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Court of Appeals
Division III
State of Washington

32043-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

SAMUEL MILLER, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF YAKIMA COUNTY

APPELLANT'S BRIEF

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A. ASSIGNMENTS OF ERROR

1. The court erred in finding: “This Court finds that there was no time-for-trial violation, as only 2.5 months had passed from date of violation to the date of filing.” (CP 229)
2. The court erred in finding: “Rules 3.3 & 4.1 were revised for a reason, and based on that intent, the Court finds the State’s argument more persuasive than *Bonifacio*.” (CP 229)
3. The court erred in reversing the district court order dismissing the charges with prejudice. (CP 229)

B. ISSUE

1. Do the 2003 revisions to the speedy trial provisions of CrRLJ 3.3 and 4.1 supersede the Supreme Court’s 1995 construction of the CrRLJ 2.1(b) and (d) governing initiation of criminal proceedings by citation and notice to appear?

C. STATEMENT OF THE CASE

The relevant facts in this case are undisputed.

A Yakima County sheriff’s officer issued Sam Miller a uniform criminal citation for driving with a suspended license, and without an

ignition interlock device on September 29, 2012. (CP 8, 23) Although the officer checked the “mandatory court appearance” box, he left the appearance date blank. *Id.* Mr. Miller called the court to find out his court date and was told there was no record. *Id.*

On December 5, the State filed a complaint alleging the same offenses, and Mr. Miller’s first court appearance was set for January 3, 2013. (CP 5-6, 23) On January 3, 2013, the district court entered an “Order Setting Conditions of Release” releasing Mr. Miller on his own recognizance. (CP 14) On January 17, appointed counsel objected to the charges based on a violation of the right to a speedy trial in light of the Supreme Court’s decision in *City of Seattle v. Bonifacio*, 127 Wn.2d 482, 900 P.2d 1105 (1995). (CP 20, 22-23, 193)

Following a hearing on Mr. Miller’s motion to dismiss the charges, the trial court concluded that issuance of the citation initiated criminal proceedings, the officer’s failure to file the citation within two days violated CrRLJ 2.1(d), that Mr. Miller’s speedy trial date had expired on January 17, 2013, and the case should be dismissed with prejudice. (CP 137; RP 209-10)

The State appealed and a Superior Court judge concluded that the amendments to the speedy trial rules superseded the holding in *Bonifacio*, reversed the District Court and remanded the case for trial. (CP 141, 229)

D. ARGUMENT

1. REVISION TO THE SPEEDY TRIAL RULES DO NOT SUPERSEDE THE SUPREME COURT HOLDING THAT ISSUANCE OF A CITATION INITIATES THE CRIMINAL PROCESS.

Criminal proceedings in courts of limited jurisdiction may be initiated by the prosecutor's filing of a complaint stating "the facts constituting the offense charged." CrRLJ 2.1(a). Alternatively, proceedings may be initiated by an arresting officer serving a citation and notice to appear:

(b) Citation and Notice to Appear.

(1) *Issuance.* Whenever a person is arrested or could have been arrested pursuant to statute for a violation of law which is punishable as a misdemeanor or gross misdemeanor the arresting officer, or any other authorized peace officer, may serve upon the person a citation and notice to appear in court. . . .

CrRLJ 2.1(b)(1). The arresting officer is required to promptly file the citation:

(2) *Time.* The citation and notice shall be filed with the clerk of the court within two days after issuance, not including Saturdays, Sundays, or holidays. A citation and notice not filed within the time limits of this rule may be dismissed without prejudice.

CrRLJ 2.1(d). Under the language of the rule, the citation is not equivalent to a complaint unless and until it has been filed:

(5) *Initiation*. When signed by the citing officer and filed with a court of competent jurisdiction, the citation and notice shall be deemed a lawful complaint for the purpose of initiating prosecution of the offense charged therein.

CrRLJ 2.1(b).

In *City of Seattle v. Bonifacio*, 127 Wn.2d at 488, the court addressed the issue of whether a citation initiates criminal proceedings if the officer fails to comply with the rule requiring timely filing with the clerk of the court. Noting that “issuance of a citation in lieu of arrest is ‘in effect . . . a release of [a] defendant on his personal recognizance,’” the Court held that “the criminal process is initiated by issuance of the citation.” *Id.* 487-88.

The Court explained the policy reasoning behind its decision:

The issuance and receipt of a citation is not an insignificant intrusion on one’s liberty. It is, therefore, important that the rule requiring the filing of citations, CrRLJ 2.1(d), be observed. If consequences do not flow from an officer’s failure to file a citation within the time allotted, many persons who have been issued citations will be left in legal limbo, not knowing whether or not the citation they have received will lead to proceedings in court. Under the trial court’s decision, greater fairness and efficiency is assured because persons who have been issued citations will generally know within forty-eight hours of the issuance of a citation whether it will lead to court proceedings. . . . The significant aspect of our holding is that the time for trial

computation relates to the date the citation is filed or forty-eight hours after its issuance, if it is not filed.

Id. at 488-89. In short, when the issuing officer fails to comply with the mandate of CrRLJ 2.1(d)(2), the citation is deemed to have been filed 48 hours after it is issued.

The rule governing the “time for trial,” the so-called speedy trial date, provides for the calculation of a date within which the defendant must be tried. CrRLJ 3.3. The calculation, which is detailed in the rule and is rather complex, is anchored to the “arraignment” date: “The initial commencement date shall be the date of arraignment as determined under CrRLJ 4.1.” CrRLJ 3.3(c); *see State v. George*, 160 Wn.2d 727, 735-39, 158 P.3d 1169 (2007).

A person who is in jail or subject to conditions of release must be arraigned within 14 days after the complaint or citation is filed. CrRLJ 4.1(a)(1). When the accused person is not detained in jail or subject to conditions of release, the date of arraignment is 14 days after the date of the defendant’s first appearance in court following the filing of a citation or complaint. CrRLJ 4.1(a)(2).

Mr. Miller was arrested, served with a citation, signed a promise to appear and was released on September 29, 2012. The commencement date for purposes of determining his trial date under CrR 3.3(b), is 14 days

after the citation is filed. CrRLJ 4.1(a)(1). Under *Bonifacio*, the citation is deemed to have been filed on October 1, 48 hours after it was issued. The commencement date for determining Mr. Miller's time for trial under CrRLJ 3.3(b) is October 14, 2012. And since Mr. Miller was not detained in jail, his speedy trial date under CrRLJ 3.3(b)(2) was 90 days later on January 12, 2013. He was not actually arraigned until January 14, and the court properly dismissed the charge based on the State's failure to comply with the speedy trial rule.

The State has argued that the *Bonifacio* construction of CrRLJ 2.1 has been superseded by extensive revision of CrRLJ 3.3 and 4.1 in 2003.

The speedy trial rule, CrRLJ 3.3, and the provisions of CrRLJ 4.1 specifying the time for arraignment, have been amended since the *Bonifacio* decision, and these amendments superseded the constructive arraignment principles in *State v. Striker*, 87 Wn.2d 870, 557 P.2d 847 (1976), and *State v. Greenwood*, 120 Wn.2d 585, 845 P.2d 971 (1993). *State v. Olmos*, 129 Wn. App. 750, 756, 120 P.3d 139 (2005). These revisions to the speedy trial rule reflect a presumption that the date on which a complaint or citation is filed and the date of the defendant's first appearance in court following the filing of a citation or complaint may be readily ascertained.

“Court rules are interpreted using principles of statutory construction.” *State v. Blilie*, 132 Wn.2d 484, 492, 939 P.2d 691 (1997). When the legislature does not amend a statute after judicial construction of it, the legislature is presumed to agree with that construction. *State v. Bradshaw*, 152 Wn.2d 528, 535, 98 P.3d 1190 (2004); *State v. Edwards*, 84 Wn. App. 5, 12–13, 924 P.2d 397 (1996).

The *Bonifacio* decision provided an authoritative construction of CrRLJ 2.1, and thereafter the language of the rule remained unchanged. Accordingly, the judicial construction of the rule is still presumed to be the law.

V. CONCLUSION

The trial court properly concluded that the scheduled date for Mr. Miller’s formal arraignment exceeded the time limit within which he was required to have been tried under the speedy trial rules and dismissed the charges with prejudice. This court should reverse the Superior Court’s decision and affirm the that of the trial court.

Dated this 5th day of June, 2014.

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