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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.

APPELLANT'S BRIEF

Dennis W. Morgan WSBA #5286
Attorney for Appellant
120 West Main
Ritzville, Washington 99169
(509) 659-0600

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES	ii
CONSTITUTIONAL PROVISIONS	ii
RULES AND REGULATIONS	ii
ASSIGNMENTS OF ERROR	1
ISSUES RELATING TO ASSIGNMENTS OF ERROR	1
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	4
ARGUMENT	5
CONCLUSION	10

TABLE OF AUTHORITIES

CASES

<i>State v. George</i> , 160 Wn. 2d 727, 739 (2007).....	6
<i>State v. Helms</i> , 72 Wn. App. 273, 864 P. 2d 23 (1993).....	6
<i>State v. Iniguez</i> , 167 Wn. 2d 273, 217 P. 3d 768 (2009).....	8, 9
<i>State v. Ledenko</i> , 87 Wn. App. 39, 940 P. 2d 280 (1997).....	5

CONSTITUTIONAL PROVISIONS

Const. art. I, § 22.....	1, 8
Sixth Amendment to the Unites States Constitution.....	1, 8

RULES AND REGULATIONS

CrR 3.3.....	6
CrR 3.3(d)(2).....	6
CrRLJ 3.3(c)(2)(ii).....	6
JuCR 7.8.....	1,4,5,9,10
JuCR 7.8(a)(1).....	5
JuCR 7.8(c)(2).....	7

JuCR 7.8(c)(2)(ii).....	6
JuCR 7.8(d)(1).....	7
JuCR 7.8(h).....	7

ASSIGNMENTS OF ERROR

1. The trial court violated Ismael Sanchez's time-for-trial rights under JuCR 7.8.

2. Alternatively, the trial court violated Mr. Sanchez's constitutional right to a speedy trial under the Sixth Amendment to the United States Constitution and Const. art. I, § 22.

3. The Juvenile Court's conclusions of law 1, 2, 3, 4, 5, 6 and 8 are not supported by its findings of fact and the record.

ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Did the trial court correctly interpret the provisions of JuCr 7.8?

2. Is Mr. Sanchez entitled to have his conviction reversed and the case dismissed based upon a violation of either his time-for-trial rights or his constitutional right to a speedy trial under the Sixth Amendment and Const. art. I, § 22?

STATEMENT OF CASE

An Information was filed on November 19, 2008 charging Mr. Sanchez with unlawful possession of a firearm second degree and posses-

sion of less than 40 grams of marijuana. Mr. Sanchez made his preliminary appearance the same date. The Juvenile Court reduced his bail from \$25,000 to \$10,000. (CP 61; RP 1, l. 25; RP 4, ll. 24-25).

Mr. Sanchez posted a surety bond on November 20, 2008. (CP 59).

Arraignment was held on December 3, 2008. Mr. Sanchez's attorney was allowed to withdraw due to a conflict of interest. A scheduling order was entered setting a pre-trial hearing for December 17, 2008. (CP 58; RP 6, ll. 2-22).

The pre-trial hearing was initially continued to January 20, 2009. It was then continued to February 24, 2009. A time-for-trial waiver was signed that date. It did not contain an expiration date. The pre-trial was then continued to March 24, 2009. (CP 54; CP 55; CP 56; CP 57).

Mr. Sanchez and his attorney appeared in Court on March 24, 2009. His case was not on the docket. The prosecutor assigned to the case was not in Court. Neither defense counsel nor Mr. Sanchez made their presence known to the Court at that time. (9/16/09 RP 2, ll. 10-20; RP 4, ll. 14-16; RP 6, ll. 22-24).

The Juvenile Court did not schedule an adjudicatory hearing prior to the March 24, 2009 date. (9/16/09 RP 3, l. 9; CP 58).

Mr. Sanchez was subsequently arrested on an unrelated charge. Defense counsel and the prosecuting attorney then readdressed this case.

The State had not issued a warrant for Mr. Sanchez's arrest. (9/16/09 RP 2, l. 22 to RP 3, l. 5; RP 4, ll. 21-25).

A new scheduling order was entered on August 7, 2009 setting a pre-trial hearing for August 14. The August 14 pre-trial hearing was continued pending a motion to dismiss. Mr. Sanchez signed a time-for-trial waiver at that time. (CP 52; CP 53).

Defense counsel filed a motion to dismiss on September 1, 2009. It encompassed the constitutional right to a speedy trial. (CP 48).

The dismissal motion was argued on September 16, 2009. The colloquy between the judge and the attorneys centered around whether or not Mr. Sanchez made an appearance on March 24, 2009. The Court recognized that the case had fallen through the cracks. The Court ruled that Mr. Sanchez failed to appear, even though he was present with his attorney, because neither of them notified either the prosecuting attorney or the Court of their presence. (9/16/09 RP 7, ll. 9-25; RP 21, ll. 3-25; RP 26, ll. 4-10).

Findings of Fact and Conclusions of Law from the dismissal hearing were entered on September 30, 2009. (CP 39).

Additional scheduling orders were entered between September 16, 2009 and the adjudicatory hearing held on May 6, 2011. Mr. Sanchez signed additional waivers. (CP 16; CP 17; CP 18; CP 19; CP 20; CP 21; CP 22; CP 23; CP 24; CP 25; CP 26; CP 27 CP 28; CP 29; CP 30; CP 31; CP 32; CP 33; CP 34; CP 35; CP 36; CP 37; CP 38; CP 42).

Officer Taylor of the Yakima Police Department testified at the May 6, 2011 adjudicatory hearing. He was present during the execution of a search warrant at 1100 North Naches Avenue. After a knock and announce the officers entered the residence. He saw three people sleeping on couches in the living room. (5/6/11 RP 13, ll. 21-22; RP 14, ll. 4-7; RP 15, ll. 21-25; RP 16, ll. 21-25).

Mr. Sanchez was one of the individuals on a couch. As he was handcuffed and removed from the couch a silver revolver was seen under his face. It was seized. There were crease marks from the revolver on Mr. Sanchez's face. (5/6/11 RP 18, ll. 6-21; ll. 24-25; RP 22, ll. 2-6).

Officer Taylor tested the revolver on January 7, 2010. It was operational. (RP 20, ll. 19-24).

Mr. Sanchez was born on November 5, 1991. He was under 18 years on age at the time the revolver was seized. (5/6/11 RP 22, l. 24).

The Juvenile Court entered a disposition order adjudicating Mr. Sanchez of having committed the offense. Findings of Fact and Conclusions of Law were subsequently entered. (CP 5; CP 12).

Mr. Sanchez filed his Notice of Appeal on June 6, 2011. (CP 4).

SUMMARY OF ARGUMENT

The Juvenile Court's analysis of JuCR 7.8 and the phrase "failure to appear" is contrary to the state of the law and violated Mr. Sanchez's time-for-trial rights, as well as his constitutional right to a speedy trial.

ARGUMENT

I. JuCR 7.8

JuCR 7.8(a)(1) states:

It shall be the responsibility of the court to ensure an adjudicatory hearing in accordance with the provisions of this rule to each person charged with a juvenile offense.

Mr. Sanchez contends that the court failed to comply with its duty under JuCR 7.8(a)(1).

The facts of Mr. Sanchez's case parallel those in *State v. Ledenko*, 87 Wn. App. 39, 940 P. 2d 280 (1997). Mr. Ledenko appeared for his case but was in the wrong courtroom. His case was not on the docket for the day. The Court ruled at 43:

...[A] defendant bears some responsibility for insuring compliance with the speedy trial rule. **But that responsibility should not include rectifying the superior court's own clerical error in managing its calendar.** In light of this clerical error, it is not clear what Mr. Ledenko (or even his attorney, if he were present) could have done to "appear." The superior court bears a significant responsibility to assure a defendant is brought to trial in accordance with the rule. [Citations omitted.] **The court's error here prevented Mr. Ledenko from appearing,** and [the rule] does not apply.

(Emphasis supplied.)

The Juvenile Court relied on JuCR 7.8(c)(2)(ii) to justify its ruling. It misinterpreted the rule.

In *State v. Helms*, 72 Wn. App. 273, 864 P. 2d 23 (1993), the Court, in addressing CrR 3.3, determined that the State's argument was not viable where the case had not been called on the scheduled trial date. Even though there was no evidence that Mr. Helms was present in court, there was also no evidence to support the State's position that he failed to appear. The *Helms* Court stated at 276: "[I]t [the State] cannot, therefore, invoke the extension authorized by CrR 3.3(d)(2)."

The State attempts to utilize a disingenuous argument that even though Mr. Sanchez and his attorney appeared, they did not appear because they did not make their presence known. This is not a requirement of the rule.

The comparable rule for Courts of Limited Jurisdiction is CrRLJ 3.3(c)(2)(ii). It was recently discussed in *State v. George*, 160 Wn. 2d 727, 739 (2007):

We believe the "failure to appear" provision is intended to apply to a defendant who thwarts the government's attempt to provide a trial within the time limit specified under the rule by absenting himself from a proceeding. Thus, **the phrase "failure to appear" refers to a defendant's unexcused absence from a court proceeding.** A defendant who negligently or inadvertently fails to appear when required to do so for-

feits the right to trial within the statutory
time-for- trial. ...

(Emphasis supplied.)

It is obvious from the record that Mr. Sanchez did not fail to appear as that phrase has been interpreted by the Supreme Court. It was the Juvenile Court's own poor recordkeeping that prevented the case from proceeding on March 24, 2009. It was also the Prosecuting Attorney's fault for not having someone present in court on behalf of the State to address Mr. Sanchez's case.

The Juvenile Court erroneously reset the commencement date for the adjudicatory hearing under JuCR 7.8(c)(2).

Moreover, the Juvenile Court failed to comply with JuCR 7.8(d)(1) which states, in part:

The court shall, within 15 days of the juvenile's actual arraignment in juvenile court, set a date for the adjudicatory hearing which is within the time limits prescribed by this rule and notify counsel for each party of the date set. ...

No adjudicatory hearing was scheduled prior to March 24, 2010. No notification was provided to counsel as required by the rule.

The Juvenile Court's conclusions of law denying Mr. Sanchez's motion to dismiss are without foundation in fact. They are an attempt to overcome the State's mishandling of the case. Mr. Sanchez respectfully requests that his conviction be reversed and the case dismissed pursuant to JuCR 7.8(h).

II. Constitutional Right to Speedy Trial

The Sixth Amendment to the United State Constitution and Const. art. I, § 22 guarantee a right to a speedy trial. The constitutional speedy trial right has been the subject of extensive litigation. The most recent pronouncement on that right can be found in *State v. Iniguez*, 167 Wn. 2d 273, 217 P. 3d 768 (2009).

“A denial of constitutional rights is reviewed de novo.” *State v. Iniguez, supra*, 280.

The *Iniguez* Court, in analyzing Const. art. I, § 22 stated:

The right to a speedy trial “is as fundamental as any of the rights secured by the Sixth Amendment.” *Barker* [*Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)] at 515 n.2 (quoting *Klopfer v. North Carolina*, 386 U.S. 213, 223, 87 S.Ct. 988, 18 L. Ed. 2d 1 (1967)). If a defendant’s constitutional right to a speedy trial is violated, the remedy is dismissal of the charges with prejudice. *Id.* at 522.

A total of 887 days elapsed between Mr. Sanchez’s arraignment on December 3, 2008 and the adjudicatory hearing conducted on May 6, 2011. Even though there were continuances and waivers signed, only those continuances and waivers subsequent to September 16, 2009 should be set aside in consideration of whether or not Mr. Sanchez’s speedy trial rights were violated.

The continuances and waivers after September 16, 2009 were necessitated by the Juvenile Court's denial of his motion to dismiss for violation of JuCR 7.8.

The *Iniquez* Court, at p. 283, determined that "the constitutional speedy trial right [cannot] be quantified into a specific time period."

In Mr. Sanchez's case, the 887 days is more than enough to establish presumptive prejudice.

The *Iniquez* Court went on to hold, at p. 290, that a delay of more than 8 months is presumptively prejudicial. Thus, Mr. Sanchez meets the initial threshold for a determination of whether or not his constitutional right to a speedy trial was violated.

When considering the factors applicable to a speedy trial analysis, other than the fact that Mr. Sanchez had posted bond, all of the factors are favorable to him. The length of delay was substantial. The charge was not a complex charge. There was only a single witness presented at the adjudicatory hearing.

Mr. Sanchez asserted his time-for-trial rights when he brought the dismissal motion in September 2009. Any delay prior to September and after March 24, 2009 was caused by the State and the Court.

The prejudice occasioned by the delay may be minimal, but when considered in light of all the facts and circumstances, Mr. Sanchez was denied all of the rights guaranteed to him by both the Juvenile Court Rules and the Federal and State Constitutions.

CONCLUSION

Mr. Sanchez's time-for-trial rights under JuCR 7.8 were violated.

Mr. Sanchez's constitutional right to a speedy trial was violated.

Mr. Sanchez's conviction must be reversed and the case dismissed.

DATED this 12th day of October, 2011.

Respectfully submitted,

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant.

120 West Main

Ritzville, Washington 99169

Telephone: (509) 659-0600

Fax: (509) 659-0601

nodblspk@rcabletv.com

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DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	YAKIMA COUNTY
Plaintiff,)	NO. 08 8 01579 4
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 12th day of October, 2011, I caused a true and correct copy of the *APPELLANT'S BRIEF* to be served on:

Renee S. Townsley, Clerk
Court of Appeals, Division III
500 North Cedar Street
Spokane, Washington 99201

E-FILE

Yakima County Prosecutor's Office
Attn: Kevin Eilmes
kevin.eilmes@co.yakima.wa.us

E-FILE (per agreement)

Ismael Sanchez #352649
Washington Correction Center
PO Box 900
Shelton, Washington 98584

S/ Connie Hille

Connie Hille, Administrative Assistant
DENNIS W. MORGAN LAW OFFICE
120 W. Main Street
Ritzville, WA 99169
(509) 659-0600
(509) 659-0601
c_hille@centurytel.net