

NO. 47009-8-II

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

---

---

STATE OF WASHINGTON,

Respondent,

v.

JASON A. HANSON,

Appellant.

---

---

ON APPEAL FROM THE  
SUPERIOR COURT OF CLARK COUNTY

The Honorable John F. Nichols, Judge and  
The Honorable Robert Lewis, Judge

OPENING BRIEF OF APPELLANT

---

---

Peter B. Tiller, WSBA No. 20835  
Of Attorneys for Appellant

The Tiller Law Firm  
Corner of Rock and Pine  
P. O. Box 58  
Centralia, WA 98531  
(360) 736-9301

## TABLE OF CONTENTS

	<u>Page</u>
A. ASSIGNMENT OF ERROR.....	1
B. SUMMARY OF ARGUMENT .....	1
C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR .....	3
D. STATEMENT OF THE CASE.....	3
1. <u>Procedural facts:</u> .....	3
2. <u>Timeline for a speedy trial:</u> .....	4
3. <u>Testimony at trial:</u> .....	5
E. ARGUMENT .....	7
1. <u>THE CONVICTION MUST BE REVERSED         AND THE CHARGES DISMISSED         BECAUSE MR. HANSON WAS DENIED HIS         RIGHT TO A SPEEDY TRIAL</u> .....	7
a. The court violated Mr. Hanson's constitutional right to a speedy trial and abused its discretion in granting two continuances over his objection .....	7
2. <u>MR. HANSON RECEIVED INEFFECTIVE         ASSISTANCE OF COUNSEL THAT DEPRIVED         HIM OF HIS RIGHTS TO A SPEEDY TRIAL</u> .....	13
3. <u>THE TRIAL COURT FAILED TO TAKE INTO         ACCOUNT MR. HANSON'S FINANCIAL         CIRCUMSTANCES BEFORE IMPOSING         DISCRETIONARY LEGAL FINANCIAL         OBLIGATIONS</u> .....	16
F. CONCLUSION .....	17

**TABLE OF AUTHORITIES**

<b><u>WASHINGTON CASES</u></b>	<b><u>Page</u></b>
<i>State v. Blazina</i> , 182 Wn.2d 827, 344 P.3d 680 (2015).....	
<i>State v. Campbell</i> , 103 Wn.2d 1, 691 P.2d 929 (1984).....	10,11, 12
<i>State v. Downing</i> , 151 Wn.2d 265, 87 P.3d 1169 (2004) .....	10
<i>State v. Grier</i> , 150 Wn. App. 619, 208 P.3d 1221 (2009) .....	13
<i>State v. Hendrickson</i> , 129 Wn.2d 61, 917 P.2d 563 (1996).....	14
<i>State v. Jenkins</i> , 76 Wn. App. 378, 884 P.2d 1356 (1994).....	8
<i>State v. Kenyon</i> , 167 Wn.2d 130, 216 P.3d 1024 (2009) .....	8, 9
<i>State v. McFarland</i> , 127 Wn.2d 322, 899 P.2d 1251 (1995).....	14
<i>State v. McNeal</i> , 145 Wn.2d 352, 37 P.3d 280 (2002) .....	14
<i>State v. Regan</i> , 143 Wn. App. 419, 177 P.3d 783 (2008).....	15
<i>State v. Reichenbach</i> , 153 Wn.2d 126, 101 P.3d 80 (2004) .....	14
<i>State v. Ross</i> , 98 Wn. App. 1, 981 P.2d 88 (1999).....	6
<i>State v. Saunders</i> , 153 Wn. App. 209, 220 P.3d 1238 (2009) .....	10
<i>State v. Swenson</i> , 150 Wn.2d 181, 75 P.3d 513 (2003).....	8, 13
<i>State v. Turner</i> , 143 Wn.2d 715, 23 P.3d 499 (2001).....	14
<i>State v. Williams</i> , 104 Wn. App. 516,17 P.3d 648 (2001) .....	10
<b><u>UNITED STATES CASES</u></b>	<b><u>Page</u></b>
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).....	13
<b><u>REVISED CODE OF WASHINGTON</u></b>	<b><u>Page</u></b>
RCW 9A.36.021(1)(a) .....	3
<b><u>CONSTITUTIONAL PROVISIONS</u></b>	<b><u>Page</u></b>
U. S. Const. Amend. VI .....	13
<b><u>COURT RULE</u></b>	<b><u>Page</u></b>
CrR 3.3 .....	7, 9, 10
CrR 3.3 (b)(S).....	8

CrR 3.3 (e) .....	8
CrR 3.3(e)(3).....	8
CrR 3.3(f).....	8
CrR 3.3(f)(1)(2).....	8
CrR 3.3(h) .....	7, 13
CrR 3.3(h)(2).....	10
CrR 3.5 .....	3

**A. SUMMARY OF ARGUMENT**

On November 17 and 18, 2014, Jason Hanson was tried and convicted of assault in the second degree. He was sentenced to 13 months' confinement on December 12, 2014.

On July 10, 2014, Mr. Hanson was arraigned and given a trial date of September 2, 2014, with a speedy trial expiration date of September 8, 2014. Mr. Hanson's case was continued two times, both over his objections, because defense counsel believed that he was unprepared to proceed. Mr. Hanson remained in the Clark County Jail prior to trial and repeatedly stated that he did not want to waive his right to a speedy trial.

Ultimately, Mr. Hanson's trial did not begin until November 17, 2014, 130 days after he was arraigned on the charge and over one month after the speedy trial expiration date set by the Court. The continuances granted by the trial constitute an abuse of discretion and consequently his conviction for second degree assault should be reversed.

**B. ASSIGNMENTS OF ERROR**

1. The trial court erred by continuing Mr. Hanson's trial beyond the speedy trial date.

2. The trial court abused its discretion by granting a continuance of Mr. Hanson's trial on August 28, 2014.

3. The trial court abused its discretion by granting a continuance of Mr. Hanson's trial on October 27, 2014.

4. Mr. Hanson's trial counsel provided ineffective assistance of counsel by failing to act diligently in the preparation of the case, and counsel's inability to try the case when originally scheduled created a conflict of interest between counsel and his client's right to a speedy trial.

5. The trial court erred by not assessing the appellant's individual financial circumstances and making an individualized inquiry into his current and future ability to pay legal financial obligations.

### **C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Where the trial court granted two continuances that extended the time for trial 130 days past Mr. Hanson's original commencement date and where he remained in custody prior to trial, does good cause exist for the continuances in light of the defendant's repeated objections to counsel's request for the continuances and in light of the reasons for the continuances that were asserted by defense counsel? (Assignments of Error 1, 2, and 3)

2. Whether the trial court abused its discretion, violating Mr. Hanson's right to a speedy trial, by granting two continuances over Mr. Hanson's objections? (Assignments of Error 1, 2, and 3)

3. Where defense counsel repeatedly requested continuances over

his client's objection, citing the need to interview the complaining witness, review medical reports that had been provided by the State the previous week, and to try to locate an unidentified witness who ultimately was not produced at trial, and as a result of the repeated delays the defendant was brought to trial 130 days after the commencement date, is counsel's performance unconstitutionally ineffective? (Assignment of Error 4)

4. Did the sentencing court err by imposing the legal financial obligations requested by the State without assessing the individual financial circumstances of the appellant and making an individualized inquiry into his current and future ability to pay? (Assignment of Error 5)

#### **D. STATEMENT OF THE CASE**

##### **1. Procedural facts:**

Jason Hanson was tried to a Clark County jury on a one-count information charging him with assault in the second degree, in violation of RCW 9A.36.021(1)(a). Clerk's Papers (CP) 1.

The court heard a motion to suppress pursuant to CrR 3.5 on October 27, 2014. 1Report of Proceedings (RP) at 40-90.<sup>1</sup> On November 5, 2014, the court found that Mr. Hanson's statement to law enforcement regarding the alleged

---

<sup>1</sup>The record of proceedings is designated as follows: 1RP – July 7, 2014, July 10, 2014, August 28, 2014, September 5, 2014, October 23, 2014, October 27, 2014 (CrR 3.5 hearing), November 5, 2014, November 12, 2014; 2RP—November 16, 2014 (jury trial); and 3RP—November 18, 2014 (jury trial), and December 12, 2014 (sentencing).

assault were admissible. 1RP at 87. Findings of fact and conclusions of law were entered November 12, 2014. 1RP at 91; CP 20.

The matter came on for jury trial on November 17 and 18, 2014, the Honorable Robert Lewis presiding. The jury found Mr. Hanson guilty of second degree assault as charged. CP 105.

At sentencing, the court calculated an offender score of "2," based on a prior felony conviction. 3RP at 306. The court sentenced Mr. Hanson to a midrange sentence of 13 months, and 18 months of community custody. 3RP at 312; CP 110.

Timely notice of appeal was filed on December 18, 2014. CP 124. This appeal follows.

**2. Timeline for speedy trial:**

● July 3, 2014: After being extradited from Oregon to Clark County, Washington, Mr. Hanson was arrested on the underlying charge of second degree assault. 1RP at 5.

● July 8, 2014: The Clark County Prosecutor filed a one-count information against Mr. Hanson. CP 1-2.

● July 10, 2014: Mr. Hanson was arraigned and assigned a trial date of September 2, 2014. 1RP at 7.

● July 18, 2014: The prosecution filed an amended information,

adding co-defendant Autumn Williams and charging her with one count of assault in the second degree and one count of malicious mischief. CP 3.

●August 28, 2014: Mr. Hanson's counsel and counsel for co-defendant Williams requested a trial continuance. 1RP at 8. Mr. Hanson's defense counsel, Robert Vukanovich, requested a continuance of the trial date of September 2 so he would have additional time to interview the alleged victim and to read medical reports regarding the injuries. 1RP at 9. Mr. Hanson objected to the continuance. 1RP 11-12. The trial court agreed to continue Mr. Hanson's trial date. 1RP at 12-13. Counsel for Williams indicated that she was expected to change her plea. 1RP at 10. The court set a new trial date of October 27, 2014.

●October 27, 2014: Mr. Vukanovich requested a second continuance based on discovery of two previously unknown witnesses. 1RP at 30, 31. The witnesses were interviewed by law enforcement and recordings of the interviews were provided to defense counsel. 1RP at 32. Mr. Vukanovich requested a continuance of the trial date. 1RP at 32. Again, Mr. Hanson objected to any continuation of the October 27 trial. 1RP at 34. The trial court found good cause to continue the trial. 2RP at 34, 35. Trial was continued to November 17, 2014. Following the ruling, a CrR 3.5 motion was heard later on October 27. 1RP at 39-80.

●November 17, 2014: Trial commenced.

**3. Testimony at trial:**

After work on June 23, 2014, Hardev Juj, the chief engineer and vice president at the Bonneville Power Administration, went for a walk with his wife near Esther Short Park, located near their condominium at 701 Columbia Street in Vancouver, Washington. 2RP at 133, 184. While walking near the park at approximately 8:40 p.m., he was approached by Autumn Williams and a juvenile male, who asked him for money. 2RP at 185. He told her that he did not have any money and that he was only out for a walk. He stated that Williams swore at him and said “go back to your country” 2RP at 186. Mr. Juj turned to face Williams and asked her what she said to him, and she swung her skateboard at him, hitting him on the forehead, nose and throat. 2RP at 186, 187. She and the juvenile then picked up their skateboards and ran across a street into Esther Short Park while Mr. Juj called 911 using his cell phone. 2RP at 189. The 911 dispatcher asked what direction they were running, so Mr. Juj followed them in order to see where they went. 2RP at 189. He then returned to the stairs in front of his apartment building while still on the phone with 911. 2RP at 190.

While on the phone, a man who was identified by police as Jason Hanson approached him and asked what he was doing. 2RP at 190. Mr.

Juj said he was calling 911. 2RP at 191. Mr. Hanson then hit Mr. Juj on the side of his face three to four times, knocking him to the ground. 2RP at 175, 192, 198.

Mr. Juj sustained injuries to the right side of his face, including a fractured upper jaw, injury to his right eye affecting his vision, fractured orbital bone and broken nose. 2RP at 153, 198 199, 203, 211. Mr. Juj stated that the injuries occurred as a result of being hit by the man and not being hit by the skateboard. 2RP at 203. A Chicago Bulls baseball hat was found at the scene. Exhibit 5.

The State introduced a security surveillance video depicting the incident. Exhibit 2. Two still photographs from the security video were entered as Exhibits 12 and 14.

Following an investigation, Mr. Hanson was arrested on June 30, 2014 in Salem, Oregon for suspicion of second degree assault. 2RP at 229. After being returned to Vancouver, Mr. Hanson told police that Williams told him that she was being followed by an older man and that he told the man to leave her alone. 2RP at 234. He said that he hit the man three to four times. 2RP at 234.

Mr. Hanson stipulated that the Chicago Bulls baseball hat found at the scene of the incident belonged to him and that he was the young male who hit Mr. Juj, as depicted in the video. 2RP at 154-55.

The defense rested without calling witnesses. 3RP at 247.

**E. ARGUMENT**

**1. THE CONVICTION MUST BE REVERSED  
AND THE CHARGES DISMISSED  
BECAUSE MR. HANSON WAS DENIED HIS  
RIGHT TO A SPEEDY TRIAL.**

- a. The court violated Mr. Hanson's constitutional right to a speedy trial and abused its discretion in granting two continuances over his objection.

The right to a speedy trial is a fundamental right under Washington's speedy trial rule. *State v. Ross*, 98 Wn. App. 1, 4, 981 P.2d 88 (1999). Absent compelling circumstances, a criminal defendant should be tried within the speedy trial time period set out by court rule. See CrR 3.3, Attachment A, *infra*.

CrR 3.3(h) provides that, subject to specifically enumerated exceptions, an incarcerated defendant's trial must begin within 60 days of arraignment, or the case must be dismissed with prejudice. Certain periods may be excluded in computing the time for trial, including valid continuances granted by the court pursuant to CrR 3.3(f), CrR 3.3(e)(3). Excluded periods under CrR 3.3(e) include delays "granted by the court pursuant to section (f)." CrR 3.3(e)(3). A continuance may be granted based on "written agreement of the parties, which must be signed by the defendant" or "on motion of the court or a party" where a 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)(1), (2). If any period of time is excluded under the exception, the time for trial does not expire sooner than thirty days after the end of the excluded period. CrR 3.3 (b)(S).

Although the rule is "not a constitutional mandate," its purpose is to protect the constitutional right to a speedy trial. *State v. Kenyon*, 167 Wn.2d 130, 136, 216 P.3d 1024 (2009). Under CrR 3.3(a)(1), "it is the trial court which bears the *ultimate* responsibility to ensure a trial is held within the speedy trial period." *State v. Jenkins*, 76 Wn. App. 378, 382-83, 884 P.2d 1356 (1994).

The determination of whether a defendant's time for trial has elapsed requires application of the court rules to the particular facts of the case and is, therefore, reviewed *de novo*. *State v. Swenson*, 150 Wn.2d 181, 186, 75 P.3d 513 (2003). *See also, Kenyon*, 167 Wn.2d at 135 (speedy trial violation found through de novo review of the court's compliance with the rules regarding the continuance decision, not the discretionary decision itself). Although the application of CrR 3.3 is reviewed de novo, a trial court's factual determination to grant a continuance is reviewed for abuse of discretion. *Kenyon*, 167 Wn.2d at 135.

In this case, Mr. Hanson was arraigned in Clark County Superior Court on July 10, 2014, on one count of second degree assault. CP 1-2. The trial

was originally set for September 2, 2014, but on August 28, 2014, just five days before the trial was scheduled to commence, Mr. Hanson's attorney moved for continuance of the trial date, arguing that he had received medical reports approximately a week and a half before the hearing and that he had yet to review the reports and interview the complaining witness. CP 6. The continuance was granted over Mr. Hanson's objection. 1RP at 12. In granting the continuance, the Court stated that "[t]he case law is that these types of decisions are up to the Court to decide depending upon what your attorney has said. So I will grant the continuance. I think it's vital to the case." 1RP at 13. Mr. Hanson's speedy trial period was set to expire on September 8, 2014.

On October 27, 2014, Mr. Hanson's counsel requested a second continuance. Counsel stated that he had been provided with information regarding two new witnesses interviewed by the police, and those witnesses referred to a third, unidentified potential witness. 1RP at 30. The court granted the defense motion over Mr. Hanson's objection and the trial was continued to November 17, 2014. The trial setting of November 17, 2014 was 130 days after Mr. Hanson's arraignment, and forty days after the speedy trial date of September 8 had expired.

This Court has held that "[t]he decision to grant or deny a motion for continuance rests within the sound discretion of the trial court," which

discretion is abused when the trial court's decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Saunders*, 153 Wn. App. 209,216,220 P.3d 1238 (2009) (quoting *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004)). A continuance may be granted upon a finding that additional time is required in the administration of justice and the defendant will not be substantially prejudiced. *State v. Williams*, 104 Wn. App. 516,521-22, 17 P.3d 648 (2001) (citing CrR 3.3(h)(2)).

In itself, granting a continuance over a defendant's objection to allow defense counsel more time to prepare for trial is not an abuse of discretion. *Williams*, 104 Wn. App. at 523 (citing *State v. Campbell*, 103 Wn.2d 1, 15, 691 P.2d 929 (1984)). But courts have acknowledged that continuance requests must be considered in light of counsel's duty to abide by the client's decision as to the objectives of representation. In cases in which a defendant repeatedly objects to further continuances and insists upon his right to a speedy trial, that request should be adhered to, absent compelling circumstances.

This Court has dismissed a conviction for a CrR 3.3 violation despite defense counsel's agreement to continuances beyond the speedy trial period. *Saunders*, 153 Wn. App. at 217-18. In *Saunders*, two continuances were requested by defense counsel for the purpose of investigation or

preparation for trial, two were agreed motions purportedly for the purpose of negotiations, and two were requested by the State without adequate explanation—but Saunders personally objected to all six, refused to sign each and every continuance form, and moved to dismiss pro se. *Id.* at 212-15. Because he "consistently resisted extending time for trial," the Court found he did not waive his objection. *Id.* at 220.

As was the case in *Saunders*, Mr. Hanson objected to both extensions of his trial date. After the initial trial date of September 2, 2014 was set, the trial court continued the trial over his objection two times, On August 28, 2014, defense counsel requested a 60 day continuance to review discovery and to interview Mr. Juj. 1RP at 8. Defense counsel requested another continuance on October 27 in order to try to find an unidentified witness who did not subsequently materialize. Despite the nebulous nature of the request, the trial court nevertheless, granted the continuance. The new trial date was set for November 17, 2012, an extension of an additional 21 days from the previously granted continuance. 1RP at 21.

*State v. Campbell*, 103 Wn.2d 1, 14-15, 691 P.2d 929 (1984) is not controlling authority in this case. In *Campbell*, the Superior Court found that the trial court did not abuse its discretion in granting a continuance requested by defense counsel to prepare for a capital trial, even over the defendant's

objection. *Campbell* involved three counts of aggravated first degree murder, aggravating factors, the death penalty, and large amounts of complex forensic physical evidence, but the trial was delayed for only six months and the defendant objected to only a single continuance. *Id.* at 5-15. Here, Mr. Hanson's case was not complex. Mr. Hanson did not contest identity and conceded that he was the man in the video. Instead, his defense rested on the argument that Williams caused Mr. Juj's injuries when she hit him with a skateboard and therefore Mr. Hanson did not commit second degree assault.

The continuances were an abuse of discretion because of the tenuous nature of the requests compared to the relative simplicity of the facts and defense theory. Counsel asked for time to review medical reports given to him the week before, but no serious challenge to the medical testimony was presented at trial. Instead, counsel engaged in extremely brief cross examination of the treating physician regarding Mr. Juj's injuries. 2RP at 213-14. The defense presented no expert testimony to support its theory of the case—that Mr. Juj's injuries were caused by Williams when she hit him with her skateboard and not caused by Mr. Hanson.

Mr. Hanson consistently and repeatedly objected to further continuances of his trial. If the time for trial has passed and the defendant has properly objected, the court has no discretion but must dismiss the

charges with prejudice. *Swenson*, 150 Wn.2d at 186-87. Because the trial court abused its discretion in granting the continuances, Mr. Hanson's time for trial expired on September 8, 2014. The State having failed to timely bring him to trial, under CrR 3.3(h), the charge must be dismissed with prejudice.

2. **MR. HANSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL THAT DEPRIVED HIM OF HIS RIGHTS TO A SPEEDY TRIAL**

In this case, Mr. Hanson's trial counsel's representation was ineffective. Counsel's performance was deficient because of the inexcusable lack of diligence in proceeding, which ultimately resulted in two requests for continuances by defense counsel, neither of which resulted in testimony that benefitted the defendant. As a result of counsel's lack of diligence, Mr. Hanson was denied a speedy trial.

Under the Sixth Amendment to the U.S. Constitution, a criminal defendant has the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Claims of ineffective assistance of counsel are reviewed de novo. *State v. Grier*, 150 Wn. App. 619, 633, 208 P.3d 1221 (2009). "To establish ineffective assistance of counsel, the defendant must show that (1) counsel's, performance was deficient and (2) the deficient performance prejudiced the defense." *State v. Turner*, 143 Wn.2d 715, 730, 23 P.3d 499 (2001). Prejudice

is established where the defendant shows that the outcome of the proceedings would likely have been different but for counsel's deficient representation. *State v. McFarland*, 127 Wn.2d 322, 337, 899 P.2d 1251 (1995).

Although apparently unreasonable decisions can be excused on tactical grounds, where the record shows an absence of conceivable legitimate trial tactics or theories explaining counsel's performance, such performance falls "below an objective standard of reasonableness" and is deficient. *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004); *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002); *State v. Hendrickson*, 129 Wn.2d 61,77-78, 917 P.2d 563 (1996).

In the present case, trial counsel requested two continuances of the trial date. The first request to continue the trial from September 2 to October 27 was due to counsel's failure to prepare for trial in a timely manner. Counsel requested the continuance because he had not yet interviewed the complaining witness Mr. Juj and had not reviewed medical reports that counsel had received the previous week. 1RP at 9.

Counsel requested the second continuance from October 27 to November 18 in order to interview two witnesses located by the police—Chris Zwach and Christine Clark—who identified a potential unidentified

third witness. 1RP at 31-32. Although counsel argued that the delays were needed for a tactical reasons—for example, to locate the unidentified potential witness or read medical reports—nothing in the record indicates that counsel actually followed through on any of these purported justifications. The defense presented no witness contradicting the severity or nature or origin of the injuries and engaged in extremely limited cross-examination of the State’s medical expert. Moreover, the defense did not identify the new witness referenced by Clark and Zwach.

Counsel's unreasonable performance in failing to proceed diligently with the case, particularly in light of Mr. Hanson's vehemently stated desire for a speedy trial, prejudiced Mr. Hanson by depriving him of his speedy trial rights.

A Sixth Amendment violation is established when the defendant shows that his attorney has an actual conflict of interest that adversely affected his performance. *State v. Regan*, 143 Wn. App. 419,427, 177 P.3d 783 (2008). In such cases, prejudice is presumed. *Id.* In *Regan*, as in the present case, defense counsel placed his own interests by requesting a continuance over the interests of her client in having a speedy trial. *Id.* at 428-29. The court held unequivocally that the choice created an actual

conflict of interest, of which the trial court had notice, and that the conflict adversely affected Regan's representation. *Id.* at 429.

3. **THE TRIAL COURT FAILED TO TAKE INTO ACCOUNT MR. HANSON'S FINANCIAL CIRCUMSTANCES BEFORE IMPOSING DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS.**

At sentencing, the court ordered Mr. Hanson to pay legal costs. CP 110. The record contains no finding, either oral or written, stating that the trial court considered Mr. Hanson's financial circumstances and found that he has the ability or likely future ability to pay the LFOs ordered in the Judgment.

Mr. Hanson did not object to the trial court's failure to make any findings of ability to pay, or to the trial court's imposition of discretionary LFOs. However, our Supreme Court recently chose to review an objection to the imposition of LFO's raised for the first time on appeal, In *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), the Supreme Court held that RAP 2.5(a) provides appellate courts with discretion whether to review a defendant's LFO challenge raised for the first time on appeal. *Blazina*, 344 P.3d at 683. There, the *Blazina* court exercised its discretion in favor of allowing the LFO challenge. *Id.*

In this case, the sentencing court failed to make any individualized inquiry into his present or future ability to pay. Factors to be considered in

determining whether a person has a present or future ability to pay include the length of incarceration and whether the court has previously made an indigency determination.

The State did not provide evidence establishing Mr. Hanson's ability to pay, nor did it ask the court to make a determination under RCW 10.01.160, when it asked that LFOs be imposed. Moreover, the trial court made no further inquiry into Mr. Hanson's financial resources, debts, or employability. There was no specific evidence before the trial court regarding her past employment or his future educational opportunities or employment prospects. "The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay." *Blazina*, 344 P.3d at 685. The record in this case fails to establish that the trial court made an "individualized inquiry" into his ability to pay, or actually took into account his financial circumstances before imposing LFOs. The trial court therefore did not comply with the LFO statute.

In *Blazina*, the Supreme Court held that because the sentencing judge failed to make a proper inquiry into the defendant's ability to pay, the case should be remanded to the trial court for a new sentencing hearing. *Blazina*, 344 P.3d at 685. Similarly, this Court should vacate the LFO portion of Mr. Hanson's Judgment and remand for resentencing on this issue.

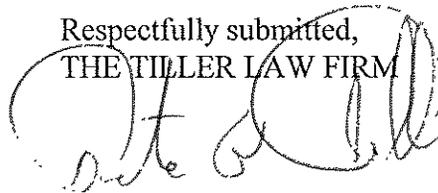
**F. CONCLUSION**

For the foregoing reasons, Jason Hanson respectfully requests that the court reverse his conviction.

Alternatively, because the record fails to establish that the trial court did in fact consider his ability to pay before imposing discretionary LFOs, this case should be remanded for resentencing.

DATED: July 17, 2015.

Respectfully submitted,  
THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835  
Of Attorneys for Jason Hanson

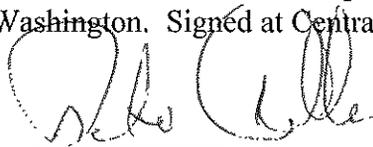
**CERTIFICATE OF SERVICE**

The undersigned certifies that on July 17, 2015, that this Appellant's Opening Brief was sent by the JIS link to Mr. David Ponzoha, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and copies were mailed by U.S. mail, postage prepaid, to the following:

Ms. Anne Cruser  
Deputy Prosecuting Attorney/AAG  
Clark County Prosecutor's Office  
PO Box 5000  
Vancouver, WA 98666-5000

Mr. Jason A. Hanson,  
*Address Unknown at this Time*

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on July 17, 2015.

A handwritten signature in black ink, appearing to read 'Peter B. Tiller', written over a horizontal line.

PETER B. TILLER

## APPENDIX A

### 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.

## TILLER LAW OFFICE

July 17, 2015 - 4:52 PM

### Transmittal Letter

Document Uploaded: 5-470098-Appellant's Brief.pdf

Case Name: State v. Jason A. Hanson

Court of Appeals Case Number: 47009-8

Is this a Personal Restraint Petition?  Yes  No

### The document being Filed is:

- Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_\_
- Answer/Reply to Motion: \_\_\_\_\_
- Brief: Appellant's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Shirleen K Long - Email: [slong@tillerlaw.com](mailto:slong@tillerlaw.com)

A copy of this document has been emailed to the following addresses:

[prosecutor@clark.wa.gov](mailto:prosecutor@clark.wa.gov)