

FILED
Court of Appeals
Division III
State of Washington
7/17/2020 8:38 AM

NO. 36902-1-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

MICHAEL LOGAN ARNETT,

Defendant/Appellant.

REPLY BRIEF

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES	ii
RULES AND REGULATIONS	ii
OTHER AUTHORITIES	ii
ARGUMENT	1

TABLE OF AUTHORITIES

CASES

State v. Chavez-Romero, 170 Wn. App. 568, 285 P.3d 195 (2012) 3

State v. Fladebo, 113 Wn.2d 388, 779 P.2d 707 (1989)..... 1

State v. Hand, 192 Wn.2d 289, 429 P.3d 502 (2018) 3

State v. Silva, 127 Wn. App. 148, 110 P.3d 830 (2005) 2

State v. Ross, 98 Wn. App. 1, 981 P.2d 888 (1999)..... 1

RULES AND REGULATIONS

CrR 3.3..... 1, 2

CrR 3.3 (a)(5)..... 2

CrR 3.3(e)(5)..... 2

OTHER AUTHORITIES

Drafter’s Comment, 2003 Rule, Wash. Prac. 4A (8th ed. 2020) 1

Wash. Prac. 4A, CrR 3.3, Note 31: Excluded Periods- Disposition of Re-
lated Charge.....2

ARGUMENT

CrR 3.3 was amended effective September 1, 2003. The amendment to the rule was substantial. See: **Drafter's Comment, 2003 Rule, Wash. Prac. 4A** (8th ed. 2020).

The State, in its brief, relies upon two cases that predate the amendment to the rule. The two cases are distinguishable.

In *State v. Fladebo*, 113 Wn.2d 388, 779 P.2d 707 (1989) the Court noted that results from the Washington State Patrol Crime Lab (WSPCL) were received by the Prosecutor's Office within 36 days of the date of arraignment in Municipal Court. The State delayed filing the felony charge until February 17, 1987. Meanwhile Ms. Fladebo pled guilty to DUI.

The *Fladebo* case is no longer good law even though it was followed in *State v. Ross*, 98 Wn. App. 1, 981 P.2d 888 (1999).

The facts in *Ross* parallel what occurred in *Fladebo*. Mr. Ross was arraigned in District Court on a DUI. The Prosecutor's Office received the WSPCL report within the time-for-trial rule. The State did not file the felony charge until after Mr. Ross pled guilty.

The *Ross* Court reversed and remanded the case for determination of whether or not the State had acted in good faith and with due diligence.

The good faith and due diligence provisions relating to the prior version of CrR 3.3 are no longer applicable.

A review of cases that have been decided under the amended version of CrR 3.3 are indicative of the fact that the related charge provision under CrR 3.3 (a)(5) and CrR 3.3 (e)(5) has not been re-addressed. *See: Wash. Prac 4A, CrR 3.3, Note 31: Excluded Periods- Disposition of Related Charge (Reserved. Watch this space for possible new cases decided under the 2003 version of CrR 3.3.)*

Mr. Arnett has located two cases discussing related charges under the new rule. The first case is *State v. Silva*, 127 Wn. App. 148, 110 P.3d 830 (2005).

The *Silva* Court's discussion of CrR 3.3 at 155 concludes:

CrR 3.3 confers a right to a defendant to be brought to trial within 90 days of the arraignment if he or she is out of custody. ... Where multiple charges stem from the same criminal conduct, **the time for trial begins on the date the defendant was held to answer on the first of the charges.** The purpose of this rule is to prevent “prosecutors from harassing a defendant by bringing successive charges over a long span of time even though all charges stem from the same criminal episode.” [*State v. Kindsvogel*, 149 Wn.2d 477 , 480, 69 P.3d 870 (quoting *State v. Lee*, 132 Wn.2d 498, 503, 939 P.2d 1223 (1997)).]

(Emphasis supplied.)

In Mr. Arnett's case the State was fully aware of what was discovered in the backseat of the patrol car and in his pockets at the time of the arrest. The State elected to proceed in District Court on charges of driving while license suspended 3rd degree and possession of a legend drug. It did not file the felony drug charges until after Mr. Arnett pled guilty.

In *State v. Chavez-Romero*, 170 Wn. App. 568, 285 P.3d 195 (2012) the Court reiterated the duties of the trial court and the prosecuting attorney in connection with the time-for-trial rule. The Court stated at 583:

Furthermore, both the trial court and the State abused their duties under CrR 3.3. The trial court is responsible for ensuring that the trial is held in accordance with the rules. CrR 3.3(a)(1)... But, as between the State and a criminal defendant, the State is responsible for bringing the defendant to trial within the speedy trial period. *State v. Wilks*, 85 Wn. App. 303, 309, 932 P.2d 687 (1997).

The *Wilks* Court pointed out the State has alternatives when it comes to multiple charges arising from the same incident if it is unable to obtain information in a timely manner from another agency.

The *Wilks* case involved an interlocutory petition for discretionary review. The *Chavez-Romero* Court involved a situation where the defendant was in federal custody. A third case having some application to Mr. Arnett's situation is *State v. Hand*, 192 Wn.2d 289, 429 P.3d 502 (2018). The *Hand*

case involved a delay where the defendant was awaiting a competency evaluation.

Justice Madsen, in a concurring opinion at 307, stated:

Delay in state services due to lack of resources is not unheard of. For example, when the State is waiting for a toxicology report that is delayed due to backlogs, prosecutors may elect to dismiss an action without prejudice to avoid a speedy trial rights violation.

Here, it can be reasonably concluded that the State was aware that there was potential for a felony drug offense. It is not unusual for law enforcement to conduct NIK tests on presumed controlled substances. If a positive reaction is noted it is then sent for further analysis to the WSPCL.

Moreover, in analyzing the State's brief, there is no response to Mr. Arnett's argument on the rule of lenity. As argued in Mr. Arnett's original brief the rule of lenity applies to the interpretation of court rules.

Mr. Arnett reasserts the argument contained in his original brief in connection with the error involving ineffective assistance of counsel.

DATED this 17th day of July, 2020.

Respectfully submitted,

s/Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant

P.O. Box 1019

Republic, Washington 99166

Phone: (509) 775-0777/Fax: (509) 775-0776

nodblspk@rcabletv.com

NO. 36902-1-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
) LINCOLN COUNTY
 Plaintiff,) NO. 18 1 00070 22
 Respondent,)
) **CERTIFICATE OF SERVICE**
 v.)
)
)
 MICHAEL LOGAN ARNETT,)
)
)
 Defendant,)
 Appellant.)
)
 _____)

I certify under penalty of perjury under the laws of the State of Washington that on this 17th day of July, 2020, I caused a true and correct copy of the *REPLY BRIEF* to be served on:

RENEE S. TOWNSLEY, CLERK
Court of Appeals, Division III
500 North Cedar Street
Spokane, Washington 99201

E-FILE

CERTIFICATE OF SERVICE

Lincoln County Prosecutor's Office
Attn: Adam Walser
450 Logan Street
Davenport, Washington 99122
adam.a.walser@gmail.com

E-FILING

Michael Logan Arnett
P.O. Box 612
Wellpinit, Washington 99040

U.S. MAIL

s/Dennis W. Morgan
Dennis W. Morgan, Attorney at Law
DENNIS W. MORGAN LAW OFFICE
PO Box 1019
Republic, WA 99166
(509) 775-0777
(509) 775-0776
nodblspk@rcabletv.com

CERTIFICATE OF SERVICE

July 17, 2020 - 8:38 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36902-1
Appellate Court Case Title: State of Washington v. Michael Logan Arnett
Superior Court Case Number: 18-1-00070-7

The following documents have been uploaded:

- 369021_Briefs_20200717083730D3406390_4522.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was Reply Brief Arnett.pdf

A copy of the uploaded files will be sent to:

- adam.a.walser@gmail.com
- jbarkdull@co.lincoln.wa.us

Comments:

Sender Name: Dennis Morgan - Email: nodblspk@rcabletv.com
Address:
PO BOX 1019
REPUBLIC, WA, 99166-1019
Phone: 509-775-0777

Note: The Filing Id is 20200717083730D3406390