

FILED
Jan 11, 2013
Court of Appeals
Division I
State of Washington

89390-0

NO. 69630-1-I

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

STATE OF WASHINGTON

Respondent

v.

PETER R. BARTON,

Petitioner

ANSWER TO MOTION FOR DISCRETIONARY REVIEW

MARK K. ROE
Prosecuting Attorney

KATHLEEN WEBBER
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
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I. ISSUES

The trial court set bail in accordance with CrR 3.2(b)(4) permitting the court to “require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum no to exceed 10 percent of the amount of the bond...”

1. Should the court grant the petitioner’s motion for discretionary review of the bail order?
2. Should the court grant the petitioner’s motion to expedite review of this matter?

II. STATEMENT OF THE CASE

The petitioner Peter Barton was charged with one count of Rape of a Child First Degree on August 13, 2012. Appendix A¹. The charges arose from an incident that was alleged to have occurred on July 1, 2012 at the petitioner’s sister’s home involving a 7 year old female relative. Appendix B. At the time of the alleged offense the defendant was on community custody for an earlier conviction for Second Degree Assault with sexual motivation. He

¹ Appendices designated APP(number) are the appendixes to the petitioner’s motion for discretionary review and expedited review. The State’s appendixes are designated by letter.

had a warrant for his arrest for failing to report to his community corrections officer. Appendix B, C.

The State sought high bail at arraignment based in part on the nature of the offense. The charged offense was a violent offense. A conviction would result in a second strike resulting in sentenced to life imprisonment. In addition the State pointed out the petitioner had a history of non-compliance with the conditions of his community custody. His history of non-compliance included two convictions for failing to register as a sex offender. Further, at the time charges were filed in the instant case the petitioner was under investigation for two additional sexual assaults. Appendix C, G.

The court initially set bail at "\$250,000 by executing a bond with sufficient sureties or depositing cash in the registry of the court in lieu thereof." App.001. Two days later the court held a bail review hearing. At that hearing counsel for the petitioner advised the court "Mr. Barton has no financial means to even post the amount of bail of \$250,000." App.012. At the State's request the court increased bail to \$500,000 and ordered 10% of that amount be posted in cash. App.005, App.016.

Trial was originally set for September 28, 2012. Appendix D. Trial has been continued twice since the petitioner's arraignment. Appendix E, F. Trial is currently scheduled for January 25, 2013.

The petitioner brought a motion to strike the "cash only" provision of the bail order in August 2012. App.19-26. The parties briefed the matter. App.27-51. The court modified the order to be consistent with the requirements of CrR 3.2(b)(4). The court ordered

Defendant's order on release, section 1.1 shall be modified to read: Defendant shall execute a bond in the amount of \$500,000 and deposit in the registry of the court in \$50,000 cash or other security, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release. This order is intended to include all of the language of CrR 3.2(b)(4).

App.052.

The order modifying the bail order was entered on October 18. The petitioner filed a notice for discretionary review on November 16. App.052, App.081.

III. ARGUMENT

A. THE COURT SHOULD GRANT DISCRETIONARY REVIEW OF THE CONSTITUTIONAL ISSUES RAISED BY THE PETITIONER.

Discretionary review of a trial court order may be granted if (1) the superior court has committed an obvious error which would render further proceedings useless; (2) the superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act; (3) the superior court has so far departed from the accepted and usual course of judicial proceedings...as to call for review by the appellate court; or (4) the superior court has certified, or all the parties to the litigation have stipulated that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation. RAP 2.3(b).

The petitioner argues the court's bail order involves an interpretation of CrR 3.2(b)(4) which conflicts with article 1, §20 of the Washington Constitution and the order denies him Equal Protection of the law.

About two-thirds of the States' constitutions include a bail provision that contains the phrase "sufficient sureties". Fragoso v. Fell, 111 P.3d 1027, 1032 (Ariz. 2005). Not all States have adopted the interpretation of that phrase that the petitioner argues for here. Some courts have interpreted that phrase precludes "cash only" bail. State v. Brooks, 604 N.W. 2d 345 (Minn. 2000). Others have reached the opposite conclusion. Fragoso, supra, State v. Briggs, 666 N.W.2d 573 (Iowa 2003), State v. Gutierrez, 140 P.3d 1106 (N.M. 2006) cert denied, 143 P.3d 184 (N.M. 2006). Notably the Brooks and Briggs courts both relied in on an historical approach to the question, but reached opposite results.

Since Washington Courts have not addressed this issue, review may very well settle the issue raised in this case and future cases. The State therefore stipulates that review is appropriate under RAP 2.3(b)(4).

B. THE MOTION FOR EXPEDITED REVIEW SHOULD BE DENIED.

The petitioner also asks the Court to accelerate review of this issue on the basis that his liberty interest is at stake. The Court should deny this request.

The petitioner relies on State v. Taplin, 55 Wn. App. 668, 779 P.2d 1151 (1989). There this Court's commissioner granted a motion for accelerated review of an issue involving the statutory interpretation of the community supervision violation statute. The issue was not complicated. The amount of time at issue was short. Had the Court not granted accelerated review the defendant would have likely served the time imposed by the trial court before a decision was rendered.

The petitioner also cites State v. Marshall, 83 Wn. App. 741, 923 P.2d 709 (1996). There the Court addressed the propriety of a contempt order to hold a defendant's former attorneys in contempt for failing to respond to questions in regard to a pending motion in a murder prosecution. Id. In those circumstances the Court accelerated review.

In each of these cases accelerated review was appropriate because review in the normal course would either substantially delay the administration of justice or could possibly cause the defendant to serve a sentence in excess of the court's authority. The issues presented in each of these cases were straightforward. The Court could resolve the matters by reference to established authority in this State.

The circumstances of this case are substantially different from the authorities cited by the petitioner. As discussed above, even if this Court were to strike the portion of the bail order requiring the petitioner to post 10% of the total bail amount in cash or other security, the petitioner is not in a position to bail out pending trial. The court's order in effect reduced the bail previously posted. Rather than requiring a bond for \$250,000 the actual amount needed to secure his release was reduced to \$50,000. The order did not preclude him from obtaining the assistance of a third person to post that amount. However he still maintains that he is unable to bail out on that amount. If the Court concludes the petitioner is correct and the current order violates the constitution, bail will still be \$500,000 bondable. He does not argue the trial court abused its discretion in setting bail in that amount. But if he could not secure his release when bail is set at a lesser amount, there is no reason to think he would secure his release as the current amount.

Trial is currently set for January 25, the date this motion for discretionary review is set to be heard. The time for trial expires one month later. Whether the case may proceed to trial is not dependant on the resolution of this matter. This matter has already

been pending for five months. As of this writing the trial court has not granted an additional continuance.² It appears from the affidavit of probable cause that the case is not complicated. However, should the trial court grant the petitioner a third continuance, the case is likely to have been tried before this Court rules on the bail matter even if accelerated review is granted.

Finally, unlike the issues raised in Taplin and Marshall the issue here is not straightforward. It is an issue that has not been raised before in this State. State's that have considered the issue have reached divergent results, sometimes relying on the same facts and authority. This is an issue that warrants more thoughtful attention than would be afforded should this Court accelerate review.

C. SHOULD THE COURT ACCEPT DISCRETIONARY REVIEW AN ORDER PERMITTING THE TRIAL COURT TO PROCEED WITH THE PROSECUTION SHOULD ENTER.

Should this Court grant the motion for discretionary review the trial court's authority is limited by RAP 7.2. Thus, absent an order from this Court pursuant to RAP 8.3 the proceedings in the

² Counsel for the petitioner on appeal has advised the undersigned that the petitioner's trial counsel intends to make a motion for a 60 day trial continuance at some point before the current trial date. Whether that motion will be granted in whole or in part is not known at this time.

trial court will be stayed. If this Court grants review, then the State asks this Court to also order that the grant of review will not stay the proceedings in the trial court.

Resolution of the bail issue raised in this motion for discretionary review will have no impact on the evidence presented or issues to be determined at trial. Should the Court not grant the State's request, and the matter is stayed pending the outcome of this appeal, the petitioner would end up spending even more time in pretrial confinement, even if accelerated review is granted.

It is true that should the trial be concluded before the resolution of this appeal its outcome would render the appeal moot. A case is moot when the Court can offer no effective relief. Yakima v. Mollett, 115 Wn App. 604, 606, 63 P.3d 177 (2003). Once the case is tried what bail the court may impose on the petitioner will be irrelevant. Either the petitioner will be acquitted, in which case he will be released on these charges, or he will be convicted, in which case he will be detained pursuant to RCW 10.64.025(2).

Nevertheless the Court may still consider the issue raised here because it involves a matter of continuing and substantial public interest. Mollett, 115 Wn. App. at 606. The criteria for that standard are: (1) the public or private nature of the question

presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers, and (3) the likelihood that the question will recur. Id. How bail may be imposed is a question of public concern. Id. at 607. The lack of any authority in Washington on this issue favors a decision from this Court. Id. The trial court's bail order is specifically permitted by the court rules. In recent years the question about the limits of the court's authority in regard to bail has been raised multiple times. The constitution was recently amended to expand the court's authority in granting or denying bail in certain cases. The Legislature has also been asked to address the question further. Given the events of the past few years it is thus likely that another court will enter an order pursuant to CrR 3.2(b)(4).

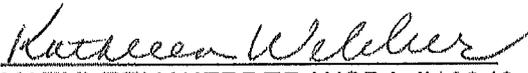
Thus, because the issue raised here has no impact on either of the parties' ability to try the case, and there are compelling reasons to consider the issue even if it becomes moot, it would be appropriate to order that review of this issue shall not stay the proceedings in the trial court.

IV. CONCLUSION

For the foregoing reasons the State does not oppose the petitioner's motion for discretionary review. However, accelerated review is not appropriate in this case. Further, an order permitting the directing acceptance of review shall not stay the proceedings in the trial court should enter.

Respectfully submitted on January 11, 2013.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 
KATHLEEN WEBBER WSBA #16040
Deputy Prosecuting Attorney
Attorney for Respondent

Sent via e-mail

I, this day I mailed a properly stamped envelope addressed to the attorney for the defendant that contained a copy of this document.
I certify under penalty of perjury under the laws of the State of Washington that this is true.
Signed at the Snohomish County Prosecutor's Office
the _____ day of _____ 20_____.

FILED

2012 AUG 13 P11 2:37

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL15683921

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v

BARTON, PETER RICHARD

Defendant

No 12-1-01772-1

INFORMATION

Aliases

Other co-defendants in this case

Comes now MARK K ROE, Prosecuting Attorney for the County of Snohomish, State of Washington, and by this, his Information, in the name and by the authority of the State of Washington, charges and accuses the above-named defendant(s) with the following crime(s) committed in the State of Washington:

RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows: That the defendant, on or about the 1st day of July, 2012, did have sexual intercourse with G.R (DOB 3/18/05), who was less than twelve years old and not married to the defendant and not in a domestic partnership with the defendant, and the defendant was at least twenty-four months older than G R , proscribed by RCW 9A 44 073, a felony

MARK K ROE
PROSECUTING ATTORNEY

ADAM W CORNELL, #32206
Deputy Prosecuting Attorney

DATED this 13th day of August, 2012 at the Snohomish County Prosecuting Attorney's Office

ORIGINAL

APPENDIX A

1

 Address 5610 BROADWAY EVERETT WA 98203
 HT 508 DOB. 11/15/1980 SID WA19487703
 WT 240 SEX M FBI 98488NB7
 EYES Brown RACE Black DOC 628081
 HAIR Black DOL BARTOPR200QN DOL STATE WA
 ORIGINATING AGENCY: EVERETT POLICE DEPARTMENT AGENCY CASE# 1212558



FILED

2012 AUG 13 PM 2:37

SONYA KRASKI
COUNTY CLERK
SNOHOMISH.CO WASH

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v

BARTON, PETER RICHARD

Defendant

No 12-1-01772-1

AFFIDAVIT OF PROBABLE CAUSE

Aliases

Other co-defendants in this case

AFFIDAVIT BY CERTIFICATION

The undersigned certifies that I am a Deputy Prosecuting Attorney for Snohomish County, Washington, and make this affidavit in that capacity, that criminal charges have been filed against the above-named defendant in this cause, and that I believe probable cause exists for the arrest of the defendant on the charges because of the following facts and circumstances

The following information is based on a review of police reports and other written material submitted in support of the prosecution of Defendant and written and transcribed oral statements from civilian witnesses. This Affidavit is being submitted for the limited purpose of establishing probable cause. Accordingly, not all facts known to the affiant have been included. Affiant has set forth only those facts believed to be necessary and relevant to establish the required foundation for probable cause for the criminal charge set forth below or to apprise the Court of Defendant's other relevant criminal conduct for the purpose of justifying bail. Affiant has no knowledge of these events independent of the reports and statements submitted, except as noted

ORIGINAL

SUMMARY

A juvenile female who will be referred herein by the initials G R. and whose date of birth is March 18, 2005, reported to family members that Defendant, Peter Barton, had sexually assaulted her on July 1, 2012. Defendant and G.R. are second cousins Defendant was 31 years old at the time of the offense

G R 's allegations came to light soon after Defendant's sister awoke to the sound of G.R. crying When G R.'s sister responded to the child's crying she found Defendant and G R alone in the dark in the living room of her Everett, Washington residence Defendant was confronted by his sister in light of the aforementioned circumstances. Defendant responded by running out of the home and later turning himself into police for an outstanding Department of Corrections (hereinafter DOC) warrant for Escape from Community Custody Soon after Defendant fled the home, G R told Defendant's sister that Defendant had harmed her

COUNT ONE

Rape of a Child First Degree

On July 1, 2012, G R was staying overnight at Defendant's sister's Everett, Washington residence Defendant was present in the home. In support of G R 's allegations against Defendant, Defendant's sister provided a written statement to police In pertinent part, the statement reads.

Unsure of time awoke to [G.R.] crying and looked in living room and found my brother [Defendant] in dark with six year old niece [G R] crying and I started yelling "why didn't you tell me she was awake and crying?" [Defendant] then jumped up off of the floor and took off running out the door while I was yelling "what are you even doing here?" I then approached [G R.] and asked her what was wrong. . .she then told me that [Defendant] hurt her feelings and continued saying he put lotion on her back and she was crying and he hurt her.

G R 's mother also provided a written statement to police concerning her daughter's allegations against Defendant To her mother, G.R. disclosed being sexually assaulted by Defendant Specifically, G R.'s mother wrote, "[G R] told me that [Defendant] touched her with his genitals in her private area and then put his hand in her private area "

A Child Forensic Interview Specialist (hereinafter CIS) interviewed G R soon after she was sexually assaulted by Defendant Broadly, G R told the CIS that she had woken up in the middle of the night to someone calling her into the living room The child went to the living room where she saw Defendant Next, according to G.R., Defendant pulled her pants down, held her to the ground, and began rubbing lotion on her body. G.R. recalled crying and asking Defendant to let her free so she could go home to her

mother Defendant replied by telling G R. that she could "see her mother later " According to G R., while she was still crying, Defendant forced his penis inside of her anus and continued to anally rape her until her Defendant's sister heard her cries and interrupted the sexual assault.

Defendant was questioned by police and voluntarily agreed to speak to them. Defendant admitted to being at his sister's home on July 1, 2012, but claimed that he did not really know anything else because he was intoxicated. Defendant denied being alone with G R. in the living room and claimed that his sister was angry with him, though he did not elaborate about the nature of the purported conflict.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct

MARK K ROE
Prosecuting Attorney



ADAM W CORNELL, #32206
Deputy Prosecuting Attorney

DATED this 13th day of August, 2012 at the Snohomish County Prosecuting Attorney's Office



CL15683924

FILED

2012 AUG 13 PM 2:37

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs

PETER R. BARTON,

Defendant

No 12-1-01772-1

AFFIDAVIT OF DEPUTY
PROSECUTING ATTORNEY IN
SUPPORT OF BAIL AND CONDITIONS

AFFIDAVIT BY CERTIFICATION

The undersigned certifies that I am a Deputy Prosecuting Attorney for Snohomish County, Washington, I make this affidavit in such capacity, and I am familiar with the facts of the above entitled cause. The following information is based on a review of police reports and other material submitted in support of the prosecution of Defendant. This Affidavit is being submitted for the limited purpose of seeking the requested amount of bail. Accordingly, not all facts known to the affiant have been included. Affiant has set forth only those facts believed to be necessary.

ST v BARTON /
Affidavit in Support of Bail and Conditions

ORIGINAL

Page 1 of 5

Snohomish County
Prosecuting Attorney - Criminal Division
Rockefeller Ave, M/S 504
Everett, WA 98201-4046
36-3333 Fax (425) 388-3572

APPENDIX C

4

1 and relevant to establish bail Affiant has no knowledge of these events independent
2 of the reports and statements submitted, except as noted

3 **Summary**

4 Defendant's propensity to commit acts of indiscriminate sexual violence, his
5 failure to engage in court-ordered sex offender treatment, and his inability to follow the
6 rules of community custody make him a clear and present danger to the community

7 Furthermore, the charged offense which is the subject of this Affidavit would constitute
8 a "second strike" requiring mandatory life in prison upon conviction RCW

9 9 94A 030(37) Defendant's prior criminal convictions, other relevant criminal conduct,
10 and his failure to abide by court and Department of Corrections' (hereinafter DOC)
11 orders support the State's request for imposition of bail in the amount of \$1,000,000

12 **I. The nature and circumstances of the offense charged.**

13 Defendant is currently charged in a one count Information with Rape of a Child
14 First Degree, a Class A felony designated by statute as a "violent offense " RCW
15 9 94A 030(54) The charged offense is punishable by up to life in prison and subjects
16 Defendant's release to the discretion of the Indeterminate Sentence Review Board
17 RCW 9 94A 507 Notwithstanding the penalties faced by Defendant for the charged
18 offense, Defendant has a qualifying conviction that would require the imposition of life
19 in prison should he be convicted as charged

20 Defendant is alleged to have brazenly and forcefully anally raped his seven
21 year-old second cousin As an older relative of the victim, Defendant had a duty to

22
23 ST v BARTON /
Affidavit in Support of Bail and Conditions

Page 2 of 5

Snohomish County
Prosecuting Attorney - Criminal Division
3000 Rockefeller Ave , M/S 504
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1 care for and protect the child, who will be referred herein by the initials G R. Instead,
2 Defendant violated a position of trust to satisfy his own selfish deviant sexual desires
3 Defendant's immediate flight from his sister's home after the sexual assault was
4 discovered further evidences his character for flight

5 **II. The history and characteristics of Defendant and other relevant**
6 **criminal conduct.**

7 Defendant was convicted in September 2001 of Second Degree Assault with a
8 Deadly Weapon and Sexual Motivation See Snohomish County Superior Court
9 Cause Number 01-1-01160-4 Defendant was sentenced to 54 months in prison He
10 was released in January 2005 Since Defendant's release, he has had 24 DOC
11 hearings with numerous violations of conditions at each hearing Furthermore,
12 Defendant failed to complete a required in-patient treatment program and has not
13 completed a required intensive out-patient treatment. Significantly, Defendant has yet
14 to begin Sex Offender Treatment—treatment that should have begun years ago At
15 the time of Defendant's arrest for the instant offense, he had an outstanding warrant
16 for Escape from Community Custody

17 Defendant has two prior convictions for Failure to Register as a Sex Offender,
18 the most recent of which led to a 14 month term of incarceration Defendant has one
19 other felony conviction for possession of Methamphetamine For his drug conviction,
20 Defendant was ordered to complete chemical dependency treatment, yet he failed to
21 complete that program

22
23 ST v BARTON /
Affidavit in Support of Bail and Conditions

1 In addition to the instant charge, Defendant is alleged to have sexually
2 assaulted two other individuals. Detectives with the Everett Police Department's
3 Special Assault Unit are currently investigating these allegations. Depending on the
4 outcome of the police investigations, other criminal charges may be filed by
5 undersigned counsel

6 Defendant's most recent alleged victim is an adult male who claims that in
7 March 2012, Defendant anally raped him. This victim, who will be referred herein by
8 the initials R T, reported the incident approximately two months after it occurred
9 because he witnessed Defendant attempt to sexually assault a female friend. R T's
10 friend provided a written statement to police and remarked that, "[Defendant] pulled
11 me into his bedroom. I thought he was being playful until he grabbed me by the wrist
12 and basically threw me on the bed. I was pretty drunk at this point. He got me on the
13 bed, I remember screaming."

14 Police learned from G R that a juvenile female who will be referred herein by
15 the initials S B had been sexually assaulted by Defendant when she was eight years-
16 old. S B is Defendant's cousin. Detectives interviewed S.B., who provided a written
17 statement to police as well as a journal that included an entry from 2004. According to
18 S B., the 2004 journal entry was written soon after Defendant raped her. The entry
19 reads in pertinent part "[G]ot molested and raped by my own cousen (sic). Wonder if
20 I'm pregnut (sic)."

21 //

22
23 ST v BARTON /
Affidavit in Support of Bail and Conditions

1 **III. Conclusion**

2 The nature and circumstances of the charged offense as well as the history and
3 characteristics of Defendant establish that Defendant has a propensity to commit acts
4 of sexual violence and his release would endanger the community. Additionally, given
5 his failure to follow the rules as required by DOC he is a significant risk of non-
6 appearance Defendant is an unrepentant and untreated sex offender Only bail in
7 the requested amount can assure the safety of the community and assure Defendant's
8 appearance.

9 Should Defendant post bond, the State requests the following conditions of
10 release: no contact with G.R., S B , R T.; no possession of firearms; no possession of
11 drugs or alcohol, no contact with minors, register as required by law; and commit no
12 new law violations

13 I certify (or declare) under penalty of perjury under the laws of the State of
14 Washington that the foregoing is true and correct to the best of my knowledge

15 

16 Adam W Cornell, WSBA #32206
17 Deputy Prosecuting Attorney

18 DATED this 13th day of August, 2012, at the Snohomish County Prosecuting
19 Attorney's Office in Everett, Snohomish County, Washington.

20
21
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23 ST v. BARTON /
Affidavit in Support of Bail and Conditions

FILED

2012 AUG 14 PM 4: 16

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WA 981



CL15791497

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

No. 12-1-01772-1

v.

ORDER SETTING

BARTON, PETER RICHARD

TRIAL DATE

(INITIAL)

Defendant.

(Clerk's Action Required)

1. An omnibus hearing is set for ~~082812~~ 090812 at 10:30 a.m.

2. Trial is set for 092812 at 1:00 p.m.

3. The last allowable date for trial pursuant to CrR 3.3 is 101512
(80) or 80 days after the date specified above].

4. Trial and all hearings will be held in the Criminal Hearings Department, Room 304.

5. For purposes of computing the allowable time for trial under CrR 3.3, the commencement date is the date of this order OR the following date: _____
If a date other than the date of this order has been specified, that date is:

the date of actual arraignment.

the date on which arraignment should have occurred pursuant to CrR 4.1(a).

the date specified in the defendant's waiver of rights under CrR 3.3.

The defendant has objected to the date of arraignment, and the court is unable at this time to determine the validity of the objection. A hearing to establish the proper date of arraignment is set for _____

The defendant shall file a brief by _____ The prosecutor shall file a responsive brief by _____

8

If the defendant objects to the arraignment date set out above on the ground that it is not within the time limits prescribed by CrR 4.1(a), the defendant must state the objection to the court at this time. If the defendant does not object, he or she will lose the right to object to the arraignment date

If the defendant objects to the trial date on the ground that it is not within the time limits proscribed by CrR 3.3, the defendant must, within 10 days from today, move that the court set a trial within those time limits. The defendant must also promptly note that motion for hearing in accordance with local procedures. If the defendant fails to do this, he or she will lose the right to object that a trial commenced on that date is not within the time limits prescribed by CrR 3.3.

THE DEFENDANT MUST APPEAR FOR TRIAL AND FOR ALL SCHEDULED HEARINGS. FAILURE TO APPEAR MAY RESULT IN ISSUANCE OF AN ARREST WARRANT, FORFEITURE OF BAIL, AND CRIMINAL PROSECUTION FOR BAIL JUMPING.

DONE IN OPEN COURT this 13 day of August, 2012.



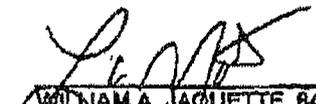
Judge

Presented by:

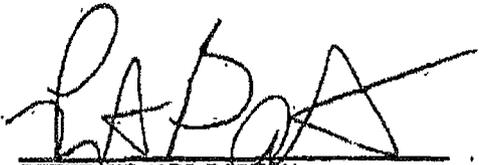


ADAM W. CORNELL, 32208
Deputy Prosecuting Attorney

Approved for entry; copy received.



WILLIAM A. JAQUETTE, 8480
Attorney for Defendant



PETER RICHARD BARTON
Defendant

Defendant's Address:
Same as in last Order of Release/Detention

New Address:



FILED

2012 OCT -5 PM 1:14

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON,

Plaintiff,

v.

Peter R. Barton

Defendant.

No. 12-1-01772 - 1

AGREED TRIAL CONTINUANCE
(Clerk's Action Required)

1. On the agreement of the prosecutor and the defendant, trial is hereby continued to the following date:
1/25/13 at 1:00 p.m. in C304.

2. The following hearings are set in the Courtroom 304:

- Omnibus Hearing 11/30/12 at 10:30 a.m.
Sat for Thursday or Friday
- Omnibus / Plea Hearing _____ at [] 8:45 a.m.
- Sentencing Hearing _____ at [] 10:30 a.m.
Sat for Wednesday In-Custody 8:45 a.m. Out-of-Custody 10:30 a.m.
- Plea [] Sentencing Hearing _____ at 3:00 p.m.
Monday - Friday
- 3.5 Hearing [] 3.6 Hearing _____ at 8:45 a.m.
Sat for Thursday or Friday
- Arraignment on Amended Info _____ at 8:45 a.m.
Sat for Thursday or Friday

3. Prior to entry of this order, trial was scheduled for 11/16/12. The period between that date and the new trial date specified above shall be an excluded period in computing the allowable time for trial. CrR 3.3(e)(3).

4. The last allowable date for trial pursuant to CrR 3.3 is 2/25/13. [The expiration date is the later of (a) 30 days after the trial date specified above or (b) 60/90 days after the commencement date, plus any excluded periods.]

THIS ORDER IS VALID ONLY IF PERSONALLY SIGNED BY THE DEFENDANT. IF THE DEFENDANT CHOOSES NOT TO SIGN, OR IS UNABLE TO SIGN, A CONTINUANCE MAY ONLY BE GRANTED PURSUANT TO CrR 3.3(f)(2).

25

THE DEFENDANT MUST APPEAR FOR TRIAL AND FOR ALL SCHEDULED HEARINGS. FAILURE TO APPEAR MAY RESULT IN ISSUANCE OF AN ARREST WARRANT, FORFEITURE OF BAIL, AND CRIMINAL PROSECUTION FOR BAIL JUMPING.

THE DEFENDANT SHALL MEET WITH HIS/HER ATTORNEY PRIOR TO THE OMNIBUS HEARING SET FORTH IN SECTION (1). FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE REVOCATION OF BAIL AND/OR PERSONAL RECOGNIZANCE PREVIOUSLY ORDERED IN THIS CAUSE.

DONE IN OPEN COURT this 5 day of October, 2012.

[Signature]
Judge
George S.B. Appel

Presented by:

[Signature]
Deputy Prosecuting Attorney #32208

Approved for entry, copy received.

[Signature]
Attorney for Defendant #36902

[Signature]
Defendant

Defendant's Address:
Same as in last Order of Release/Detention

New Address:

FILED

2012 SEP -6 AM 8:59

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WA S



SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

BARTON, PETER RICHARD

Defendant.

No. 12-1-01772-1

AGREED TRIAL CONTINUANCE
(Clerk's Action Required)

1. On the agreement of the prosecutor and the defendant, trial is hereby continued to the following date:
November 16, 2012, at 1:00 p.m. in C304.

2. The following hearings are set in the Courtroom 304:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Omnibus Hearing | <u>October 4, 2012</u> | at 10:30 a.m. |
| | <i>Set for Thursday or Friday</i> | |
| <input type="checkbox"/> Omnibus / Plea Hearing | | at <input type="checkbox"/> 8:45 a.m. |
| <input type="checkbox"/> Sentencing Hearing | | at <input type="checkbox"/> 10:30 a.m. |
| | <i>Set for Wednesday In-Custody 8:45 a.m. Out-of-Custody 10:30 a.m.</i> | |
| <input type="checkbox"/> Plea <input type="checkbox"/> Sentencing Hearing | | at 3:00 p.m. |
| | <i>Monday - Friday</i> | |
| <input type="checkbox"/> 3.5 Hearing <input type="checkbox"/> 3.8 Hearing | | at 8:45 a.m. |
| | <i>Set for Thursday or Friday</i> | |
| <input type="checkbox"/> Arraignment on Amended Info | | at 8:45 a.m. |
| | <i>Set for Thursday or Friday</i> | |

3. Prior to entry of this order, trial was scheduled for SEPTEMBER 28, 2012. The period between that date and the new trial date specified above shall be an excluded period in computing the allowable time for trial. CrR 3.3(e)(3).

4. The last allowable date for trial pursuant to CrR 3.3 is December 19, 2012. [The expiration date is the later of (a) 30 days after the trial date specified above or (b) 60/90 days after the commencement date, plus any excluded periods.]

17

THIS ORDER IS VALID ONLY IF PERSONALLY SIGNED BY THE DEFENDANT. IF THE DEFENDANT CHOOSES NOT TO SIGN, OR IS UNABLE TO SIGN, A CONTINUANCE MAY ONLY BE GRANTED PURSUANT TO CrR 3.3(f)(2).

THE DEFENDANT MUST APPEAR FOR TRIAL AND FOR ALL SCHEDULED HEARINGS. FAILURE TO APPEAR MAY RESULT IN ISSUANCE OF AN ARREST WARRANT, FORFEITURE OF BAIL, AND CRIMINAL PROSECUTION FOR BAIL JUMPING.

THE DEFENDANT SHALL MEET WITH HIS/HER ATTORNEY PRIOR TO THE OMNIBUS HEARING SET FORTH IN SECTION (1). FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE REVOCATION OF BAIL AND/OR PERSONAL RECOGNIZANCE PREVIOUSLY ORDERED IN THIS CAUSE.

DONE IN OPEN COURT this 6th day of September, 2012.

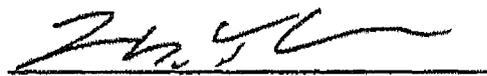


Judge
David A. Kurtz

Presented by:


ADAM W. CORNELL, 32208
Deputy Prosecuting Attorney

Approved for entry, copy received.



LINDA W. COBURN, 36902
Attorney for Defendant



PETER RICHARD BARTON
Defendant

Defendant's Address:
Same as in last Order of Release/Detention

New Address:

CASE#: 12-1-01772-1 JUDGMENT# NO
TITLE: STATE OF WASHINGTON VS BARTON, PETER RICHARD
FILED: 08/13/2012 APPEAL FROM LOWER COURT? NO

**CERTIFIED
COPY**

RESOLUTION: DATE:
COMPLETION: DATE:
CASE STATUS: STY DATE: 11/16/2012 ON DISCRETIONARY REVIEW/STAY
ARCHIVED:
CONSOLIDT:
NOTE1:*PROTECTIVE ORDER #21
NOTE2:TRIAL 1/25/2013

----- PARTIES -----

CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	ARRAIGNED
PLA01	STATE OF WASHINGTON		
DEFO1	BARTON, PETER RICHARD		
AKA	BARTON, PETER RICHARD		
ATPO1	CDRNELL, ADAM		
BAR#	32206		
ATDO1	COBURN, LINDA WY		
BAR#	36902		

----- SENTENCE INFORMATION -----

DEFO1 BARTON, PETER RICHARD

DEF. RESOLUTION CODE: DATE:
TRIAL JUDGE:
SENTENCE DATE : SENTENCED BY
SENTENCING DEFERRED : NO APPEALED TO : DATE APPEALED :

PRISON SERVED.....	
PRISON SUSPENDED.....	FINE.....\$
JAIL SERVED.....	RESTITUTION.....\$
JAIL SUSPENDED.....	COURT COSTS.....\$
PROB/COMM. SUPERVISION.....	ATTORNEY FEES.....\$
	DUE DATE : PAID : NO

----- CHARGE INFORMATION -----

DEFO1 BARTON, PETER RICHARD

RS CNT	RCW/CODE	CHARGE DESCRIPTION	DV INFO/VIOL.	RESULT
			---DATE---	---DATE---
		INFORMATION	08/13/2012	
1	9A.44.073	RAPE OF A CHILD 1ST DEGREE	N 07/01/2012	
901	NOTEPCN	465827751		

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
-	08/13/2012	*CA	COSTS ASSESSED	200.00
1	08/13/2012	INFO	INFORMATION	
		ATP01	CORNELL, ADAM	
2	08/13/2012	ADPC	AFFIDAVIT/DECLARATION PROB CAUSE	
3	08/13/2012	OMAPA	OMNIBUS APPLICATION OF PROS ATTY	
4	08/13/2012	AF	AFFIDAVIT OF DPA	
5	08/13/2012	NT	NOTICE OF INTENT TO PROCDUCE TESTIMONY	
6	08/13/2012	ORDT	ORDER OF DETENTION	
-	08/13/2012	ORSTB	ORDER SETTING BAIL (\$250,000)	
-	08/13/2012	ORNC	NO CONTACT ORDER	
		JDG23	JUDGE ERIC Z. LUCAS	
-	08/13/2012	EXWACT	EX-PARTE ACTION WITH ORDER	
7	08/14/2012	ARRAIGN	INITIAL ARRAIGNMENT	
			BAIL HEARING 08/15/12 0304 1PM	
		JDG23	JUDGE ERIC Z. LUCAS	
8	08/14/2012	ORSTD	ORDER SETTING TRIAL DATE	09-28-2012JT
		ACTION	STIP CONT 11/16/2012	
-	08/14/2012	ORSOH	ORDER SETTING OMNIBUS HEARING	09-06-20129
		ACTION	OMNIBUS HEARING	
9	08/14/2012	ORSXP	ORDER FOR SEXUAL ASSAULT PROTECTION	
10	08/14/2012	RPT	REPORT /OPD/PTS INTERVIEW WORKSHEET	
11	08/15/2012	MTHRG	MOTION HEARING	
		JDG23	JUDGE ERIC Z. LUCAS	
12	08/15/2012	ORDT	ORDER OF DETENTION	
-	08/15/2012	ORSTB	ORDER SETTING BAIL (\$500,000)	
			10% MUST BE POSTED IN CASH	
-	08/15/2012	ORNC	NO CONTACT ORDER	
13	08/15/2012	NTARD	NOT OF APPEAR AND REQ FOR DISCOVERY	
		ATD01	COBURN, LINDA WY	
14	08/22/2012	MT	MOTION TO STRIKE CASH ONLY PROVISION ON ORDER OF DETENTION	
15	09/05/2012	MM	STATE'S MEMORANDUM IN RESPONSE TO DFDT'S MOTION TO STRIKE CASH BAIL ONLY PROVISION	
16	09/06/2012	MTHRG	MOTION HEARING	10-04-20129
		ACTION	OMNIBUS HEARING	
		JDG24	JUDGE DAVID A. KURTZ	
17	09/06/2012	AGTC	AGREED TRIAL CONTINUANCE	11-16-2012JT
		ACTION	STIP CONT 1/25/2013	
18	09/07/2012	MTHRG	MOTION HEARING	
			BAIL REVIEW HRG: DFDT'S MT TO STRIKE CASH ONLY PROVISION ON ORDER ON DETENTION; RESERVED; CRT WILL ALLOW PARTIES TO SUBMIT FURTHER BRIEFING	
		JDG23	JUDGE ERIC Z. LUCAS	
19	09/07/2012	RSP	DEFENSE RESPONSE TO STATE'S BRIEF ON TERMS OF BAIL	
20	09/25/2012	SBDT	SUBPOENA DUCES TECUM	
-	09/25/2012	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE BY EMAIL	
21	09/26/2012	PORD	AGREED PROTECTIVE ORDER REGARDING	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
			IMAGE/AUDIO EVIDENCE VIA DVD RECORDING	
		JDG25	JUDGE BRUCE I. WEISS	
-	09/26/2012	EXWACT	EX-PARTE ACTION WITH ORDER	
-	09/28/2012	TCNTSTP	TRIAL CONTINUED: STIPULATED	
22	09/28/2012	BR	SUPPLEMENTAL BRIEF REGARDING HARMONIZING CONSTITUTIONAL PROTECTIONS AND THE COURT RULE ON CONDITIONS OF BAIL	
23	10/04/2012	MTHRG	MOTION HEARING	
		JDG26	JUDGE GEORGE APPEL	
-	10/04/2012	HCNTPA	CONTINUED: PLAINTIFF/PROS REQUESTED	10-05-20129
		ACTION	OMNIBUS HEARING	
24	10/05/2012	MTHRG	MOTION HEARING	11-30-20129
		ACTION	OMNIBUS HEARING	
		JDG26	JUDGE GEORGE APPEL	
25	10/05/2012	AGTC	AGREED TRIAL CONTINUANCE	01-25-2013JT
26	10/05/2012	MM	STATE'S SUPPLEMENTAL MEMORANDUM IN RESPONSE TO MOTION TO STRIKE CASH ONLY BAIL PROVISION	
27	10/18/2012	MTHRG	MOTION HEARING DFDT'S MT TO STRIKE PROVISION IN THE BOND THAT REQUIRES 10% CASH BAIL TO BE POSTED FOR RELEASE: DENIED	
		JDG23	JUDGE ERIC Z. LUCAS	
28	10/18/2012	ORMD	ORDER MODIFYING SECTION 1.1 OF ORDER OF RELEASE; DFDT TO EXECUTE \$500,000 BOND AND DEPOSIT INTO THE COURT REGISTRY \$50,000 CASH OR OTHER SECURITY (SUCH DEPOSIT TO BE RETURNED UPON PERFORMANCE OF CONDITIONS OF RELEASE OF FORFEITED FOR VIOLATION OF ANY CONDITION)	
29	11/16/2012	NTDRCA	NT OF DISCR. REVIEW TO CT OF APPEAL	
-	11/16/2012	TCNTSTP	TRIAL CONTINUED: STIPULATED	
30	11/19/2012	MTAF	MOTION AND AFFIDAVIT/DECLARATION	
31	11/19/2012	ORPRFP	ORDER TO PROCEED IN FORMA PAUPERIS	
-	11/19/2012	ORARC	ORDER AUTHOR REMOVAL OF COURT FILE	
		JDG22	JUDGE MICHAEL T DOWNES	
-	11/19/2012	EXWACT	EX-PARTE ACTION WITH ORDER	
32	11/20/2012	TRLC	TRANSMITTAL LETTER - COPY FILED	
33	11/30/2012	MTHRG	MOTION HEARING	
		JDG19	JUDGE ELLEN J. FAIR	
34	11/30/2012	ORSOH	ORDER RE-SETTING OMNIBUS HEARING	12-14-20129
		ACTION	OMNIBUS HEARING	
35	12/14/2012	MTHRG	MOTION HEARING	
		JDG29	JUDGE JANICE E. ELLIS	
36	12/14/2012	ORSOH	ORDER RE-SETTING OMNIBUS HEARING	01-18-20139
		ACTION	OMNIBUS HEARING	
37	12/17/2012	NT	NOTICE OF FEES PAID	
-	12/17/2012	\$AFF	APPELLATE FILING FEE	290.00
38	12/18/2012	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
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-----END-----

APPENDIX A TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)

REGISTERED SEX OFFENDER

DATE: January 9, 2013 (dhw/gp)
 DEFENDANT: **BARTON, Peter Richard**
 DOB: 11/15/80 M/B
 SID: WA19487703 FBI: 98486NB7 DOC: 828081
 DNA TAKEN: Yes

<u>CRIME</u>	<u>DATE OF CONVICTION</u>	<u>PLACE OF CONVICTION</u>	<u>Incarceration/Probation DISPOSITION</u>
ADULT FELONIES:			
Second Degree Assault With Deadly Weapon and Sexual Motivation (B)	9/18/01	Snohomish County 01-1-01160-4	54 Mos. Confinement (inc enhancement) 36-48 Mos Comm. Custody 1/5/05 Released
Failure to Register (C)	3/6/08	Snohomish County 08-1-00381-1	30 Days Confinement 12 Mos. Comm Custody
Failure to Register (C)	1/30/09	Snohomish County 08-1-03010-0	14 Mos. Confinement 36-48 Mos. Comm Custody 12/14/09 Released
VUCSA – Possession (C) (Methamphetamine)	8/3/10	Snohomish County 10-1-00737-1	18 Mos. Confinement 12 Mos. Comm Custody

ADULT MISDEMEANORS:

1. Possess Liquor by Minor	12/18/98	Snohomish County
2. Disorderly Conduct	2/20/99	Snohomish County
3. No Valid/Expired License	9/5/00	Snohomish County
4. Possess Liquor by Minor	11/20/00	Snohomish County
5. First Degree Criminal Trespass	7/10/07	Snohomish County
6. Fourth Degree Assault - DV	10/12/08	Yakima County

JUVENILE FELONIES:

None

JUVENILE MISDEMEANORS:

None

!Date of Conviction reflects the sentencing date on felonies & offense date on misdemeanors.

APPENDIX G

BARTON, Peter Richard

AFFIDAVIT BY CERTIFICATION

I am a legal specialist employed by the Snohomish County Prosecutor's Office, and make this affidavit in that capacity. I have reviewed the following databases maintained by federal and state agencies to determine the above named defendant's criminal history: NCIC (maintained by the FBI), WWCIC (Washington State Patrol Criminal History Section), JIS (Judicial Information System), Washington State Department of Licensing, [] Washington State Department of Corrections. A review of those sources indicates the defendant's criminal history is as listed above.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


LEGAL SPECIALIST

DATED this 10 day of Jan, 2013, at the Snohomish County Prosecutor's Office

Sanders, Laurie

From: Kremenich, Diane [Diane.Kremenich@co.snohomish.wa.us]
Sent: Friday, January 11, 2013 2:07 PM
To: Johnson, Rich; Sanders, Laurie; 'jeffcoopersmith@wt.com'; 'anthonywisen@dwt.com'
Cc: Kathleen Kyle; Webber, Kathy
Subject: State v. Peter R. Barton
Attachments: SKMBT_60113011114420.pdf

Good Afternoon...

RE: State v. Peter R. Barton
Motion for Expedited Discretionary Review
Court of Appeals No. 69630-1-I
Hearing Date: January 25th @ 9:30 a.m.

Attached is the state's Answer to Motion for Discretionary Review.

Please let me know if anyone has trouble opening the attachment.

Thanks.

Diane.

Diane K. Kremenich
 Snohomish County Prosecuting Attorney - Criminal Division
Legal Assistant/Appellate Unit
Admin East, 7th Floor
(425) 388-3501
Diane.Kremenich@snoco.org

CONFIDENTIALITY STATEMENT

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