

NO. 47209-1-II

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

Respondent,

vs.

BRUCE E. BRATTON,

Appellant.

BRIEF OF RESPONDENT

MICHAEL E. HAAS
Jefferson County Prosecuting Attorney
Attorney for Respondent
P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9180

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BRIEF OF RESPONDENT

State of Washington v. Bruce E. Bratton, 47209-1-II

A. ASSIGNMENTS OF ERROR

ISSUE STATEMENT

Whether the Trial Court properly exercised its discretion in enforcing the appellate court's mandate despite a 16 month delay in bringing the motion to impose the original sentence?

B. STATEMENT OF THE CASE

The Trial Court found Appellant, Bruce Mr. Bratton, guilty of possession of a controlled substance following a bench trial April 15, 2011. CP 3. At sentencing the Trial Court stayed execution of Mr. Bratton's sentence pending appeal. CP 36.

This Court rejected Mr. Bratton's appeal. CP 39 -45. The Jefferson County Superior Court received the mandate from this Court July 25, 2013. CP 37. A little less than 16 months later, November 19, 2014, the State filed a motion to lift the stay and carry out the sentence imposed June 7, 2011. CP 34 - 35.

Mr. Bratton filed a motion December 24, 2014, to dismiss the case based on the assertion the State violated Mr. Bratton's speedy sentencing rights. CP 50 - 53. The Trial Court granted the State's motion to impose the sentence from 2011 and signed a warrant of commitment directing Mr. Bratton to begin serving his sentence. CP 93 – 95.

Unfortunately despite health issues, Mr. Bratton continued to use methamphetamine during the appeal process and was convicted twice more. CP 60.

BRIEF OF RESPONDENT

State of Washington v. Bruce E. Bratton, 47209-1-II

C. SUMMARY OF ARGUMENT

The Trial Court properly exercised its discretion in enforcing the appellate court's mandate despite a 16 month delay in bringing the motion to impose the original sentence.

D. ARGUMENT

There are two grounds upon which a person may make a claim of a speedy sentencing violation. A party may claim a violation of the statutory right to speedy sentencing under RCW 9.94A.500 and CrR 7.1(a). In the alternative, a party may also claim their constitutional rights to a speedy sentencing were violated. For reasons stated below, Mr. Bratton should not prevail on either his claim of a statutory or a constitutional violation of his speedy sentencing rights.

1. Statutory Right to Speedy Sentencing

Under RCW 9.94A.500(1), the court must sentence a defendant within 40 court days following conviction. This time period may be extended however, upon the motion of either party for good cause or upon the court's own motion. CrR 7.1(a)(2) implements this requirement by mandating that the trial court set the date, time, and place for sentencing in compliance with RCW 9.94A.500 within three days of a plea, finding, or verdict of guilt of a felony.

Unlike the "time for trial" rule which has provisions requiring dismissal with prejudice for a violation, there is nothing in the text of

either RCW 9.94A.500 or CrR 7.1(a) that provides a remedy for a violation. CrR 3.3(h); see CrR 7.1(a). Because there is nothing in either the speedy sentencing statute or its implementing rule that provides for dismissal of the charges as a remedy, a defendant is required to show that he or she was prejudiced by the delay before dismissal of the charges can be granted based on a violation of RCW 9.94A.500. *See, e.g., State v. Anderson*, 92 Wn. App. 54, 59, 960 P.2d 975 (1998).

RCW 9.94A.500 provides that a delay in sentencing may extend beyond the 40-day period of time upon a motion by either party for good cause or upon the court's own motion. The decision whether to grant or deny a motion rests within the sound discretion of the trial court. *State v. Flinn*, 154 Wn.2d 193, 199, 110 P.3d 748 (2005). The trial court also has broad discretion to determine whether good cause exists for delaying a sentencing hearing. *State v. Roberts*, 77 Wn. App. 678, 685, 894 P.2d 1340 (1995). A trial court's decision that good cause exists is reviewed for an abuse of discretion. *Flinn*, 154 Wn.2d at 199.

After a court has pronounced its sentence, the execution of that sentence may be stayed pending appeal so long as the defendant has not been convicted of a violent crime or a sex offense and the trial court determines: the defendant is neither a flight risk nor a danger to the community; the delay in sentencing will not “unduly diminish the deterrent effect of the punishment,” and the stay will not “cause

unreasonable trauma to the victims of the crime or their families.” RCW 9.95.062.

While the above lays out the statutory rules for initial sentencing, after conviction there is no court rule or statute that addresses sentencing post appeal. *State v. Modest*, 106 Wn. App. 660, 664, 24 P.3d 1116, 1118 (2001).

2. Constitutional Right to Speedy Sentencing

Not only is there a statutory right to a speedy sentencing, but case law indicates the right to speedy sentencing is encompassed within the right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington State Constitution. *See, e.g., State v. Ellis*, 76 Wn. App. 391, 394, 884 P.2d 1360 (1994). In determining whether there has been a violation of the constitutional right to speedy sentencing, courts look to whether the delay was “purposeful or oppressive.” *Pollard v. US*, 352 U.S. 354, 361, 77 S.Ct. 481, 1 L.Ed.2d 393 (1957). This determination is based on the balancing of four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his or her right; and (4) the extent of prejudice to the defendant. *Modest*, 106 Wn.App. at 663 (*citing State v. Rupe*, 108 Wn.2d 734, 742, 743 P.2d 210 (1987)).

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3. There was No Violation of Mr. Bratton's Statutory Rights

While the State concedes it should have moved to impose the stayed sentence shortly after the mandate came down from this Court, Mr. Bratton should not benefit from what is effectively an invited error; that is, Mr. Bratton requested the stay of sentence and nothing prevented Mr. Bratton from coming forward and requesting the stay of sentence be lifted or addressed.

Furthermore, there has been no violation of Mr. Bratton's statutory speedy sentencing rights because he was sentenced prior to the filing of his appeal.

Mr. Bratton filed a CrR 3.6 motion challenging the validity of the pay or appear warrant that led to his arrest and the subsequent discovery of methamphetamine in his possession. After losing his 3.6 motion, Mr. Bratton was convicted and immediately sentenced but his sentence was not immediately imposed because the court stayed execution of the sentence pending appeal. In short, Mr. Bratton was convicted, Mr. Bratton was sentenced as the court ordered him to serve a period of incarceration, the sentence occurred within 40 days of his conviction, and since there is no court rule laying down precisely when he must be sentenced post appeal, there has been no violation of his statutory speedy sentencing rights.

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4. Mr. Bratton's Constitutional Rights were not Violated

The delay in Mr. Bratton's sentencing was neither purposeful nor oppressive; therefore, his constitutional rights were not violated. To prevail on his claim, Mr. Bratton must show the delay in the execution in his sentence was "purposeful or oppressive." *Pollard at 352 U.S. 354, 361*. There are four factors in making this determination: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his or her right; and (4) the extent of prejudice to the defendant. *Modest*, 106 Wn. App. at 663 (*citing State v. Rupe*, 108 Wn.2d 734, 742, 743 P.2d 210 (1987)). The State admits that the delay in the execution of Mr. Bratton's sentence was due to a paperwork error, and Mr. Bratton has presented the court with no evidence that calls this fact into question. Mr. Bratton asked to stay his sentence; therefore, the length of time between sentencing and execution of the sentence was triggered by his own request. There is no prejudice to Mr. Bratton in the delay – if anything he benefitted by the delay because he was free from custody. .

Mr. Bratton's reliance on *Ellis* is misplaced. In *Ellis*, the defendant obtained dismissal of his case when the State convicted him at trial but then waited two years to sentence him. *Ellis*, 76 Wn. App. 391, 394, 884 P.2d 1360 (1994). In the interim between convictions, Ellis obtained a job and stayed out of trouble and the court found prejudice to Ellis because the imposition of his sentence would do an injustice to Ellis because he had

apparently reformed. Mr. Bratton has done the opposite of Ellis. The State is not aware of Mr. Bratton obtaining any lawful employment and furthermore, since this sentence was stayed, Mr. Bratton has been *convicted* two more times for the exact same offense. Furthermore, Ellis was convicted but there was a two-year delay in his sentencing due to an error by the State, whereas Mr. Bratton was sentenced upon his conviction but there has been a delay in the execution of his sentence.

Mr. Bratton argues prejudice to his speedy sentencing rights based on his heart condition and because of a change in the standard range. His argument regarding his heart condition borders on the absurd – he asks the Court to take into account his medical condition, yet he has continued to use methamphetamine while his appeal was pending. As to the change in the standard range, when Mr. Bratton moved the court to stay the imposition of his sentence, he assumed the risk that the law could change. The fact that the law has changed in his favor, while it may be frustrating, is not prejudicial in any way to Mr. Bratton’s constitutional rights.

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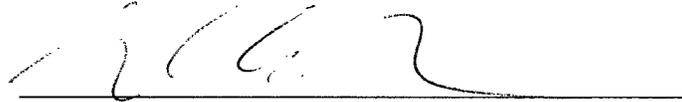
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E. CONCLUSION

For those reasons the State respectfully request this Court affirm the sentence imposed by the Jefferson County Superior Court.

Respectfully submitted this 7th day of October, 2015.

A handwritten signature in black ink, appearing to read 'M. Haas', is written over a horizontal line.

MICHAEL E. HAAS, WSBA #17663
Jefferson County Prosecuting Attorney
Attorney for Respondent

PROOF OF SERVICE

I, Janice N. Chadbourne, certify that on this date:

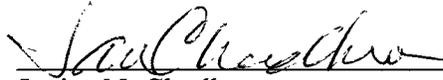
I filed the State's BRIEF OF RESPONDENT electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of the brief, using the Court's filing portal, to:

John A. Hays
jahayslaw@comcast.net

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Port Townsend, Washington on this 7th day of October, 2015.



Janice N. Chadbourne
Lead Legal Assistant

JEFFERSON COUNTY PROSECUTOR

October 07, 2015 - 10:18 AM

Transmittal Letter

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