3

ORDER CONTINUING TRIAL

366
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This motion for continuance is brought by state defendant court.

upon agreement of the parties pursuant to CrR 3.3(f)(1) or

is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

for administrative necessity.

Reasons: Defense Attorney is in Trial in Dept #3

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>11/18/07</u>	IS CONTINUED TO: <u>2/2/07</u> @ 8:30 am Room 214A			
	<u>1632479</u>			

Expiration date is: 3/2/07 (Defendant's presence not required)

TFT days remaining: 30

SF

DONE IN OPEN COURT this 18th day of JAN 20 07

Refused to sign
 Defendant

[Signature]
 Judge

Attorney for Defendant/Bar # 21675

Prosecuting Attorney/Bar # 2421

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

 Interpreter/Certified/Qualified
 Pierce County, Washington