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No. 53177-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Joseph Frantz,

Appellant.

Jefferson County Superior Court Cause No. 15-1-00192-8

The Honorable Judge Keith C. Harper

Appellant's Opening Brief

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ISSUE AND ASSIGNMENTS OF ERROR

1. Mr. Frantz's conviction was entered in violation of his right to a speedy trial.
2. The trial court erred by finding that "[g]ood cause does not exist to dismiss" Mr. Frantz's case for a speedy trial violation.

ISSUE: An accused person's trial must begin within 90 days of the speedy trial commencement date. Must Mr. Frantz's case be dismissed with prejudice because the speedy trial period expired before the case was set for trial?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

In 2016, Joseph Frantz entered a drug treatment program. CP 7-8. He had been charged with possession of a controlled substance. CP 1-2. To resolve this charge, Mr. Frantz and the State agreed to continue the case for two years, conditioned on his participation in treatment. CP 3.

The parties agreed that the charge would be dismissed if Mr. Frantz complied with the agreement. CP 3. He acknowledged that a failure to comply could lead the State to “request a hearing for the case to be submitted to the Court for a stipulated facts trial on the record.” CP 3-4.

Mr. Frantz waived his right to a speedy trial, setting a new commencement date of June 15, 2018, with a speedy trial expiration date of September 13, 2018. CP 4. The court entered an order continuing the case for two years “subject to the agreements of the parties.” CP 10. The order set a final review date of “June 15, 2018 at 8:30 a.m.” CP 10.

Mr. Frantz did not sign the order, and there is no indication in the record that he was provided a copy. CP 10; RP (6/17/16) 5-10. Instead, defense counsel told the judge he was providing his client notice for the first quarterly review hearing:

[T]he next review, it's quarterly, it's 9/16 [2016]...I'm giving Mr. Frantz a card and the order of agreement indicates that at that hearing we'll set another hearing, you know, three months out. So, as opposed to giving him a laundry list of dates... You know, every time he shows up he's gonna get another date that he'll need to be aware of.

RP (6/17/16) 8-9.

The court agreed with this procedure: “Okay, so he’ll need to be there and then there will be a final review approximately two years from today, June 15, 2018.” RP (6/17/16) 9.

Over time, Mr. Frantz provided the court several progress reports from his treatment provider. Letter from Dr. Rotchford filed 9/30/16, Progress Report filed 1/20/17, Letter from Dr. Rotchford filed 7/14/17, Letter from Dr. Rotchford filed 9/1/17, Supp. CP. However, when the case was called on June 15, 2018, Mr. Frantz did not appear.¹ RP (6/15/18) 5.

The parties discussed setting the hearing over one week. RP (6/15/18) 6-7. When the court proposed noting Mr. Frantz’s failure to appear, defense counsel pointed out that his client had not received notice of the hearing. RP (6/15/17) 7.

The court reviewed its file and determined that the State had stricken the most recent hearing (in November of 2017), saying it would “re-note if needed.” RP (6/15/18) 7. After reviewing the file, the judge remarked that “[t]his is like he wasn’t supposed to be here at all on these cases anyway.” RP (6/15/18) 7.

The prosecutor agreed: “[Y]eah, I don’t know. I’m sorry, I don’t know why these [cases] were on.” RP (6/15/18) 7. The court then “struck

¹ A companion case also appeared on the docket for that day; however, the court noted that the companion case had already concluded. RP (6/15/18) 7.

all reviews” and noted there were “no consequences to Mr. Frantz who didn’t need to be here.” RP (6/15/18) 8.

The State did not seek reconsideration of that decision. Instead, on September 27 of 2018, it filed a Motion and Declaration to Revoke Defendant’s Continuance for Dismissal.² CP 11.

Defense counsel moved to dismiss the prosecution and pointed out that the speedy trial period had expired before the State filed its motion. CP 13-14. Following argument, the trial court denied the motion to dismiss. CP 31.

The court found good cause to revoke the Continuance for Dismissal. CP 39. Mr. Frantz was convicted following a stipulated trial, and he appealed. CP 40-50.

ARGUMENT

Mr. Frantz’s speedy trial period expired before the State moved to revoke the agreed Continuance for Dismissal. Because the case was not even set for trial before the expiration of the time for trial, the court should have dismissed the prosecution. The conviction must be reversed, and the case dismissed with prejudice.

² The prosecution later filed an amended motion. CP 36.

THE TRIAL COURT VIOLATED MR. FRANTZ’S RIGHT TO A SPEEDY TRIAL BY WAITING UNTIL AFTER THE SPEEDY TRIAL EXPIRATION DATE TO SET THE CASE FOR TRIAL.

Under CrR 3.3, “[i]t shall be the responsibility of the court to ensure a trial in accordance with this rule.” CrR 3.3(a)(1). The rule provides that an accused person “shall be brought to trial” within the applicable speedy trial period. CrR 3.3(b).

Any charge that is “not brought to trial within the time limit determined under this rule shall be dismissed with prejudice.” CrR 3.3(h). Speedy trial issues are reviewed *de novo*. *State v. Kenyon*, 167 Wn.2d 130, 135, 216 P.3d 1024 (2009), *as amended* (Oct. 19, 2009).

Mr. Frantz was not “brought to trial” within the applicable speedy trial period. CrR 3.3(b). His possession charge should have been dismissed with prejudice. CrR 3.3(h).

The case is governed by CrR 3.3(b)(2). Under that provision, a defendant who is not detained in jail must be brought to trial within 90 days of the “commencement date.”³ CrR 3.3(b)(2). The commencement date may be specified in a waiver signed by the defendant. CrR 3.3(c)(2)(i).

³ If there is an “excluded period,” the time for trial “shall not expire earlier than 30 days after the end of that excluded period.” CrR 3.3(b)(2)(ii). In this case, the parties’ agreed continuance resulted in an excluded period that ended on June 15, 2018. CP 3. This would have required a trial on or before July 15, 2018 – 30 days after the end of the excluded period. Because this 30-day timeframe is shorter than the 90-day period calculated under CrR 3.3(b)(2)(i), the rule addressing excluded periods has no application here. *See* CrR 3.3(b)(2) (requiring trial “within the longer of” the two periods.)

Here, Mr. Frantz signed a waiver of speedy trial setting a commencement date of June 15, 2018. CP 4. This made September 13, 2018 the new speedy trial expiration date, as noted in the waiver. CP 4.

The State did not make any attempt to bring Mr. Frantz's case to trial prior to September 13, 2018. Indeed, it did not seek to revoke his agreed continuance for dismissal until after the expiration of speedy trial. CP 11.

The trial court did not fulfill its "responsibility... to ensure a trial in accordance with [CrR 3.3]." CrR 3.3(a)(1). Because of this, Mr. Frantz's case should have been dismissed with prejudice. CrR 3.3(h).

The trial court's refusal to dismiss was apparently based on CrR 3.3(c)(2)(ii).⁴ Under that provision the commencement date is reset upon "[t]he failure of the defendant to appear for any proceeding at which the defendant's presence was required." CrR 3.3(c)(2)(ii).

But the court (and the prosecutor) both determined that Mr. Frantz's presence was not required to be in court on June 15, 2018. RP (6/15/18) 7-8. According to the court, Mr. Frantz "wasn't supposed to be here at all" on that date. RP (6/15/18) 7. The prosecutor agreed and told the court "I don't know why these [cases] were on." RP (6/15/18) 7.

⁴ In its written order, the court found only that "[g]ood cause does not exist to dismiss." CP 31. However, the parties' pleadings addressed Mr. Frantz's absence, and the court appears to have concluded that speedy trial reset under CrR 3.3(c)(2)(ii). CP 13-14, 19, 20-30; RP 1/4/19) 27-34.

The court then “struck all reviews,” noting there were “no consequences to Mr. Frantz who didn’t need to be here.” RP (6/15/18) 8. At no time did the prosecutor ask the court to reconsider its decision. Nor did the prosecutor take any other action to stop the speedy trial clock before it expired.

Under these circumstances, the June 15th date was not a “proceeding at which the defendant’s presence was required.” CrR 3.3(c)(2)(ii). Any error in the court’s decision cannot be held against Mr. Frantz, given the court’s “responsibility... to ensure a trial in accordance with this rule.” CrR 3.3(a)(1).

If the judge (and the prosecutor) made a mistake, Mr. Frantz was not required to correct that mistake prior to the expiration of speedy trial. *See State v. Raschka*, 124 Wn. App. 103, 100 P.3d 339 (2004). In *Raschka*, the prosecutor “lost track of the case” after agreeing to take responsibility for docketing it. *Id.*, at 106. Here, as in *Raschka*, the speedy trial period expired before the prosecutor took any action to ensure the case was properly calendared.⁵

Nor do any prior missed appearances affect the speedy trial calculation. In its pleadings, the State pointed out Mr. Frantz’s failure to

⁵ Because the court found that Mr. Frantz was not required to be in court on June 15, he was not obligated to provide an excuse for his absence. *See* CP 21; RP (1/4/19) 28, 31, 34.

appear on August 25, 2017. CP 21. But the clerk's minutes from the following week note that Mr. Frantz was present for a hearing on September 1, 2017.⁶ Minutes filed 9/1/17, Supp. CP.

If Mr. Frantz hadn't already entered a waiver through June of 2018, the September 2017 hearing would have marked a new commencement date. CrR 3.3(c)(2)(ii). However, his waiver already extended the speedy trial period well beyond 90 days from September 1st. Accordingly, the August 25th missed court date and subsequent appearance on September 1, 2017 do not affect the speedy trial expiration date set by his waiver.

Under the waiver, Mr. Frantz's speedy trial commencement date was June 15, 2018. CP 4. His speedy trial period expired on September 13, 2018. CP 4. The State did not take any action to halt the speedy trial clock, and no trial date was set until after speedy trial had expired.⁷

Accordingly, the trial judge should have dismissed the prosecution under CrR 3.3(h). Mr. Frantz's conviction must be reversed, and the case dismissed with prejudice. CrR 3.3(h).

⁶ As the court noted, the only subsequent hearing was stricken by the State. RP (6/15/18) 7; Minutes filed 11/17/17, Supp. CP.

⁷ Indeed, the State did not even seek to revoke the agreed continuance for dismissal until after speedy trial had expired. CP 11.

CONCLUSION

The Superior Court bears the responsibility to ensure that trial commences within the time period contemplated by CrR 3.3. Mr. Frantz's speedy trial period expired on September 13, 2018. The court did not even set a trial date until after that date had passed.

Mr. Frantz's conviction must be reversed, and the case dismissed with prejudice.

Respectfully submitted on July 3, 2019,

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

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Port Hadlock, WA 98339

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Jefferson County Prosecuting Attorney
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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

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

Signed at Olympia, Washington on July 3, 2019.



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