

FILED
May 11, 2012
Court of Appeals
Division III
State of Washington

NO. 30002-1-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

ISMAEL SANCHEZ,

Defendant/Appellant.

REPLY BRIEF

Dennis W. Morgan WSBA #5286
Attorney for Appellant
P.O. Box 1019
Republic, Washington 99166
(509) 775-0777

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES	ii
RULES AND REGULATIONS.	ii
ARGUMENT	1

TABLE OF AUTHORITIES

TABLE OF CASES

City of Seattle v. Holifield, 170 Wn. 2d 230, 240 P. 3d 1162 (2010).....2
State v. George, 160 Wn. 2d 727, 158 P. 3d 1169 (2007).....3
State v. Halsten, 108 Wn. App. 759, 33 P. 3d 751 (2001).....3

RULES AND REGULATIONS

JuCR 7.8(a)(2)(iii).....2
JuCR 7.8(b)(2).....1
JuCR 7.8(b)(5).....1
JuCR 7.8(c)(2).....2
JuCR 7.8(c)(2)(ii).....2
JuCR 7.8(c)(2)(iii).....2
JuCR 7.8(e).....1

ARGUMENT

The State's position is succinctly stated at page 6 of its brief:

Under the new definition of "Appearance," Mr. Sanchez would only have appeared for purposes of the rule if his presence had been made known to both the court and the prosecutor. Simply being physically present in court, with nothing more, is not sufficient to constitute an appearance; the prosecutor was not notified, and no appearance was noted on the record.

What the State fails to grasp is that Mr. Sanchez appeared in connection with documents requiring his appearance. It was the Court and the prosecutor who failed to place his case on the docket.

JuCR 7.8(b)(2) is clear:

A juvenile who is not held in detention shall be brought to hearing within the longer of

- (i) 60 days after the commencement date specified in this rule, or
- (ii) the time specified in subsection (b)(5).

JuCR 7.8(b)(5) deals with excluded periods. It references JuCR 7.8(e).

JuCR 7.8(e) does not include any language pertaining to "failure to appear."

“Failure to appear” is addressed under JuCR 7.8(c)(2). JuCR 7.8(c)(2) involves resetting the commencement date for an adjudicatory hearing.

JuCR 7.8(c)(2)(ii) states:

Failure to Appear. The failure of the juvenile to appear for any proceeding at which the juvenile’s appearance was required. The new commencement date shall be the date of the juvenile’s next appearance.

The word “appearance” is defined in JuCR 7.8(a)(2)(iii) as meaning:

... The juvenile’s physical presence in the court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

Mr. Sanchez contends that the word “appearance” as set forth in the second sentence of JuCR 7.8(c)(2)(iii) is the appearance meant by JuCR 7.8(a)(2)(iii).

... [I]nterpretation of a court rule relies upon principles of statutory construction. ... To interpret a statute, we first look to its plain language. [Citations omitted.] If the plain language is subject to one interpretation only, our inquiry ends because plain language does not require construction.

City of Seattle v. Holifield, 170 Wn. 2d 230, 237, 240 P. 3d 1162 (2010).

Initially, Mr. Sanchez contends that the rule is clear on its face and does not need interpretation. However, based upon the State's argument, it appears that more than one reasonable interpretation can be given to the rule. As such, this raises a question of ambiguity.

"...[E]ven if the statute is ambiguous, we must construe it in [defendant's] favor." *State v. Halsten*, 108 Wn. App. 759, 763, 33 P. 3d 751 (2001).

The Supreme Court's decision in *State v. George*, 160 Wn. 2d 727, 739, 158 P. 3d 1169 (2007) supports Mr. Sanchez's position. He did not "fail to appear" as that term has been interpreted.

Mr. Sanchez otherwise relies upon the argument contained in his original brief and respectfully requests that his conviction be reversed and the charge dismissed.

DATED this 11th day of May, 2012.

Respectfully submitted,

s/ Dennis W. Morgan
DENNIS W. MORGAN WSBA #5286
Attorney for Defendant/Appellant
P.O. Box 1019
Republic, Washington 99166
(509) 775-0777
(509) 775-0776
nodblspk@rcabletv.com

NO. 30002-1-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)
) YAKIMA COUNTY
) NO08 8 01579 4
 Plaintiff,)
 Respondent,)
) **CERTIFICATE OF SERVICE**
 v.)
)
 ISMAEL SANCHEZ,)
)
 Defendant,)
 Appellant.)
)

I certify under penalty of perjury under the laws of the State of Washington that on this 11th day of May, 2012, I caused a true and correct copy of the *REPLY BRIEF* to be served on:

Court of Appeals, Division III
Attn: Renee Townsley, Clerk
500 N Cedar St
Spokane, WA 99201

E-FILE

Yakima County Prosecutor's Office
Attn: Kelvin Eilmes
128 N 2d St, Rm 211
Yakima, Washington 98901

EMAIL per agreement
Kevin.eilmes@co.yakima.wa.us

Ismael Sanchez #352649
Coyote Ridge Correction Center
PO Box 769
Connell, Washington 99326

U.S.MAIL

S/ Connie Hille

Connie Hille, Administrative Assistant
DENNIS W. MORGAN LAW OFFICE
P.O. Box 1019
Republic, WA 99166
(509) 775-0777
(509) 775-0776
conniehille@gmail.com