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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

NO. 41193-8-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RICHARD L. HARRINGTON,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF PACIFIC COUNTY

Before the Honorable Michael Sullivan, Judge

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

	<u>Page</u>
A. ASSIGNMENTS OF ERROR	1
B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	1
C. STATEMENT OF THE CASE.....	1
1. <u>Procedural facts:</u>	1
2. <u>Testimony at trial</u>	4
D. ARGUMENT	7
1. <u>THE TRIAL COURT ERRED IN ALLOWING MR. TURNER TO WITHDRAW AS COUNSEL, RESULTING IN A NEW COMMENCEMENT DATE OF JUNE 11, 2010, AND THEREBY DENIYING MR. HARRINGTON HIS RIGHT TO SPEEDY TRIAL.</u>	7
2. <u>DEFENSE COUNSEL’S FAILURE TO COMPLY WITH CrR 3.3 DENIED MR. HARRINGTON HIS RIGHT TO EFFECTIVE COUNSEL</u>	13
E. CONCLUSION.....	15

TABLE OF AUTHORITIES

<u>WASHINGTON CASES</u>	<u>Page</u>
<i>State v. Adamski</i> , 111 Wn.2d 574, 761 P.2d 621 (1988)	12
<i>State v. Berrysmith</i> , 87 Wn.App. 268, 944 P.2d 397 (1997)	10, 11
<i>State v. Branstetter</i> , 85 Wn. App. 123, 935 P.2d 620 (1997)	8
<i>State v. Carney</i> , 129 Wn. App. 742, 119 P.3d 922 (2005)	8
<i>State v. Michielli</i> , 132 Wn.2d 229, 937 P.2d 587 (1997).....	10
<i>State v. Ralph G.</i> , 90 Wn.App. 16, 950 P.2d 971 (1998).....	12
<i>State v. Sardinia</i> , 42 Wn. App. 533, 713 P.2d 122, review denied, 105 Wn.2d 1013 (1986)	14
<i>State v. S.M.</i> , 100 Wn. App. 401, 996 P.2d 1111 (2000).....	14
<i>State v. Swenson</i> , 150 Wn.2d 181, 75 P.3d 513 (2003)	12
<i>State v. Thomas</i> , 109 Wn.2d 222, 743 P.2d 816 (1987)	14

<u>UNITED STATES CASES</u>	<u>Page</u>
<i>United States v. Cronic</i> , 466 U.S. 648, 656, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984).....	13
<i>Herring v. New York</i> , 422 U.S. 853, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975).....	13
<i>Kimmelman v. Morris</i> , 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986).....	13
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).....	13, 14

<u>REVISED CODE OF WASHINGTON</u>	<u>Page</u>
RCW 9.94A.535	2

<u>CONSTITUTIONAL PROVISIONS</u>	<u>Page</u>
Wash. Const. art. 1, § 3.....	13
Wash. Const. art. 1, § 22.....	13
U. S. Const. Amend. VI.....	13
U. S. Const. Amend. XIV	13

<u>COURT RULE</u>	<u>Page</u>
CrR 3.3.....	7
CrR 3.3 (a) (1).....	7
CrR 3.3 (b)(1)(i).....	7
CrR 3.3(b)(1)(i), (h)	7
CrR 3.3 (b)(5).....	14
CrR 3.3(c)(1).....	14
CrR 3.3(d)(3).....	15
CrR 3.3 (c) (2) (vii).....	8

A. ASSIGNMENTS OF ERROR

1. The trial court erred in allowing counsel to withdraw without a proper basis, thereby establishing a new commencement date and causing a denial of Appellant Richard Harrington’s right to a speedy trial.

2. Trial counsel’s failure to preserve Mr. Harrington’s objection to a trial held outside of the sixty day speedy trial time period constituted ineffective assistance of counsel.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court erred in allowing Mr. Harrington’s attorney to withdraw as counsel without a proper basis, thereby establishing a new commencement date and resulting in a denial of Mr. Harrington’s right to a speedy trial? Assignment of Error No. 1.

2. Whether Mr. Harrington was denied his State and Federal constitutional right to effective counsel when his trial counsel failed to preserve Mr. Harrington’s objection to a trial held outside of speedy trial? Assignment of Error No. 2.

C. STATEMENT OF THE CASE

1. Procedural facts:

The Pacific County Prosecuting Attorney charged Richard Harrington by Amended Information with four counts of first-degree child

molestation, two counts of first-degree rape of a child, two counts of second-degree rape of a child, and two counts of third-degree rape of a child. Clerk's Papers [CP] 12-23. For each count, the State also alleged that the count was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time, and the defendant used his position of trust or confidence to facilitate the commission of each offense. RCW 9.94A.535. CP 1-11, 12-23.

Mr. Harrington, who was in custody, was arraigned on May 24, 2010. 1Report of Proceedings [RP] at 3, 20.¹ At the hearing, a status hearing was set for June 11, 2010, a CrR 3.5 hearing was set for June 18, 2010, and trial was set for July 19, 2010. 1RP at 27, 28. Mr. Harrington was represented by attorney Michael Turner. 1RP at 8.

The matter came on for the status hearing before the Honorable Michael Sullivan on June 11, 2010. At the hearing Mr. Turner moved to withdraw from the case, stating that "with my case load as it stands after

¹The record of proceedings consists of four volumes:
1RP—May 24, June 11, July 2, July 9, July 16, July 23, July 30, 2010, hearings; and August 3, 2010, jury trial;
2RP—August 4, 2010, jury trial;
3RP—August 5, 2010, jury trial; and
4RP—August 6, 2010, jury trial, and September 10, 2010, sentencing.

having had a chance to examine this case, I have determined that I cannot represent Mr. Harrington in a time frame that's required to provide him adequate representation." 1RP at 32-33.

Without substantive inquiry of counsel, Judge Sullivan allowed Mr. Turner to withdraw and appointed attorney Harold Karlsvik to represent Mr. Harrington. 1RP at 33. Later in the hearing, after further discussion between Mr. Karlsvik and the deputy prosecutor regarding the trial date, Judge Sullivan stated "I'm going to find that Mr. Turner is disqualified—disqualified himself because of his workload, but also I'm making a finding that he's—he's disqualified." 1RP at 37. The court, apparently using June 11 as the new commencement date, continued the trial date from July 19 to August 2, 2010. 1RP at 40, 41.

On July 9, Mr. Karlsvik moved to continue the suppression hearing to July 16, and the parties agreed to strike the hearing. 1RP at 52.

On July 23, 2010, Mr. Karlsvik stated that he did not believe that Mr. Turner was disqualified because he did not have a conflict. Counsel argued that speedy trial expired that day. 1RP at 65. The court noted that counsel had not filed a written objection to the new trial date. 1RP at 65-66.

Trial commenced on August 3, 2010. Neither exceptions nor objections were taken to the jury instructions. 2RP at 464.

A jury convicted Mr. Harrington of rape of a child in the second degree (Count 8) and two counts of rape of a child in the third degree (Counts 9 and 10). CP 119, 122, 125. The jury found the aggravating factors of "the offense was part of an ongoing pattern of sexual abuse of the same victim" and the use of "position of trust or confidence to facilitate the commission" of the offense. CP 120-21, 123-24, 126-27. The court concluded that "each of these aggravating factors is sufficient to impose an exceptional sentence upward." CP 169. The court imposed an aggravated exceptional sentence by ordering a minimum sentence of 360 months for Count 8. CP 162. The court imposed a standard range sentence of 60 months for Counts 9 and 10. CP 161.

Timely notice of appeal was filed on September 10, 2010. CP 192-93. This appeal follows.

2. Testimony at trial:

Richard Harrington, age 71, has been married to Jean Harrington for eight years, but she had known him many years prior to their marriage. 3RP at 378, 404. They lived in Lebam, Washington for eleven years, after having

moved from their previous house in Snoqualmie, Washington in 1999. 2RP at 170; 3RP at 378, 379.

H.R.H., who was born June 5, 1993, is Mr. Harrington's granddaughter. 2RP at 168. She lived with the Harringtons from the time she was one and a half years old until she finished kindergarten, and then lived with them a second time between ages three and sixteen. 2RP at 169, 170, 3RP at 401. H.R.H.'s brother also lived with the Harringtons between ages 14 and 16. 2RP at 170. H.R.H.'s brother moved out of the Harrington's house approximately three years ago. 2RP at 170. H.R.H. had her own bedroom in the Harrington's house in Lebam. 2RP at 171.

In June, 2009, H.R.H. left the Harrington's house and shortly thereafter alleged to a relative that Mr. Harrington had sexually molested her, and the allegation was reported to police. 2RP at 227, 229. Charges were subsequently filed against Mr. Harrington on May 19, 2010, and amended on May 20, 2010. CP 1-11, 12-23.²

At trial, H.R.H. claimed that when she was six or seven, Mr. Harrington touched her vagina on several occasions in her room in the house in Lebam. 2RP at 181. H.R.H. claimed that Mr. Harrington continued the

² A second amended information was filed on August 5, 2010, to correct H.R.H.'s initials. CP 43-54.

sexual abuse and subsequently digitally penetrated her vagina when she was in the fourth grade, but she thought that it could have happened earlier or later than that. 2RP at 213, 219. H.R.H. also claimed Mr. Harrington had sexual intercourse with her in 2006 when she was 13 and continued the molestation until she left the house in June, 2009, shortly after she finished the tenth grade. 2RP at 223-227. She made the allegation of abuse approximately a week after leaving the house. 2RP at 229.

Police obtained several items used by H.R.H., including three comforters, two bed sheets, and a pillowcase, which were tested at the Washington State Patrol Crime Laboratory in Vancouver, Washington. 2RP at 267, 276. Heather Pyles of the Crime Laboratory testified one of the comforters that was examined tested positive for the presence of spermatozoa. 2RP at 290. A profile of DNA extracted from the sample obtained from the comforter was compared with the DNA profile from an oral swab reference sample obtained from Mr. Harrington. Ms. Pyles testified that the DNA obtained from the comforter and the DNA sequence obtained from the reference sample had the same DNA profile. 2RP at 293, 323, 326. She testified that the probability of selecting an individual in the United States population with a profile that matches the profile obtained from

the comforter is one in 430 trillion. 2RP at 295.

Jean Harrington testified that Mr. Harrington had been incapable of having sexual intercourse during the previous eight years, and that he has high blood pressure and diabetes. 3RP at 382, 418. She stated that he reported that he had had a vasectomy many years earlier. 3RP at 381. Mr. Harrington received Cialis in October, December 2006, March 2007, May 2007, June 2007, January 2008, April 2008, July 2008 and December 2008. 3RP at 374. On June 30, 2009 Jean Harrington gave police a bottle of Cialis that she got from a drawer in Mr. Harrington's nightstand. 1RP at 138, 139, 140, 3RP at 383, 393.

Mr. Harrington's counsel rested without calling any witnesses. 3RP at 430.

D. ARGUMENT

1. **THE TRIAL COURT ERRED IN ALLOWING MR. TURNER TO WITHDRAW AS COUNSEL, RESULTING IN A NEW COMMENCEMENT DATE OF JUNE 11, 2010, AND THEREBY DENYING MR. HARRINGTON HIS RIGHT TO SPEEDY TRIAL**

CrR 3.3 governs the time for trial in criminal cases. CrR 3.3 generally requires the State to bring an in-custody defendant to trial within 60 days of arraignment; if not, the trial court will dismiss the case with prejudice. CrR

3.3(b)(1)(i), (h).

The trial court bears the ultimate responsibility to ensure that trial is held within the speedy trial period. CrR 3.3 (a) (1); *State v. Carney*, 129 Wn. App. 742, 749, 119 P.3d 922 (2005). Speedy trial applications to facts are reviewed *de novo*. *State v. Branstetter*, 85 Wn. App. 123, 127, 935 P.2d 620 (1997).

Under CrR 3.3 (c) (2) (vii), the disqualification of the defense attorney or prosecuting attorney will reset the speedy trial commencement date. In such case, the 60-day period begins on the disqualification date. CrR 3.3(c)(2)(vii).

In this case, Mr. Harrington's attorney Michael Turner moved to withdraw from the case on June 11, 2010. The record is silent as to why Mr. Turner could not represent Mr. Harrington; Mr. Turner simply told the court “with my case load as it stands after having had a chance to examine this case, I have determined that I cannot represent Mr. Harrington in a time frame that’s required to provide him adequate representation.” 1RP at 32-33. Without substantive inquiry, the court permitted Mr. Turner to withdraw from the case and Harold Karlsvik was appointed. 1RP at 33. Later in the hearing, when discussing the July 19 trial date with Mr. Harrington’s newly-appointed attorney Mr. Karlsvik, the court addressed the requirements of

disqualification. Judge Sullivan stated:

The withdrawal of counsel due to a conflict or request it—I didn't—it wasn't conflict. Excuse me. It was a basis that Mr. Turner gave I found was—was sufficient cause to allow the withdrawal and that starts the clock running again 90 days [sic] from today.

1RP at 36.

After hearing from Mr. Karlsvik, the following exchange took place:

THE COURT: . . . I didn't use the word disqualify and I'm pretty sure there's case law that says that-that qualifies as disqualification, otherwise you could just keep going on and on and-and withdraw as an attorney and the case would be illogical. But I can't recall a case on point on that. Mr. Bustamante?

MR. BUSTAMANTE: Your Honor, Mr. Karlsvik is correct, the court rule state-uses the word disqualified. So when a counsel is disqualified, that's what restarts the clock. But I would agree that given the reason Mr. Turner gave for his withdrawal, that he is-is disqualified as counsel. He says he-he basically was arguing he couldn't handle the case due to the work schedule and so for the amount of time that would be needed.

THE COURT: That's a good point. I heard that, too. I'm going to find Mr. Turner is disqualified-disqualified himself because of his workload, but also I make a finding that he-he's disqualified. I may just take a look at that, see if I can find a case to support that seems logical to me what you just said, Mr. Bustamante.

1RP at 36-37.

Mr. Turner's schedule and case load does not distinguish him from

any other attorney in criminal practice in the State of Washington. Under the speedy trial rule, if a defendant is in custody, the rule requires that he be brought to trial within sixty days. A defendant has a statutory right to avail himself of this rule, just as he has the right to avail himself of his right to a trial, without penalty. *State v. Michielli*, 132 Wn.2d 229, 937 P.2d 587 (1997).

Here, the court did not articulate the specific nature of the disqualification, and did not inquire regarding Mr. Turner's specific schedule and caseload. In addition, Mr. Turner was well acquainted with the facts of the case, having represented Mr. Harrington during the police investigation prior to filling the information on May 19, 2010. 1RP at 8.

The record below simply does not support the trial court's order allowing Mr. Turner to withdraw from representation, thereby resetting the speedy trial commencement date from May 24, 2010, to June 11.

A trial's court's decision to allow an attorney to withdraw from representation is reviewed for abuse of discretion. *State v. Berrysmith*, 87 Wn.App. 268, 944 P.2d 397 (1997). In *State v. Berrysmith*, the Court held that the trial court properly allowed counsel to withdraw where he reasonably believed that his client intended to perjure himself at trial. *State v. Berrysmith* at 279-80. Because withdrawal was proper, the court properly

continued the case for three weeks, outside the speedy trial period, for new counsel to prepare for trial. *State v. Berrysmith* at 280.

Here, no such conflict of interest was found by the court, or even raised by Mr. Turner. Mr. Turner simply did not want to represent Mr. Harrington unless the timeline was of Mr. Turner's choosing. No record whatsoever was made as to why Mr. Turner could not represent Mr. Harrington and be ready for trial on July 19, particularly since Mr. Turner was Mr. Harrington's attorney during the investigatory stages of the case. As such, the trial court abused its discretion in allowing Mr. Turner to withdraw. The correct speedy trial period, therefore, commenced on May 24, 2010, and expired on July 23, 2010. Mr. Harrington was not brought to trial within this speedy trial period.

The State may claim that Mr. Harrington failed to object to the violation of his right to speedy trial and therefore waives any objection on appeal. However, the record reflects that Mr. Karlsvik did note his objection on July 23, 2010, when he argued that Mr. Turner was permitted to withdraw in the absence of a valid disqualification and that speedy trial expired on that day. 1RP at 64-65. To the extent Mr. Karlsvik did not file a written motion pursuant to CrR 3.3(d)(3), that failure constituted deficient representation. There can be no tactical reason for an attorney to fail to object to a violation

of his right to a speedy trial.

The basis for the trial court allowing Mr. Turner to withdraw appears to be the trial court's agreement with Mr. Turner that because of his case load he did not have time to prepare for trial by July 19. The law in Washington simply does not support this ruling; the speedy trial rule must be strictly followed, and when it is violated, dismissal with prejudice is required without any showing of prejudice. "Failure to strictly comply with the speedy trial rule requires dismissal, regardless of whether the defendant can show prejudice." *State v. Adamski*, 111 Wn.2d 574, 582, 761 P.2d 621 (1988); *State v. Swenson*, 150 Wn.2d 181, 186-87, 75 P.3d 513 (2003); *State v. Ralph G.*, 90 Wn.App. 16, 20-21, 950 P.2d 971 (1998). Mr. Harrington did not place unreasonable conditions on Mr. Turner's representation, he simply asserted his right to a speedy trial. A diligent review by appellate counsel has found no case which supports a trial court's requirement that a defendant must choose between his right to a speedy trial and his right to counsel. Absent a conflict of interest, or some legitimate, specific, identifiable reason why Mr. Turner could not represent Mr. Harrington—instead of vaguely referring to his "case load"—Mr. Harrington was entitled to representation and to a speedy trial period commencing on May 24, 2010. Mr. Harrington's right to a speedy trial was violated and this Court should reverse his

convictions and dismiss this prosecution.

2. **DEFENSE COUNSEL'S FAILURE TO COMPLY WITH CrR 3.3 DENIED MR. HARRINGTON HIS RIGHT TO EFFECTIVE COUNSEL**

A criminal defendant has the constitutional right to the assistance of counsel. U.S. Const. amends. 6, 14; Wash. Const. art. 1, §§ 3, 22.

Counsel's critical role in the adversarial system protects the defendant's fundamental right to a fair trial. *Strickland v. Washington*, 466 U.S. 668, 684-85, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *United States v. Cronin*, 466 U.S. 648, 656, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984). "[T]he very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." *Herring v. New York*, 422 U.S. 853, 862, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975). The right to counsel therefore necessarily includes the right to effective assistance of counsel. *Kimmelman v. Morris*, 477 U.S. 365, 377, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986). When reviewing a claim that trial counsel was not effective, appellate courts utilize the two-part test announced in *Strickland*. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987).

Under *Strickland*, the appellate court must determine (1) was the

attorney's performance below objective standards of reasonable representation, and, if so, (2) did counsel's deficient performance prejudice the defendant. *Strickland*, 466 U.S. at 687-88; *Thomas*, 109 Wn.2d at 226. Ineffective assistance of counsel claims are reviewed *de novo*. *State v. S.M.*, 100 Wn. App. 401, 409, 996 P.2d 1111 (2000). There is a presumption that counsel's assistance was effective. *State v. Sardinia*, 42 Wn. App. 533, 539, 713 P.2d 122, review denied, 105 Wn.2d 1013 (1986). The appellate court will find prejudice under the second prong if the defendant demonstrates "counsel's errors were so serious as to deprive the defendant of a fair trial." *Strickland*, 466 U.S. at 687.

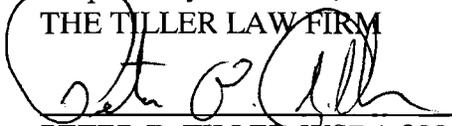
Here, trial counsel was ineffective by failing to argue and preserve Mr. Harrington's right to a speedy trial by filing a written objection. As noted in Section 1 of this brief, a defendant detained in jail shall presumptively be brought to trial within 60 days unless there is an allowable excluded period. CrR 3.3 (b)(1)(i) and (b)(5). The 60-day window commences with arraignment. CrR 3.3(c)(1). Mr. Harrington was arraigned in custody on May 24, 2010, giving the court until July 23 for trial. The court set a July 19 trial date, then reset the trial date to August 2 after appointment of new counsel on June 11. 1RP at 41. Objections to the resetting of a trial date must be made within 10 days of receiving notice of the new date or the

right to challenge the new date is lost. CrR 3.3(d)(3). Defense counsel should have respected Mr. Harrington's right to be tried within 60 days and filed an objection to the August trial date within the 10 days required by the rule. Had defense counsel done so, Mr. Harrington's right to object to the trial date would have been preserved and he would likely have been successful on challenging his delayed trial date and won a dismissal with prejudice. Defense counsel's failure to do so fell below the standard required by effective counsel and Mr. Harrington was prejudiced thereby.

F. CONCLUSION

Mr. Harrington's convictions should be reversed and dismissed because he was denied his right to a speedy trial. In the alternative, Mr. Harrington's convictions should be reversed and remanded to the trial court for retrial.

DATED: July 21, 2011.

Respectfully submitted,
THE TILLER LAW FIRM

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APPENDIX A
COURT RULES

RULE CrR 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 file 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 excluded 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.

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,	COURT OF APPEALS NO.
	41193-8-II
Respondent,	
vs.	PACIFIC COUNTY SUPERIOR
	COUNTY NO. 10-1-00089-3
RICHARD L. HARRINGTON,	
Appellant.	CERTIFICATE OF MAILING

The undersigned attorney for the Appellant hereby certifies that one original and one copy of the Appellant's Opening Brief were mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to Richard Harrington, Appellant, and David Burke, Deputy Prosecuting Attorney, by first class mail, postage pre-paid on July 21, 2011, at the Centralia, Washington post office addressed as follows:

Mr. David J. Burke
Pacific County Prosecutor's Office
PO Box 45
South Bend, WA 98586

Mr. David Ponzoha
Clerk of the Court
Court of Appeals
950 Broadway, Ste.300
Tacoma, WA 98402-4454

CERTIFICATE OF
MAILING

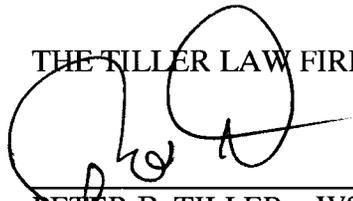
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Monroe, WA 98272

Dated: July 21, 2011.

THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'Peter B. Tiller', is written over the firm name.

PETER B. TILLER – WSBA #20835
Of Attorneys for Appellant

CERTIFICATE OF
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