

NO. 48428-5-II

IN THE COURT OF APPEALS OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON

Petitioner,

v.

ANDREW PHILIP LINGLE

Respondent.

**REPLY BRIEF OF PETITIONER**

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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## STANDARD OF REVIEW

Alleged violations of the State speedy trial rule and the constitutional right to a speedy trial are reviewed *de novo*. U.S.C.A. Const. Amend. 6, CrR 3.3; *State v. Rafay*, 168 Wn. App. 734, 285 P.3d 83 (2012). Questions of statutory construction are also reviewed *de novo*. *State v. Volvata*, 149 Wn. 2d 178, 66 P.3d 1050 (2003). While Petitioner's Opening Brief correctly asserted that *de novo* review applies with respect to the trial court's interpretation of the court rule, it framed the issues presented in terms of whether the trial court abused its discretion with respect to dismissal. To clarify, Petitioner concurs with Respondent's position that review of dismissal based on CrR 3.3 *et. seq.* should be *de novo*.

Similarly, factual determinations surrounding the trial court's interpretation of the court rule should be reviewed *de novo*, since those are inextricably intertwined with the trial court's interpretation of the court rule. For mixed questions of law and fact, unchallenged factual findings are verities on appeal and application of those facts to the law are reviewed *de novo*. *State v. Samalia*, 375 P.3d 1082, *En Banc*, (2016)

- A. The Superior Court erred in dismissing the case for violation of the speedy trial rule because pursuant to the plain language of the rule the time for trial had not yet expired.**

Respondent argues that the language of the rule mandating dismissal for violation of the rule should be strictly construed. CrR 3.3 (2) (h). That section of the rule mandates:

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.”

The plain language contained in CrR 3.3(c)(2)(i) unambiguously mandates that where no commencement date is specified in a speedy trial waiver, the commencement date is the date set for trial. As argued in Petitioner’s opening brief, pursuant to rules of statutory construction, the unambiguous language of CrR 3.3 (c) (2) (i) mandates that the commencement date is December 14, 2015, the date of trial set by the court. With a commencement date of December 14, 2015, the parties were well within the requirements of the rule.

**B. The State did not waive application of the court rule with respect to time for trial.**

The State did not agree to a speedy trial deadline of December 17, 2015. On September 18, 2015, when Mr. Lingle waived speedy trial and agreed to a trial date by December 17, 2015, no commencement date was specified. By operation of CrR 3.3 (c) (2) (i), in the absence of a specified commencement date, the commencement date is the date set for trial. The trial date was contemporaneously set for December 14, 2015.

Contrary to Respondent's assertion, Michael Haas, the elected prosecutor, who was covering the pretrial hearing, did not confirm on the record his understanding that the speedy trial waiver was through December 17, 2015. (12.4.15 VRP 6). Rather, Mr. Haas inquired: "Okay. What's our, we're waived through December 17<sup>th</sup>?" In response, the trial court stated, "I mean, I'm thinking, he's out of custody. I'm thinking we might have another twenty-eight days or something after that. But I, I haven't thought that out." (12.4.15 VRP 6).

Equitable estoppel does not apply here. None of the cases cited by Respondent are on point. As Respondent concedes, equitable estoppel against the government is disfavored. *Schoonover v. State*, 116 Wn. App. 171, 179, 64 P.3d 677 (2003); *See also, State v. Yates*, 161 Wn. 2d 714, 738-739, 168 P.3d 359 (2007), (holding that a criminal defendant may not rely on equitable estoppel to challenge a plea agreement). In *Yates*, the Court noted, "[n]o case has been cited to the court involving an equitable estoppel in a criminal prosecution" and that, [i]n fact, authority exists for the proposition that it is inapplicable in a criminal matter." *Id.*, citing *United States v. Anderson*, 637 F.Supp. 1106 (D.Conn. 1986).

Moreover, the elements of equitable estoppel are not present here. The essential elements of equitable estoppel are (1) an admission, act, or statement inconsistent with a later claim; (2) another party's reliance upon

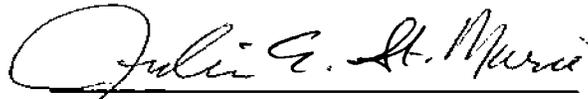
the admission, act, or statement, and (3) injury to the other party which would result if the first party is allowed to contradict or repudiate the earlier admission, act, or statement. *Dept. of Ecology v. Campbell Gwinn, LLC.*, 146 Wn. 2d 1, 20, 43 P.3d 4 (2002). Proof of those elements must be by clear and convincing evidence. *Yates*, 161 Wn. 2d. at 739.

The State did not reverse its position with respect to speedy trial. The issue had not come up in any meaningful way until Respondent moved for and the court granted dismissal on January 8, 2016. No evidence exists to support Respondent's claim that he relied upon any claimed admission by the State as to time for trial. In fact, based upon the trial court's indication that "there might be another twenty-eight days or something like that" left on the clock in which to try the severed count, Respondent had no reason to believe that the time for trial expired on December 17, 2015. (12.4.15 VRP 6). The record simply does not reflect acquiescence by the State to a speedy trial deadline of December 17, 2015.

### **CONCLUSION**

This Court should reverse the trial court's dismissal of Cause No. 15-1-00194-4, and remand for trial. By operation of CrR 3.3(c)(2)(i), the time for trial had not yet elapsed.

Respectfully submitted this 29<sup>th</sup> day of September, 2016.

A handwritten signature in cursive script that reads "Julian E. St. Marie". The signature is written in black ink and is positioned above a horizontal line.

Julian E. St. Marie, WSBA #27268  
Chief Deputy Prosecuting Attorney

**PROOF OF SERVICE**

I, Cammy Brown, certify that on this date:

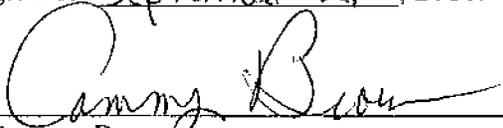
I filed the State's REPLY BRIEF electronically with the Court of Appeals, Division II, through the Court's online filing system.

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

Bret Roberts, Esq.  
bretjacpd@gmail.com

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 September 29, 2016.

  
\_\_\_\_\_  
Cammy Brown  
Felony Legal Assistant

**JEFFERSON SUPERIOR COURT**

**September 29, 2016 - 6:02 PM**

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**Comments:**

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