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NO. 53111-9

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY GENE HAND,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Judge Jack Nevin

No. 18-1-03271-9

BRIEF OF RESPONDENT

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I. INTRODUCTION

On August 20, 2018, the State charged Anthony Gene Hand with burglary in the second degree when he tripped multiple alarms at a church after entering through a window at 2:30 in the morning while wearing latex gloves. The court found Hand competent after an in-jail competency evaluation in which Hand terminated his participation after only a few minutes. Later, on October 1st, Hand's competence was brought into question again by both the State and defense counsel at a hearing, and the court ordered a 15-day inpatient evaluation at Western State Hospital (WSH). Hand was transported to WSH on November 7th, resulting in a 30-day delay beyond the State's deadline to transport Hand for the evaluation. The trial court denied Hand's motion to dismiss for the delay in transporting Hand for the evaluation. The WSH evaluator and the court found Hand competent a second time. Hand then pled guilty to a reduced charged based on plea negotiations, and the court sentenced him accordingly.

The trial court properly denied Hand's motion to dismiss. First, Hand waived his right to challenge the trial court's denial of his motion to dismiss by pleading guilty. Second, even if this Court addresses the merits of Hand's claim, he fails to cite any legal authority to show that a delay in obtaining a second competency evaluation constitutes a substantive due

process violation warranting dismissal. Dismissal with prejudice is an extraordinary remedy reserved for only the most egregious cases. If dismissal was not warranted under *State v. Hand*, 192 Wn.2d 289, 429 P.3d 502 (2018)—where an incompetent defendant’s restoration treatment was delayed for more than two months resulting in a substantive due process violation—it cannot be warranted here where there was only a one month delay involving a competent defendant. Therefore, even if this Court considers the merits of Hand’s claim, it should affirm the trial court’s denial of Hand’s motion to dismiss and affirm his conviction.

II. RESTATEMENT OF THE ISSUES

- A. Did Hand waive his right to challenge the trial court’s pretrial denial of his motion to dismiss by pleading guilty to a reduced charge based on plea negotiations?
- B. Did the trial court properly deny Hand’s motion to dismiss where Hand fails to cite any authority that a delay in obtaining a second competency evaluation constitutes a substantive due process violation warranting dismissal?
- C. Did the trial court properly deny Hand’s motion to dismiss where Hand fails to show the extraordinary remedy of dismissal is warranted under the facts of this case?

III. STATEMENT OF THE CASE

On August 20, 2018, the State charged Anthony Gene Hand¹ with one count of burglary in the second degree when he tripped multiple alarms

¹ This is the same Anthony Gene Hand from *Hand*, 192 Wn.2d 289.

at Spanaway Lutheran Church after entering a window at 2:30 in the morning while wearing clear latex gloves. CP 1-2.

A. First Competency Evaluation

On September 5, 2018, the trial court ordered a competency evaluation to take place at the jail. CP 3-9. The evaluator, Dr. Robert Saari, completed the evaluation within seven days pursuant to the court's order. *See* CP 7, 14-28. Dr. Saari ultimately concluded that Hand was competent to stand trial. CP 26. In order to complete his evaluation of Hand, Dr. Saari conducted a thorough review of Hand's mental health records, police reports, and past competency evaluations, as Hand refused to meet with him. CP 16-17. Dr. Saari reported that Hand refused to participate in the evaluation after telling Dr. Saari that he did not think participating in the interview would help him. CP 23. Dr. Saari noted similar efforts in the past by Hand to thwart the evaluation process, including refusing to attend restoration classes in 2015 because he "saw no advantage in being found competent just to be locked up in prison." CP 20, 27. Dr. Saari noted that Hand's current clinical presentation is likely best accounted for by his Antisocial Personality Disorder: "it is probable that he is intentionally trying to undermine the legal process of prosecuting him." CP 24-26.

Dr. Saari opined that Hand's "current difficulties with his attorney are likely a manifestation of his Antisocial Personality Disorder. This disorder does not compromise his capacity to understand the nature of the proceedings against him or to assist in his own defense." CP 26. Dr. Saari noted that this disorder may make Hand difficult to legally counsel based on his "stubborn refusal to accept the reality of his legal situation" and his "pervasive animosity and suspiciousness toward those in positions of authority." CP 26. Dr. Saari found that given the available evidence, Hand "may be unwilling to assist in his defense, but he is not incapable." CP 26-27. Dr. Saari concluded that Hand is competent but noted the limitation on the factual basis of his opinions based on Hand's refusal to cooperate. CP 15, 26-27. On September 12th, the parties agreed that Hand was competent, and based on Dr. Saari's evaluation, the court entered an order finding Hand competent to proceed. CP 12-13; 09/12/18 RP 3-4.

B. Second Competency Evaluation

1. Order for Competency Evaluation

On October 1, 2018, Hand's competency was questioned again during a hearing where Hand expressed that he wanted to replace his attorney. 10/01/18 RP 3-6. After Hand alleged a conspiracy between his attorney, the prosecution, and other elected officials, the court ordered another competency evaluation at the joint recommendation of the parties.

10/01/18 RP 3-7; CP 29-35. The court ordered that Hand shall be admitted to WSH within seven days for an in-patient evaluation. CP 31-33.

2. Motion to Dismiss and Hand's "Pro Se" Motions

While Hand was awaiting transport to WSH, he submitted several "pro se" handwritten documents to the court despite being represented by counsel. *See* CP 38-44. Hand submitted a letter on October 25th, requesting the court clerk file an attached "Declaration of Trueblood Class Membership and Motion to Dismiss," as well as a "Motion to Reserve for Appeal," both drafted by Hand. CP 38. But Hand was represented by counsel during the entirety of his proceedings, and the Sixth amendment does not provide a right to "hybrid representation" allowing a defendant to serve as co-counsel with his or her attorneys. *See State v. DeWeese*, 117 Wn.2d 369, 379, 816 P.2d 1 (1991).

On October 31st, Hand's counsel filed a motion to dismiss pursuant to CrR 8.3(b) for the delay in transporting Hand to WSH for the evaluation. CP 45-62. Counsel also requested the court hold WSH in contempt and impose daily sanctions for the delay. *Id.* The Department of Social and Health Services (DSHS)/WSH submitted a response claiming that the Hospital should not be fined because it had been unable to admit Hand due to staffing issues and punitive fines were not warranted because the delay in transporting Hand was not intentional. CP 64-69; 11/7/18 RP 2-3; *see*

also CP 70-117. DSHS/WSH pointed out that because federal sanctions had already been imposed upon them, additional fines would be unnecessary. CP 66.

On November 7th, the court found DSHS/WSH in contempt of court for not transporting Hand to WSH for an evaluation within seven days of its October 1st order. CP 118-19; 11/07/18 RP 3.² The court did not impose any additional sanctions beyond what was currently being imposed by the federal court. CP 118-19; 11/07/18 RP 3-4.³ The court denied the motion to dismiss. CP 119; 11/07/18 RP 4. The court declined to rule on the additional “pro se” handwritten motions filed directly by Anthony Hand, noting that it was not going to address those motions. 11/07/18 RP 4.

3. WSH Competency Evaluation by Dr. Beesley

Hand was admitted to WSH on November 7, 2018 for his second competency evaluation. CP 125, 150.⁴ On November 28, 2018, Dr. Eden

² The court’s order from November 7th incorrectly indicates that the court previously ordered Hand transported for “competency restoration treatment.” *See* CP 118. But the court correctly recognized at the November 7th hearing that Hand’s case was “still at the evaluation stage.” 11/07/18 RP 5. Further, the court’s October 1st order explicitly indicates that the court ordered Hand transported for an in-patient “competency evaluation.” CP 29-35; *see also* 10/01/18 RP 5-6.

³ DSHS accrues federal court fines in the amount of \$500 per day for each day that the defendant waits more than seven days but fewer than 14 days to be transported. DSHS is fined \$1000 per day each day that the defendant waits in jail starting on the 14th day. CP 118-19.

⁴ The WSH Forensic Evaluation completed on November 28th is designated as both CP 122-40 and CP 147-65. Although the evaluations are the same, CP 122-40 was filed with the court on November 30th and CP 147-65 was filed with the court on December 10th. The State will cite CP 147-65 when referring to this evaluation.

M. Beesley completed the inpatient competency evaluation and concluded that Hand has the current capacity to have a “factual or rational understanding of the charges and court proceedings” as well as the current ability to “consult with his attorney with a reasonable degree of rational understanding.” CP 164. Dr. Beesley opined that Hand currently meets the diagnostic criteria for “Exaggeration/Feigning of Mental Health Symptoms, Antisocial Personality Disorder” and two substance abuse disorders, by history. CP 148, 163.

Dr. Beesley noted that Hand “presented as superficially cooperative, but did not put forth adequate effort during evaluation procedures. He also appeared overly invested in endorsing psychotic symptoms that were not consistent with his presentation as reported in chart notes.” CP 158. Several chart notes describe Hand as “likely exaggerating his reported symptoms.” CP 153. Additionally, Hand refused to take medication for his anxiety and depression, telling staff “If I follow your advice then it looks like I’m doing well and I can’t be rewarded.” CP 157. When asked to clarify this statement, Hand said, “you know what I’m referring to.” CP 157. Dr. Beesley concluded that Hand appeared “overly invested in appearing mentally ill[.]” CP 163.

Hand’s social worker observed that Hand has a large number of legal documents “regarding the Trueblood lawsuit” and deliberately tries to incite

his peers by telling them that their rights are being violated. CP 153. The social worker noted that Hand is operating at “an average to above-average level of intelligence,” but is “not highly motivated to help himself in the legal proceedings.” CP 154. Rather, Hand expressed a desire not to return to prison. CP 152-53.

Similar to Dr. Saari’s evaluation, Dr. Beesley opined that Hand’s presentation was more consistent with a personality disorder. CP 161-62. She concluded that he exhibited “no credible symptoms of a thought or psychotic disorder” and “no genuine signs of cognitive impairment.” CP 162-63. Dr. Beesley opined that although Hand may prove to be “a challenging client to work and collaborate with,” he does not lack the capacity to understand the proceedings against him or to assist in his defense as a result of a mental disease or defect. CP 164.

On December 4th, the parties again agreed that Hand was competent, and based on Dr. Beesley’s evaluation, the court entered a second order finding Hand competent to proceed. CP 143-44; 12/04/18 RP 12.

C. Guilty Plea to Amended Information

On December 21, 2018, based on plea negotiations, Hand pleaded guilty to a reduced charge of possession of stolen property in the second degree. CP 217-27. The parties jointly recommended a Drug Offender

Sentencing Alternative (DOSAs) with treatment. CP 218, 222; 12/21/18 RP 7-8. Hand's counsel acknowledged that Hand needs treatment, explaining that the incident at issue was a "drug fueled incident. They [found] four methamphetamine pipes in Mr. Hand's backpack. He needs treatment...methamphetamine, as we know, is a very powerful stimulant." 12/21/18 RP 7.

By pleading guilty, Hand voluntarily gave up several rights otherwise guaranteed to him, such as the right to a speedy trial, the right to a presumption of innocence, and "the right to appeal any pretrial rulings in the case." CP 219-20; 12/21/18 RP 3-7. Hand also signed the advice of right to appeal form, which advised Hand "[i]f you have entered a guilty plea, you have waived your right to raise certain issues, as discussed in your guilty plea statement, in an appeal." CP 248-49. This form also informed Hand that he had the right to appeal any sentence outside the standard sentence range and the right to appeal rulings on other post-conviction motions. CP 248-49. Finally, the trial court engaged in a detail colloquy with Hand about the rights he was giving up by pleading guilty, including that he was giving up the right to appeal "any sort of pretrial motions or any pretrial rulings regarding admission of evidence, procedural matters, [and] time for trial that have been made at the time at trial." 12/21/18 RP 3-7. Hand indicated that he was making the plea freely and voluntarily and that

no one threatened him or made any promises of any kind to cause him to enter the plea. CP 227; 12/21/18 RP 6-7. The trial court determined that Hand's guilty plea was knowingly, intelligently, and voluntarily made and that Hand understands the charges and the consequences of the plea. CP 228; 12/21/18 RP 7.

Ultimately, the court followed the agreed recommendation by the parties and imposed a DOSA. CP 232-47; 12/21/18 RP 8. As part of the DOSA, the court waived imposition of the standard sentencing range and imposed a sentence half of the midpoint of the standard range, or 12.75 months, to be served in prison (with credit for 124 days served as part of this case), followed with 12.75 months to be served on community custody. CP 239-40. Hand timely appealed. *See* CP 261-64.

IV. ARGUMENT

Fundamentally, Hand's guilty plea waives his right to challenge the trial court's pretrial denial of his motion to dismiss. Hand freely and voluntarily declined his right to appeal when he took advantage of the plea bargain from the State. Further, even assuming he may appeal, Hand does not cite any authority to show that the delay in this case resulted in a substantive due process violation. The authority Hand relies on involves a delay in transporting *incompetent* defendants for *restoration treatment*, not

a delay in transporting a defendant for a second competency evaluation. Finally, Hand's request for dismissal with prejudice is an extreme remedy only reserved for the most egregious cases of misconduct that prejudiced the defendant's right to a fair trial. Hand cites no authority that dismissal with prejudice is warranted under the facts of this case. Hand fails to distinguish this case, with its 30-day delay, from his other case where this Court determined dismissal with prejudice was not warranted after a 61-day delay. Accordingly, the Court should affirm the trial court's denial of Hand's motion to dismiss this case.

A. Hand waived his right to challenge the court's denial of his motion to dismiss by pleading guilty to a reduced charge based on plea negotiations.

Hand's guilty plea waived his right to appeal when he took advantage of a plea bargain to reduce his charges and sentence. After a plea of guilty, a defendant's right of review is limited. *State v. Majors*, 94 Wn.2d 354, 356, 616 P.2d 1237 (1980). "Ordinarily, a plea of guilty constitutes a waiver by the defendant of his right to appeal[.]" *Id.*; *State v. Olson*, 73 Wn. App. 348, 353, 869 P.2d 110 (1994) ("A guilty plea generally waives the right to appeal."). If a defendant pleads guilty, he is not entitled to appeal the denial of any pretrial motions. *Olson*, 73 Wn. App. at 353. Plea agreements should be upheld where the defendant agreed to the bargain

voluntarily and knowingly, and the defendant was fully apprised of the consequences. *Majors*, 94 Wn.2d at 358.

Ordinarily, defendants should be held to the terms of the plea bargain. *See Majors*, 94 Wn.2d at 359. But a guilty plea does not usually preclude a defendant from raising collateral questions “such as the validity of the statute, sufficiency of the information, jurisdiction of the court, or the circumstances in which the plea was made.” *Id.* at 356. “[A] guilty plea waives or renders irrelevant all constitutional violations that occurred before the guilty plea, except those related to the circumstances of the plea or to the government’s legal power to prosecute regardless of factual guilt.” *State v. Brandenburg*, 153 Wn. App. 944, 948, 223 P.3d 1259 (2009). A defendant’s knowing and voluntary admission of guilt as part of a plea precludes the defendant from later raising claims of constitutional violations that happened before the plea:

[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.

Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973).

The trial court, not the defendant, makes the determination of guilt or innocence at a bench trial on stipulated facts. *Olson*, 73 Wn. App. at 353. And unlike a guilty plea, a trial on stipulated facts preserves legal issues for appeal. *Id.* Here, by pleading guilty to a reduced charge and receiving a DOSA based on plea negotiations, Hand explicitly waived his right to appeal the trial court's pretrial ruling on the motion to dismiss. *See* CP 219-28; *see also* *Brandenburg*, 153 Wn. App. at 948. Hand was clearly advised several times that his guilty plea would preclude his ability to appeal. *See* CP 219-20, 248-49; 12/21/18 RP 3-7. By pleading guilty, Hand gave up his right to appeal any pretrial rulings. 12/21/18 RP 4; *see* CP 219-20, 248-49. In his previous case, unlike this one, Hand preserved his right to appeal by proceeding to a bench trial on stipulated facts where the court determined his guilt. *See Hand*, 192 Wn.2d at 293; *see also Olson*, 73 Wn. App. at 353.

Ultimately, Hand does not challenge the voluntariness of his guilty plea, or any other collateral matter that may be appealed. Hand freely and voluntarily pleaded guilty in exchange for a reduced charge of possession of stolen property in the second degree and a joint recommendation for a DOSA that significantly reduced his sentence. CP 217-28, 239. Thus, Hand has waived any right to appeal the court's pretrial ruling on the motion to dismiss.

B. Even assuming Hand is entitled to appeal, he fails to cite any authority that a delay in obtaining a second competency evaluation constitutes a substantive due process violation.

The State concedes that there was a delay in transporting Hand to WSH for the second competency evaluation, but Hand cites no authority to show that the delay in transporting him for a second competency evaluation within a two-month period constitutes a substantive due process violation. The basis of his claim relies upon an incorrect understanding of the facts of the case.

Hand erroneously contends that he was held in jail and delayed transport for restorative treatment. *See* Br. of Appellant at 5, 9, 13. This is inaccurate. Here, unlike in Hand's previous case, Hand was never found incompetent and thus was never ordered to undergo restorative treatment. CP 3-9, 12-13, 29-35, 143-44. Accordingly, Hand's assertion that he possessed a liberty interest to receive restorative treatment in both cases is inaccurate, because in this case, Hand was never found incompetent or ordered to undergo restorative treatment. *See* Br. of Appellant at 13 (arguing that Hand was "forced to remain in jail without restorative treatment for over a month past the deadline imposed by the trial court"); *see also* CP 3-9, 12-13, 29-35, 143-44.

Hand also incorrectly asserts that he was transported to WSH on November 12th. *See* Br. of Appellant at 4. But in actuality, the record

reflects that Hand was admitted to WSH on November 7th. CP 150. Although the State concedes that there was a delay in transporting him for the second competency evaluation, the November 7th admission date resulted in a 30-day delay beyond the deadline to transport, not the 35-day delay that Hand claims. *See* CP 150; *see also* Br. of Appellant at 4.

Hand's entire due process analysis is based on the *Hand* opinion involving *incompetent* defendants detained for restorative treatment. *See* Br. of Appellant at 5-9 (citing *Hand*, 192 Wn.2d 289). "Detaining an incompetent defendant in jail for months likely harms a defendant's mental health and runs counter to the very purpose for which he was committed—which is to *restore the defendant's competency*." *Hand*, 192 Wn.2d at 298 (emphasis added). The focus in *Hand* was on restoring competency for incompetent defendants:

Because prolonged incarceration while awaiting treatment may cause serious harm to defendants and does not meaningfully advance the State's interest in restoring defendants' competency to stand trial, the constitutional due process balancing favors Hand.

Hand, 192 Wn.2d at 298. Incompetent defendants have a liberty interest in receiving competency restoration treatment and a liberty interest in freedom from incarceration because they have not yet been convicted. *Hand*, 192 Wn.2d at 296. In *Hand*, the Court ultimately held that the delay in

transporting an *incompetent* defendant for *restoration treatment* constituted a substantive due process violation. *Id.* at 302.

In this case, Hand was never found incompetent so the mental health concerns are not implicated. In fact, Hand was found to consistently demonstrate that he is aware of the implications of being found competent; indeed, Dr. Saari's 2018 in-jail evaluation cites Hand's 2015 competency restoration where Hand "explicitly communicated that he saw no advantage in being found competent just to be sent back to prison." CP 27, 20. Ultimately, Hand frequently "appeared overly invested in endorsing psychotic symptoms that were not consistent with his presentation" and Dr. Beesley determined that he "appeared to be attempting to feign symptoms of a mental disorder." CP 148, 158. Hand's exaggeration of symptoms was so deliberate that Dr. Beesley diagnosed him with "Exaggeration/Feigning of Mental Health Symptoms." CP 148.

Hand's 30-day delay in receiving a second competency evaluation does not result in a substantive due process violation. The facts in this case are distinguishable from Hand's previous case that is the basis of the *Hand* decision. *See Hand*, 192 Wn.2d 289. Here, evaluators and the court determined that Hand was competent on two separate occasions. CP 12-13, 143-44. And the second competency evaluation lead to the conclusion that Hand was attempting to fake a mental illness and competency. CP 148, 153,

158, 163. Hand fails to show a substantive due process violation under the facts of this case.

C. The trial court correctly denied Hand’s motion to dismiss where Hand failed to show the extraordinary remedy of dismissal was warranted.

Even if this Court considers the merits of Hand’s claim, his argument fails. First, Hand fails to show the required prejudice resulting from governmental misconduct to warrant dismissal with prejudice. Second, he fails to distinguish the prejudice from the 30-day delay in this case from the 61-day delay in his previous case where this Court concluded that dismissal with prejudice was not warranted. *See Hand*, 192 Wn.2d 299-302. Under *Hand*, dismissal with prejudice is inappropriate under these facts, and this Court should affirm Hand’s conviction. *See id.* at 301-02.

1. Dismissal under CrR 8.3(b) is an extraordinary remedy that is not warranted under these facts.

Hand fails to meet his burden of showing that dismissal is warranted under CrR 8.3(b). Before charges can be dismissed under CrR 8.3(b), the defendant must show both “arbitrary action or governmental misconduct” and prejudice that affects his right to a fair trial. *State v. Wilson*, 149 Wn.2d 1, 9, 65 P.3d 657 (2003); *State v. Salgado-Mendoza*, 189 Wn.2d 420, 427, 403 P.3d 45 (2017) (defendant bears the burden of showing both misconduct *and* actual prejudice). The defendant must show *actual*

prejudice as opposed to mere speculative prejudice. *See State v. Rohrich*, 149 Wn.2d 647, 658, 71 P.3d 638 (2003).

A trial court's ruling on a motion to dismiss under CrR 8.3(b) is reviewed for an abuse of discretion and can only be reversed if it is manifestly unreasonable or based on untenable grounds. *Wilson*, 149 Wn.2d at 9. A decision is manifestly unreasonable or based on untenable grounds if it results from applying the wrong legal standard or is unsupported by the record. *Salgado-Mendoza*, 189 Wn.2d at 427. "A reviewing court may not find abuse of discretion simply because it would have decided the case differently—it must be convinced that '*no reasonable person* would take the view adopted by the trial court.'" *Id.* (emphasis in original).

It is well established that dismissal of charges is an extraordinary remedy that is available only when the defendant's right to a fair trial has been prejudiced. *Rohrich*, 149 Wn.2d at 653; *State v. Moen*, 150 Wn.2d 221, 226, 76 P.3d 721 (2003) (dismissal under CrR 8.3(b) "is an extraordinary remedy and is improper absent material prejudice to the rights of the accused"). Dismissal should be limited to egregious cases of mismanagement or misconduct and "only as a resort." *Wilson*, 149 Wn.2d at 9, 12. In *Hand*, the Supreme Court held that dismissal with prejudice is not warranted even when an incompetent defendant's competency restoration treatment is delayed for more than two months and results in a

substantive due process violation. *Hand*, 192 Wn.2d at 301-02. If dismissal is not warranted under the facts of *Hand*—a two-month delay involving an *incompetent* defendant—it cannot be warranted here where there was only a one-month delay involving a *competent* defendant.

Hand has not shown that the delay in transporting him for a second competency evaluation in less than two months constitutes governmental misconduct that resulted in actual prejudice to his case. First, Hand waived his right to a trial and pleaded guilty to a reduced charge and sentence based on plea negotiations. CP 217-28, 239. Second, the time that Hand served in jail was credited to his prison sentence. CP 239; WAC 137-30-040. Third, Hand did not suffer any “mental deterioration” while waiting for his evaluation, as he claims with no supporting facts. *See* Br. of Appellant at 12. Rather, the record reflects that Hand was found competent twice during this case; Dr. Beesley ultimately concluded that he was exaggerating his symptoms and feigning mental illness. CP 148, 153, 158, 163. Thus, the record does not support any mental illness whatsoever—let alone a “deterioration” in mental illness as Hand asserts. Finally, Hand cites no legal authority to support his dismissal with prejudice argument. *See Hand*, 192 Wn.2d at 301-02.

Further, Hand’s reliance on *State v. Martinez*, 121 Wn. App. 21, 86 P.3d 1210 (2004) is misplaced. Neither the facts nor the holding of *Martinez*

is in any way similar to Hand's case. *Martinez* involved the State withholding exculpatory *Brady*⁵ evidence from the defendant. *Martinez*, 121 Wn. App. at 35-36. *Martinez* is neither dispositive nor relevant to Hand's case. Thus, dismissal under CrR 8.3(b) is not warranted, and this Court should affirm the trial court's denial of Hand's motion to dismiss.

2. Hand fails to distinguish the prejudice from the 30-day delay in this case from the 61-day delay in his previous case where this Court concluded that dismissal with prejudice was not warranted.

In *Hand*, the Supreme Court held that dismissal with prejudice is not warranted even when an incompetent defendant's competency restoration treatment is delayed in violation of due process. *Hand*, 192 Wn.2d at 301-02. In *Hand*, this same defendant was found incompetent to stand trial after his arrest for escape and possession of a controlled substance. *Id.* at 291-92. The trial court then ordered his commitment to WSH for restorative treatment, and Hand was subsequently detained in jail for 61 days beyond the State's deadline to transport him to WSH for restorative treatment. *Id.* at 292-93. The trial court found WSH in contempt of the court's order to transport Hand for restorative treatment, but ultimately denied Hand's motion to dismiss. *Id.* at 293. A judge found Hand guilty at a bench trial upon stipulated facts. *Id.*

⁵ *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

In Hand's previous case, the Supreme Court refused to dismiss the charges with prejudice when Hand had been detained for 61 days beyond the deadline to transport him to Western State Hospital; the Court necessarily found that Hand's access to a fair trial was not prejudiced by the violation of his due process rights for the 61-day delay in transporting him to WSH. *Hand*, 192 Wn.2d at 301-02. In this case, Hand had been detained less than half of the time than in his previous case—only 30 days—but is requesting the same remedy he sought before: dismissal *with* prejudice. Br. of Appellant at 13. If a 61-day delay in admitting an *incompetent* defendant for restorative treatment did not prejudice Hand enough to warrant dismissal with prejudice, certainly the 30-day delay in his present case does not support dismissal, especially when Hand was never found incompetent or in need of any treatment. In fact, Hand was found to be exaggerating his symptoms in an effort to be found incompetent. CP 148, 153, 157-58. Therefore, this Court should affirm the trial court's denial of Hand's motion to dismiss this case with prejudice.

Further, the record appears to suggest that Hand may have played a role in any delay by faking signs of mental illness. His behavior at a court hearing triggered a second competency evaluation,⁶ ultimately requiring his

⁶ Hand's first competency evaluation was done in the jail and completed on time. *See* CP 3-9, 14-28.

transport to WSH for an inpatient evaluation, where the evaluator concluded that he was faking signs of mental illness. *See* 10/01/18 RP 3-7; CP 29-35, 147-65. At that time, Hand was intimately familiar with *Trueblood* from his previous case. 10/01/18 RP 4-6; CP 153; *See Hand*, 192 Wn.2d 289.

In his evaluations from his previous case as well as this one, Hand has consistently demonstrated that he knows the implications of being found competent. Hand refused to cooperate with Dr. Saari's evaluation after telling Dr. Saari that he did not think participating in the evaluation would help him. CP 23. Dr. Saari noted similar efforts in the past to thwart the evaluation process, including refusing to attend restoration classes in 2015 because he saw no advantage in being found competent just to be sent back to prison. CP 20, 27. Further, he told hospital staff, "If I follow your advice then it looks like I'm doing well and I can't be rewarded." CP 157. When asked to clarify his statement, he stated, "you know what I'm referring to." CP 157.

^{1ST} Hand appears to be savvy of the fact that defendants who appear incompetent can be classified as *Trueblood* class members due to the highly publicized delays in receiving evaluations or restoration services at state hospitals. CP 153, 156. Hand's social worker documents that Hand "received a large amount of legal documents, which he claims are regarding the *Trueblood* lawsuit. He is also heard speaking to his peers [at Western

State Hospital] about the Trueblood lawsuit and how their rights are being violated. Mr. Hand deliberately tries to incite his peers.” CP 153. In the most recent competency evaluation, Dr. Beesley opined that Hand appeared to be attempting to feign symptoms of a mental disorder and concluded that he currently meets the diagnostic criteria for Exaggeration/Feigning of Mental Health Symptoms. CP 148; *see also* CP 153, 157-64. The facts in this case simply do not warrant dismissal. This Court should affirm Hand’s conviction.

V. CONCLUSION

For the foregoing reasons, this Court should affirm the trial court’s denial of Hand’s motion to dismiss and affirm his conviction.

RESPECTFULLY SUBMITTED this 1ST day of October, 2019.

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Certificate of Service:

The undersigned certifies that on this day she delivered by E-file or U.S. mail to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

10.1.19 
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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