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Court of Appeals
Division II
State of Washington
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NO. 53177-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

JOSEPH FRANTZ,

Appellant,

vs.

STATE OF WASHINGTON,

Respondent.

**ON APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR JEFFERSON COUNTY**

Brief of the Respondent

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

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I. STATEMENT OF THE CASE

On June 17th, 2016 the Appellant entered in a contract with the Respondent to have his charge of possession of a controlled substance dismissed following approximately two years of compliance with the conditions outlined by the contract (hereafter agreement). CP 3-6. The agreement, which was signed by the Appellant, specifically stated that “I agree to appear in court for a review hearing on the following dates:

- September 16, 2016, 8:30 a.m., and every three months as set forth by the court thereafter; and
- June 15, 2018 – Final Review”

CP at 5. This specific provision was initialed by the Appellant. *Id.* The agreement also stated that the Appellant agreed to waive his time for trial right with a new commencement date of June 15, 2018, and an expiration date of September 13, 2018. CP at 4. Elsewhere in the agreement, the Appellant agreed to have no new criminal law violations. CP at 5. In addition to the agreement, the court also signed an order setting the case over to June 15, 2018, at 8:30 a.m. for final review; the Appellant’s presence was not excused for that hearing. CP at 10. Finally, the Court specifically informed the Appellant that he needed to be present in court “approximately two years from today, June 15, 2018.” VRP at 9.

Following this hearing the Appellant appeared for a review hearing on September 16, 2016, but was out of compliance. CP at 21. He failed to appear for review hearings on January 6, 2017 and August 25, 2017; on November 17, 2018, the State moved to strike the review hearing and further review hearings were not held. CP at 21; 71.

On June 15, 2018, the court heard the case for final review, however the Appellant was not present for the hearing. VRP at 5 (06/15/2018). Both his attorney and a prosecutor were present, however, they seemed to be unaware of the reason for the hearing. *See* at VRP 5-7 (06/15/2018). The prosecutor requested a warrant on account of the Appellant's absence and his prolific warrant history. VRP at 5 (06/15/2018). The prosecutor later observed that the Appellant had a pending bench warrant on another tracking case as well. VRP at 6 (06/15/2018). The defense attorney stated that he was not sure that the Appellant was aware of the hearing and requested that no warrant be issued. VRP at 7 (06/15/2018). The hearing was ultimately struck and the parties discussed resetting the hearing for a future date. VRP at 8.

On September 27, 2018, the State filed a motion to revoke the Continuance for Dismissal along with a summons setting a court date for October 5th, 2018. CP at 11-12, 25. The summons was served on the Appellant on September 28th, 2018 by a member of the Jefferson County Sheriff's Office. CP at 26. On October 5th, 2018 the Appellant again, failed

to appear for court, however, this time the court issued a bench warrant. CP at 27. The Appellant next appeared before the court on October 15th, 2018. CP at 74-75.

On December 18, 2018, the Appellant filed a motion to dismiss the case on the grounds that his rights were violated under CrR 3.3. CP at 13-14. On January 4th, 2019, the parties argued the Appellant's motion to dismiss. VRP at 27. After hearing arguments the Court adopted the State's reasoning and denied the Appellant's motion. VRP at 34.

On January 18, 2019 the Appellant was found guilty of one count of possession of a controlled substance at a bench trial. CP at 40. One week later on January 25, 2019 the Appellant was sentenced. CP at 48.

II. ISSUES PRESENTED

1. Whether the Appellant's time for trial right under CrR 3.3 was violated when the Appellant failed to appear for a mandatory court date and did not reappear until his previously calculated time for trial date had expired?

III. ARGUMENT

1. **By simple operation of court rule, the Appellant's time for trial right was not violated.**

A criminal defendant must be brought to trial within 60 days if in custody or 90 days if out of custody from the commencement date. CrR 3.3(b). A commencement date is reset after a defendant next appears for

court following a failure to appear for a mandatory court date. CrR 3.3(c)(2)(ii). The State has no obligation to exercise good faith or diligence in procuring the defendant's presence for court. *State v. George*¹, 160 Wn.2d 727, 738, 158 P.3d 1169 (2007). “ ‘Failure to appear’ refers to a defendant's unexcused absence from a court proceeding.” *Id.* at 739. The absence need not be deliberate, an absence that is inadvertent or even negligent is enough to forfeit a trial within the time frame as set forth by court rule. *Id.*

In the present case, the Appellant failed to appear for court on June 15th, 2018 after having been previously ordered by the court to be present for that hearing. This was made explicitly clear to the Appellant on June 17th, 2016, the day he entered the agreement with the State. The Appellant failed to appear on that date. Although it was apparently unknown to the parties, two years hence, why that court date had been set, the fact remains that the Appellant had been required to appear for court on that day. That the court may have excused him from appearing for monthly review hearings did not excuse from him final review date². Furthermore, the fact that the court ultimately chose to excuse his absence on that date does

¹ In *State v. George*, the court was reviewing Court Rule CrRLJ 3.3, not CrR 3.3 as is at issue in the present case. However, “the substantive differences between CrRLJ 3.3 and CrR 3.3 are few”. *State v. Chavez-Romero*, 170 Wn. App. 568, 580, 285 P.3d 195 (2012).

² The court minutes from November 17, 2017 only reflect that the “State strikes *this* hearing, will re-note if needed”. CP at 71 (emphasis added).

nothing to change to simple operation of court rule – that a failure to appear for a mandatory court date resets the time for trial period. The Appellant next appeared in court on October 15th, 2018, no violations of the time for trial rule are alleged to have occurred after this date.

The Appellant relies on *State v. Raschka*³ to assert that his time for trial had been violated. *Appellant's Brief at 7*. *Raschka* relies on the old court rules prior to their modification in 2003. *Raschka*, at 108. The Appellant asserts that he cannot be held responsible for errors made by the prosecutor and the court. *Appellant's Brief at 7*. However, a review of the record indicates that the State requested a warrant and the Court noted his failure to appear, but the court was persuaded to walk back both steps on the false assertion by the Appellant's attorney that the Appellant had no notice of the hearing. VRP 5-7 (06/15/2018). In *Raschka*, the appellant contested whether the hearing he missed was one which required his appearance. 124 Wn. App. at 109-10. No such confusion exists in the present case where the Appellant was specifically informed by the court that he needed to be in court on June, 15, 2018. VRP at 9. Furthermore, the appellant in *Rashka* was reported to have been physically unavailable for court due to hospitalization stemming from a recent car accident. 124 Wn. App. at 106. This is in stark contrast to the situation in the present

³ 124 Wn. App. 103, 108-112, 100 P.3d 339 (2004).

case where Appellant failed to appear without an excuse and was on warrant status⁴ when his case was called. VRP 6-7 (06/15/2018), CP at 28, 30. Issuing an additional warrant was not required to reset his time for trial when one was already issued on another case.

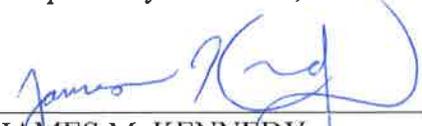
Because the Appellant failed to appear to for a mandatory court hearing on June 15, 2018 his time for trial did not reset until his next court appearance, which took place on October 15th, 2018. Consequently, the Defendant did not suffer a time for trial violation and the Superior Court's ruling should be affirmed.

IV. CONCLUSION

For the aforementioned reasons the Respondent respectfully requests that the Court of Appeals affirm the Superior Court's decision denying the Appellant's motion for dismissal based on an alleged time for trial violation.

Dated this 19 day of December, 2019

Respectfully submitted,



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⁴ Jefferson County Superior Court cause 17-1-00107-0. CP at 30.

PROOF OF SERVICE

I, Laura Mikelson, declare 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:

Jodi R. Backlund, WSBA #22917
backlundmistry@gmail.com

I declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct. Dated this 19th day of December, 2019, and signed at Port Townsend, Washington.



Laura Mikelson
Legal Assistant

JEFFERSON COUNTY PROSECUTING ATTORNEY'S OFFICE

December 19, 2019 - 3:20 PM

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