

FILED  
Court of Appeals  
Division II  
State of Washington  
3/28/2018 4:30 PM

NO. 50759-5-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent

v.

JOHN AMBLE,

Appellant.

---

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

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APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

**With 17 days remaining within Mr. Amble's speedy trial period, the government was not entitled to an additional 10 days to prepare for trial when it rejected Mr. Amble's offer to plead guilty on the condition that the prosecutor not argue for programs Mr. Able could not afford.**

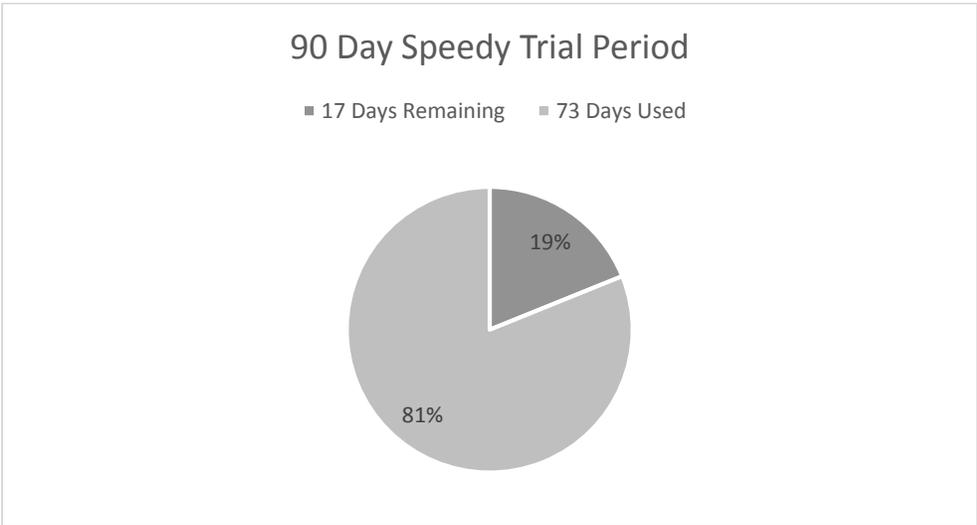
CrR 3.3 states that defendants not detained in jail shall be brought to trial within 90 days after their commencement date. "This state has always been strict in its application of the speedy trial provisions of CrR 3.3." *State v. Kokot*, 42 Wn. App. 733, 737, 713 P.2d 1121 (1986). Unless a strict rule is applied, past experience has shown that the right to a speedy trial as well as the integrity of the judicial process, cannot be effectively preserved." *State v. Kenyon*, 167 Wn.2d at 130, 136, 216 P.3d 1024 (2009). It is the responsibility of the court to ensure a trial in accordance with the speedy trial rules. CrR 3.3(a)(1).

The government argues that it was entitled to additional time because Mr. Amble refused to plead guilty to the charge, even though there were 17 days left before the time for trial expired. Brief of Respondent at 7. This argument should be rejected. It had already been clear weeks earlier that Mr. Amble would be unable to complete the terms required by the government, because he was too poor to be able to pay for the treatment required to complete the deferred prosecution.

RP 15. When Mr. Amble agreed to plead guilty to the charge, he conditioned it on the prosecutor agreeing not to argue for an anger management evaluation, which Mr. Amble knew he could not afford.

RP 23. When the prosecutor refused to agree to this condition, Mr. Amble felt he was compelled to go to trial. RP 25.

The prosecutor correctly recognizes Mr. Amble notified the prosecutor of his conditions for pleading guilty on June 22, 2018, four days before the plea date had been set. Brief of Respondent at 8. At this point, there were 21 days left before speedy trial expired. When Mr. Amble appeared in court and it was clear the government would not accept his offer to plead guilty on the condition that the government agree to sentencing terms, 17 days were left before speedy trial expired. CP 38, RP 44, 48. Nearly 20 percent of the time for trial remained.



The prosecutor's rejection of Mr. Amble's conditions for pleading guilty does not qualify as good cause for a continuance. CrR 3.3(f)(2). And while the government argues otherwise, it cites no cases to support this proposition. Instead, the prosecutor examines cases regarding counsel's unavailability. Brief of Respondent at 9.

In *State v. Brown*, the court granted a one-day continuance because of a scheduling conflict. 40 Wn. App. 91, 94, 697 P.2d 583 (1985). In addition, the extension requested in *Brown* fell within the cure period allowed by CrR 3.3(d)(8) when a matter is continued from its original commencement date. Here, the prosecutor had no scheduling conflict. Additionally, the cure period did not apply to the prosecutor's request for a trial setting ten days beyond the time allowed for trial.

Likewise, defense counsel in *State v. Eaves* was unavailable for trial when the court was compelled to continue a case outside speedy trial. 39 Wn. App 16, 20-21, 691 P.2d 245 (1984). In *State v. Heredia-Juarez*, also cited by the government, the prosecutor was similarly unavailable. 119 Wn. App. 150, 155, 79 P.3d 987 (2003). No such claim of unavailability was made here. These cases do not help this Court determine whether a breakdown in plea negotiations and a

rejection of plea terms by the government allows the prosecutor additional time for trial under CrR 3.3.

Finally, the government relies on *State v. Flinn* to argue a continuance was justified. Brief of Respondent at 10. In *Flinn*, however, the matter had been continued numerous times at the defendant's request in order to prepare a diminished capacity defense. 154 Wn.2d 193, 201, 110 P.3d 748 (2005). When the court granted the continuance, it advised the parties that they should accelerate the matter if the parties could be ready for trial sooner. *Id.* The primary purpose of setting the date outside of speedy trial was to ensure no further continuances were necessary. *Id.*

The prosecutor does not address why trial could not have been set within the time allowed for a speedy trial. While at trial the prosecutor argued there were other matters set, no analysis is done in the respondents brief about whether these cases were a barrier to setting this case within Mr. Amble's speedy trial period. And while the prosecutor argues his office was under no obligation to find another prosecutor who could be available to try the case, he misreads *Heredia-Juarez* in doing so. Brief of Respondent at 11. *Heredia-Juarez* requires trial courts to consider all relevant factors before allowing a

continuance outside the speedy trial period. 119 Wn. App. at 155. It is not sufficient for the prosecutor to assert that he would have a hard time getting ready for trial as a basis for violating Mr. Amble's speedy trial rights. RP 45.

Mr. Amble never requested a continuance or suggested that he could not be ready for trial within the time set for trial. He acted expeditiously in trying to negotiate a settlement with ample time left for the parties to prepare for trial if negotiations broke down before the time for trial expired. CP 38, RP 44, 48. Twice, he tried to settle the matter, but both times, he could not pay for the programs the prosecutor conditioned his plea offers on. RP 9, 25. This was not Mr. Amble's fault. Mr. Amble's rejection of a settlement did not mean that Mr. Amble gave up his speedy trial right. He should not be penalized for trying to settle his case, as happened here.

Through rulemaking, Washington's Supreme Court has determined that a prosecutor must be ready for trial within 90 days of subjecting a person to criminal prosecution. CrR 3.3. And while ten days did not sound like a significant period of time to the trial court, it amounts to an 11 percent increase in the time the prosecutor had to try Mr. Amble's case. RP 48. This is not acceptable. The trial court's

stated reason for continuing the case: that “there was a meeting of the minds that there was to be a plea entered today” cannot justify allowing the prosecutor this additional time. RP 48.

When the accused is not brought to trial within the time limit provided by the speedy trial rule, the charge must be dismissed with prejudice. CrR 3.3(h). Maintaining a plea of not guilty is not an “unavoidable” or “unforeseen” circumstance that justifies an exclusion from the speedy trial rule. CrR 3.3(e)(8). Mr. Amble’s conviction must be reversed and the charge dismissed with prejudice.

#### B. CONCLUSION

Mr. Amble’s right to a speedy trial was denied. Mr. Amble asks this Court to dismiss this case with prejudice.

DATED this 28th day of March 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

TRAVIS STEARNS (WSBA 29935)  
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Attorneys for Appellant

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Respondent,	)	
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v.	)	NO. 50759-5-II
	)	
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	)	
Appellant.	)	

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I, MARIA ARRANZA RILEY, STATE THAT ON THE 28<sup>TH</sup> DAY OF MARCH, 2018, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE COURT OF APPEALS – DIVISION TWO AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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# WASHINGTON APPELLATE PROJECT

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## Transmittal Information

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