Supreme Court No. _____
COA No. 38958-8-III



THE SUPREME COURT OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON,

Respondent,

v.

JUAN CARLOS NAVARRO,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KLICKITAT COUNTY

---

# PETITION FOR REVIEW

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## A. IDENTITY OF PETITIONER AND DECISION BELOW

Under RAP 13.4, Appellant Juan Carlos Navarro asks for review of the October 3, 2023 opinion of the Court of Appeals. (attached as Appendix).

## B. ISSUE PRESENTED FOR REVIEW

For persons in custody, CrR 3.3 requires that trial is held within 60 days. To protect the accused's speedy trial rights, CrR 3.3 is strictly enforced. Where the rule is violated, dismissal is required, even where there is no showing of prejudice.

The court granted the prosecution's oral requests continuances beyond the 60 day trial period, over Mr. Navarro's oral objections. For instance, at a status hearing the State came to court and orally requested for continuance to accommodate a State witness's vacation and to allow another to attend training. Mr. Navarro vehemently objected. The Court accepted the

oral motion, and made no inquiry or findings about whether the vacation or the training could be postponed. The trial court postponed trial. On several occasions, it orally apprised Mr. Navarro of its decision on the eve of trial that trial was postponed or reset. The Court of Appeal holds that it cannot review any violation of the time-for-trial rule because Mr. Navarro's objection to ad-hoc oral motions was not in writing. Is review warranted to correct the Court of Appeals' opinion that under CrR 3.3 a defendant's comtemporaneous objections, to oral motions during the hearing must be in writing or the issue is waived for appeal? RAP 13.4(b)(1),(2)(4).

## C. STATEMENT OF THE CASE

The State charged Mr. Navarro with first degree unlawful possession of a firearm. CP 90. Mr. Navarro was arraigned on November 1, 2021, the day following

his arrest. RP 6. He has remained in custody ever since because he could not post bond on the $20,000 bail.

Following a jury trial, three months later, the jury deliberated for almost two hours, it deadlocked, and could not return a unanimous verdict. RP 193. The trial court declared a mistrial on February 9. RP 200.

The court set a new trial date for April 6, which was 56 days after it declared mistrial. RP 205. This was 4 days before the time for trial expired.

*1. The State orally moves for a continuance. The trial court grants it without requiring any justification why the witnesses were unavailable.*

Mr. Navarro's attorney did not have the prescience to predict the State would orally move for a continuance at their status hearing on March 21. He did not prepare a pre-emptive written motion to object. At the March 21 status hearing, the State orally requested: "The current trial date is 4-6. We're going to

be asking for a continuance to the next trial calendar," until April 20. RP 206. The request was oral only; the State did not file a written motion to continue. *Id.*

The State offered two reasons for a continuance: First, one officer had a scheduled a vacation between April 4 and April 10. RP 206. Second, another police witness was scheduled for a "preapproved" training during the same period. RP 206.

Mr. Navarro objected and opposed the continuance as violating his right to a speedy trial. RP 207.

The court acknowledged that April 20 was ten days past the speedy trial date. RP 209. Nonetheless, it granted the continuance, ruling that continuing trial was "necessary in the administration of justice" and an additional two weeks would not prejudice Mr. Navarro's presentation of his defense. RP 209.

*2. The trial court grants yet another continuance because defense counsel who was vaccinated and fully boosted was exposed to Covid-19.*

Mr. Navarro's counsel did not have the prescience to predict his son would test positive for Covid-19. The day before trial on April 19, Mr. Navarro's attorney apprised the court he had dinner with his son the previous evening, and in the morning his son tested positive for Covid-19. RP 215. Counsel explained he had received necessary vaccinations and a booster within the last 60-days and tested negative that morning. RP 218. He had no symptoms and did not foresee he would be ill the next day and wished to proceed with the trial with any precautions the court may deem necessary, including N-95 masks and distancing. RP 217.

Though neither party requested an extension, the court continued the trial for over two weeks for the defense counsel to wait five days and then verify his negative status for Covid-19 before trial could resume. RP 220.

*3. The Court on its own resets the trial date to try another case first.*

Mr. Navarro's counsel did not have the prescience to predict the trial court was planning to reset the trial date on its own motion. He did not prepare a pre-emptive written motion to object.

On May 4, the parties were in court ready for trial, but the court said it was continuing trial for yet another month because it was going to hold another defendant's trial first. RP 225-26. It explained the period from April 20 to May 4 was an "excluded period of time" under CrR(b)(5). RP 225. The court calculated that the allowable time for trial did not expire until 30

days after the May 4 trial date, which was June 3. RP 225. The trial court indicated it would reset trial for May 18. RP 225-26.

The trial court reasoned it was not making a finding that this was a "continuance" or calling it that, but it was just "resetting within the speedy trial time." RP 225-26. It indicated it would try the other case first because the defendant in the other case was arraigned March 7 and had just two days left on his speedy trial time. RP 226. Yet Mr. Navarro was arraigned November 1 of the previous year.

Mr. Navarro objected that further continuing trial violated his right to a speedy trial as he had remained in custody without trial since October 2021: "Mr. Navarro's liberty has been greatly infringed upon over the past number of months." RP 226. In the

alternative, he asked for the trial court to reduce bail. *Id.*

The trial commenced on May 18. RP 236. Following trial, the jury found Mr. Navarro guilty as charged. RP 411.

*4. The Court of Appeals concludes that oral objections to an unanticipated oral request for continuance or the trial court's unanticipated, sua sponte vacature of trial dates does not preserve a time-for-trial issue for appeal.*

On appeal, Navarro argued that multiple continuances and resetting of trial dates violated the time-for-trial rule. The State countered Mr. Navarro's oral objections were insufficient to preserve the issue for appeal because CrR 3.3 requires any objection be in writing. Br. of Resp. at 2-4. The Court of Appeals agreed with the State and deemed the issue not preserved for appeal. App. 4. It reasoned that a CrR 3.3

motion must be "noted" for a hearing and "noted" means made in writing. App. 5.

Mr. Navarro seeks review of the Court of Appeals' novel interpretation of CrR 3.3. RAP 13.4.

## D. ARGUMENT

The State came to court at a status hearing without a written motion and orally requested a continuance. This prompted Mr. Navarro to vehemently object during that status hearing. The court rejected his protestations and moved the trial date. Then, on two separate occasions, the trial court told Mr. Navarro it had decided on its own to continue or reset the trial date. It did not first consult Mr. Navarro. It did not give him any sort of written prior notice before these hearings of its intent to continue or reset the trial dates.

Neither Mr. Navarro nor his attorney had the prescience to predict that the State would make a last-minute oral request to continue trial. Neither Mr. Navarro nor his attorney had the prescience to know the trial court would on its own reset the trial date without a written notice to them.

The Court of Appeals' opinion unfairly faults Mr. Navarro for not pre-empting with a written motion the State's ad-hoc, eleventh hour, oral motion for a continuance. It faults Mr. Navarro for not having the prescience to predict the Court would on its own reset the trial date in violation of the time for trial rules. It is absurd to require a defendant to wait to object to the State's ad-hoc oral requests in writing after the court has ruled orally on the issue. This Court should accept review because the Court of Appeals unfairly wields

the preservation rule to deny a meritorious CrR 3.3 claim.

## I. The Court should accept review to correct the absurd Court of Appeals' opinion that Mr. Navarro waived his speedy trial rights by objecting orally to unanticipated oral CrR 3.3 motions by the prosecution and the trial court.

A charge not brought to trial within the time limit determined under [CrR 3.3] shall be dismissed with prejudice." CrR 3.3(h).

If at any point before time for trial period expires defense counsel becomes aware that trial date has been set in violation of time for trial rules, defense counsel has duty as officer of court to so advise court. CrR. 3.3. The rule requires an objecting party to make the required motion within 10 days of notice of the trial date, or waive it. CrR 3.3(d)(3); *State v. Walker*, 199 Wn.2d 796, 801–02, 513 P.3d 111 (2022).

The trial court bears the ultimate responsibility for ensuring that the accused receives a speedy trial. *State v. Chavez-Romero*,170 Wn. App. 568, 583, 285

P.3d 195 (2012) CrR 3.3(a)(1) ("It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime."). Defense counsel does bear some responsibility to assert the client's speedy trial rights and to assure compliance before the time for trial period expires. *State v. Walker*, 17 Wn. App. 2d 275, 284-85, 485 P.3d 970, *review granted,* 198 Wn.2d 1001, 493 P.3d 730 (2021), and *aff'd on other grounds,* 199 Wash. 2d 796, 513 P.3d 111 (2022). If at any point before the time for trial period expires defense counsel becomes aware that the trial date has been set in violation of time for trial rules, defense counsel has a duty as an officer of the court to so advise the court. *Id.* at 285.

Here, Mr. Navarro met his burden to object, yet the courts wrongly disregarded his objections and violated his right to a speedy trial.

*1. Under the plain language of CrR 3.3 an objection need not be in writing. It can be made orally.*

The principal burden on the defense is to lodge a timely objection. Mr. Navarro did so.

During the nearly three months that Mr. Navarro awaited the retrial, the trial court extended his trial date for various continuances under CrR 3.3(f). The original commencement date was February 9, the date of mistrial. CrR 3.3(c)(2)(iii);RP 200. The court set a new trial date for April 6, 2022 and determined it was within 60 days of when the speedy trial period expired. RP 205. After April 6, the trial court entered multiple continuances—to April 20, to May 4, and finally to May

18—without proper justification. Mr. Navarro was finally brought to trial on May 18.

Mr. Navarro contemporaneously objected to the untimely proposed trial dates at the respective motion hearings where the prosecution and the trial court proposed those dates for the first time. It bears repeating these were ad-hoc motions by the State and the trial court. Mr. Navarro scarcely had time to interpose an oral objection when the trial court ruled orally that the trial date was vacated and there was a new trial date.

Absurdly, the State and the Court of Appeals believe Mr. Navarro's oral objections at the hearings did not suffice; they believe any objection under CrR 3.3, must be in writing. This is not correct.

Under the plain language of the speedy trial rule, Mr. Navarro's oral objections were timely. *See* CrR

3.3(d)(3) ("A party who objects to the trial date set upon the ground that it is not within the time limits prescribed this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits."). The plain language does not say "written" anywhere.

The Court of Appeals' opinion conflicts with the plain language of the speedy trial rule. This Court should grant review and reverse. RAP 13.4(b)(1), (2), (4).

*2. The Court of Appeals' interpretation is strained and leads to absurd results.*

The Court of Appeals believes Mr. Navarro did not follow the specific steps required to preserve the issue.

Specifically under CrR 3.3(d)(3):

> [a] party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within

> 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly *noted* for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

CrR 3.3(d)(3) (emphasis added).

A close examination reveals that the "moving party" who makes a motion under CrR 3.3 must promptly note the motion for hearing. But here, curiously the State moved orally for a continuance. At the beginning of the status hearing, the prosecution argued their witnesses were not available and requested a continuance. This CrR 3.3 motion was not in writing. Mr. Navarro merely objected in the same form as did the moving party—he objected orally to an oral motion. The Court of Appeals overlooks that to the

extent there is a writing requirement in the rule, it was the State that violated this requirement.

The Court of Appeals' interpretation of CrR 3.3(d)(3) leads to strained and absurd results. *See Walker*, 199 Wn.2d at 808. It was the State that at the eleventh hour moved orally at a status hearing to continue trial, claiming it had just learned some witnesses would be unavailable. Mr. Navarro interposed an oral objection and the court promptly ruled against him orally.

Similarly, at a later date the trial court again told Mr. Navarro it was continuing trial because of a collateral positive covid test, even though the defense counsel was fully-vaccinated and boosted, and no party was asking for a continuance. And following that continuance, the trial court again reset the trial date to try another case. Even before Mr. Navarro could finish

his oral objection the court had ruled on its own motion and the trial date was changed.

To conclude that objecting orally to oral motions waives the issue for appeal is an absurd result. It is axiomatic that judges have discretion to consider oral motions, including a request for release so as to avoid a speedy trial violation. *State v. Maling*, 6 Wn. App. 2d 838, 843, 431 P.3d 499. (2018).

In *Maling,* the prosecution was alerted that Maling's 60-day in-custody deadline was within hours of expiring. *Id.* at 840. The prosecution then added Maling's case to the court's afternoon docket for a hearing. Maling's counsel happened to be present at the courthouse that afternoon on another matter and appeared in court with Maling for the hearing. During the hearing, the State requested that the court either continue the trial schedule or, alternatively, release

Maling. *Id.* at 841. Over Maling's objection, the trial court granted the State's motion, and Maling's speedy trial deadline was extended by an additional 30 days. *Id.* at 840.

On appeal, Maling argued the trial court's release order was invalid because it was not preceded by a written motion before the court hearing. *Id.* at 840–41. The Court of Appeals affirmed Maling's conviction and held that the trial court holds the responsibility for ensuring compliance with speedy trial rules and its ability to meet this obligation is not ***hindered*** by the technical requirements for motion practice applicable to litigants. *Id.* at 841.

Here, like *Maling*, if *arguendo*, the trial court had authority to consider the prosecution's oral motions, and make its own oral motions, without written motions, it is absurd for the Court of Appeals to hold

that Mr. Navarro motion should have preceded the prosecution and the judge's sua sponte oral motions with a preemptive written motion. *Maling*, 6 Wn. App. 2d at 843.

The Court of Appeals held that "[a] motion for the court to set trial within the time prescribed by CrR 3.3 must be made in writing." App. 7 (citing *Chavez-Romero*, 170 Wn. App. at 581).

CrR 3.3(f)(2) captioned "**Motion by the Court or a Party**" states:

> On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. The motion must be made before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

Ostensibly, the State and the Court moved for a continuance under CrR3.3(f)(2). Neither the State's motion for continuance, nor the Court's motion were in writing. Again, the State was not held to the technical requirement to request a continuance by a written motion before the court hearing. *Id.* The trial court did not give Mr. Navarro written motion ahead of time indicating that it would continue the trial or re-set the trial date so he can make a written objection before the hearing. Yet the Court of Appeals absurdly declares that the requirement of a writing is "near explicit" in the rule itself by requiring that the motion be "noted" for hearing. Either the prosecution's motion and the trial court's motions should have been in writing triggering Mr. Navarro's obligation to file a written motion. The CrR 3.3(f) does not specify the form of the

motion—oral or written. In any case,[1] if it is perfectly ok for the prosecution, or the Court to move orally under the rule, it is patently unfair and unjust to require only the objection be in writing.

The Court of Appeals conveniently ignores that the trial court did not require the prosecution, nor itself, to make their CrR 3.3 motions in writing before the hearing where the court ruled on the continuances.

Additionally, the opinion does not cite any authority, any precedent why "noted for hearing" means the opponent to an oral motion must tender his objection in writing, even though their oral argument was on the record and the trial court ruled by rejecting it.

---

[1] What's sauce for the goose is sauce for the gander

In short, this preservation rule is patently unfair as the trial court accepted and ruled on the prosecution's oral motion. By this rule, the prosecution and the court's motions violated CrR 3.3 by filing oral motions during the hearing, not before. It is absurd that those violations now insulate the issue from any appellate review. This Court should accept review to correct this absurdity.

*3. By the same logic, the opinion should have ruled in favor of Mr. Navarro because the State violated CrR 3.3's writing requirement by moving orally for a continuance on March 21.*

What's good for the goose is good for the gander. If we accept the logic that the "moving party" must make a motion in writing, then the State and the Court who moved to change the trial dates should have provided a written motion to comply with CrR 3.3.

Because they did not, the Court should now rule in favor of Mr. Navarro.

Again Mr. Navarro was not the moving party under CrR 3.3(d)(3). At the March 21 status hearing, Mr. Navarro did not have the prescience of knowing ahead of time that the prosecution would orally request a continuance. RP 206.

By this logic the trial court was required to rule in favor of Mr. Navarro because on March 21 it was the State that orally moved for a continuance despite the strict and technical time-for-trial rules. The absurdity is palpable. According to the opinion, the prosecution did not note the motion for a hearing. Mr. Navarro found himself already in a hearing discussing the motion orally, seconds before the court continued trial over his well-made objections. Clearly there is no need to note the motion for a hearing if you're already in a

hearing asserting your right to a speedy trial. Review should be granted to correct this warped logic and the inherent unfairness of the Court of Appeals' decision.

## II. The Court should also grant review to strike the victim penalty assessment and the DNA fees as it did in *Cone*.

Under former RCW 7.68.035(1)(a) (2018), the trial court was required to impose the $500 VPA on any person convicted of a crime. In 2023, the legislature passed Engrossed Substitute House Bill 1169, amending RCW 7.68.035 and prohibiting imposition of the $500 VPA on indigent defendants as defined in RCW 10.01.160(3). LAWS ●F 2023, ch. 449, § 1; RCW 7.68.035(4). This amendment took effect on July 1, 2023. LAWS ●F 2023, ch. 449.

The trial court found Mr. Navarro was indigent under RCW 10.01.160(3). RP 8, 439, 443. The trial

court imposed the $500 VPA, and $100 DNA fees. RP 439.

In addition, under former RCW 43.43.7541, the court was required to impose on any convicted person a $100 fee for the collection of DNA. Under the same amendment as the VPA, the Legislature eliminated the $100 fee. LAWS OF 2023, ch. 449, § 4. This amendment also took effect on July 1, 2023. LAWS OF 2023, ch. 449.

These amendments apply here because this case is on direct appeal. *State v. Ramirez*, 191 Wn.2d 732, 748-49, 426 P.3d 714 (2018). Mr. Navarro is "entitled to benefit from this statutory change." *Ramirez*, 191 Wn.2d at 749. This Court should strike the VPA and the DNA fee.

RAP 1.2(a) and (c) state that the Rules of Appellate Procedure will be liberally interpreted to

serve the goals of promoting justice and facilitating decisions of cases on the merits. Extraordinary circumstances and the ends of justice favor review of this issue based on the significant change in the law that occurred after the briefing was filed and the Court of Appeals considered this case. RAP 13.4(b)(4).

The purpose of these statutory changes is to reduce the barriers that obstruct indigent people from productively re-entering society after their convictions. *Ramirez*, 191 Wn.2d at 747. The Court should grant review to strike the VPA and the DNA fees as it did in *State v. Cone*, No. 102110-1, 2023 WL 6464105, at *1 (Wash. Oct. 4, 2023), in the interest of judicial economy and the interest of justice.

## E. CONCLUSION

The Court of Appeals unfairly wields the preservation rule to turn a blind eye to the violation of

Mr. Navarro's statutory speedy trial rights. The trial court accepted and ruled on the prosecution's oral motion. Severally, it also orally moved for a continuance and reset trial without any written notice to Mr. Navarro. By the opinion's logic, the prosecution and the court's motions violated CrR 3.3 by filing oral motions at beginning of the hearing. But their violation now insulates the issue from any appellate review. This Court should accept review to correct this patent absurdity by ordering the dismissal of the charge with prejudice. RAP 13.4(b)(1),(2)(4).

Alternatively, the Court should remand the case with instructions to strike the $500 VPA and $100 DNA fees based on the changes in the law. RAP 13.4(b)(4).

This brief complies with RAP 18.7 and contains 4,448 words.

DATED this 24th day of October 2023.

Respectfully submitted,

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Washington Appellate Project
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## APPENDICES

October 3, 2023 Court of Appeals
Decision……1-6

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

| | | |
|---|---|---|
| STATE OF WASHINGTON, | ) | No. 38958-8-III |
| | ) | |
| Respondent, | ) | |
| | ) | |
| v. | ) | UNPUBLISHED OPINION |
| | ) | |
| JUAN CARLOS NAVARRO, | ) | |
| | ) | |
| Appellant. | ) | |

LAWRENCE-BERREY, A.C.J. — Juan Carlos Navarro appeals his conviction for possession of a firearm in the first degree. He argues his conviction must be dismissed because the trial court, on three occasions, violated the time-for-trial rule, CrR 3.3. We disagree and affirm.

## FACTS

While on a routine late-night patrol, a law enforcement officer encountered Juan Carlos Navarro at a trailhead in his parked car. The officer saw a shotgun in the backseat of Mr. Navarro's car. After learning that Mr. Navarro was prohibited from owning a firearm due to a prior conviction and that he had outstanding warrants, the officer placed him under arrest.

The State charged Mr. Navarro with first degree unlawful possession of a firearm. He did not post bail and remained detained in jail throughout the court proceedings.

Mr. Navarro was arraigned on November 1, 2021. Trial commenced three months later, but the jury could not arrive at a unanimous verdict. The trial court declared a mistrial on February 9, 2022. Later that month, the court set a new trial date for April 6, 2022, the 56th day after it declared a mistrial.

*First continuance*

On March 21, the State moved for a continuance of the trial date to April 20 because of scheduling conflicts for two of its witnesses—one police officer had a scheduled vacation and another officer was scheduled to attend a preapproved training. Defense counsel objected to the continuance and argued it would violate Mr. Navarro's ruled-based right to a speedy trial. The trial court granted the State's motion and continued trial to April 20. The court made oral findings that the continuance was necessary to the administration of justice and that the defendant would not be prejudiced in the presentation of his defense.

*Second continuance*

On April 19, during a status conference the day before trial, defense counsel notified the trial court that he had dinner with his son the previous day and that his son

tested positive for COVID-19 the next morning. Defense counsel stated he took a rapid test that morning that came back negative, he was not experiencing symptoms, and he was vaccinated and boosted. Neither party moved for a continuance based on this information.

However, on its own motion, the trial court continued the trial to May 4 because of safety concerns for the trial's participants. The court made oral findings that an unavoidable or unforeseen circumstance affected the time of trial, it was necessary for the administration of justice to continue the trial, and the defendant would not be prejudiced in his defense. Although defense counsel stated he did not want a continuance and was willing to go forward with the April 20 trial date, he did not expressly object to the trial court's continuance.

*Resetting of trial date*

On May 4, both parties appeared for trial, but the trial court said it was resetting Mr. Navarro's trial to May 18. The court explained that the previous continuance from April 20 to May 4 was "an excluded period of time [under CrR 3.3(b)(5)]." Rep. of Proc. at 225. It calculated the speedy trial expiration date as June 3—30 days after May 4. The court said it had another case scheduled for May 4 and explained it could not reset that case because it had only two days remaining under the speedy trial rule. Defense counsel

did not object to the May 18 trial date but instead moved, successfully, to reduce Mr. Navarro's bail.

Trial began on May 18. The jury returned a guilty verdict. Mr. Navarro timely appealed.

ANALYSIS

Mr. Navarro contends the trial court violated the time-for-trial rule on three occasions. We conclude that he waived any objection by failing to note a motion to set the trial within the rule's time limits.

*Standard of review*

We review alleged violations of CrR 3.3 de novo. *State v. Walker*, 199 Wn.2d 796, 800, 513 P.3d 111 (2022).

*Washington's time-for-trial rule—CrR 3.3*

States can prescribe reasonable periods for commencement of trials consistent with constitutional standards. *Barker v. Wingo*, 407 U.S. 514, 523, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). Under Washington's time-for-trial rule, a defendant who is detained in jail must be brought to trial within 60 days of arraignment. CrR 3.3(b)(1)(i), (c)(1).

Under CrR 3.3(e), certain time periods are excluded when computing the time for trial. If any time period is excluded under CrR 3.3(e), the allowable time for trial does not expire earlier than 30 days after the end of the excluded period. CrR 3.3(b)(5).

If a defendant is not brought to trial within the applicable time period, the court must dismiss all charges with prejudice, provided the defendant takes specific steps to preserve the issue. CrR 3.3(d)(3), (h). Specifically,

> [a] party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly *noted* for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

CrR 3.3(d)(3) (emphasis added).

A motion for the court to set trial within the time prescribed by CrR 3.3 must be made in writing. *State v. Chavez-Romero*, 170 Wn. App. 568, 581, 285 P.3d 195 (2012). The requirement of a writing is near explicit in the rule itself by requiring that the motion be "noted" for hearing. The requirement that a motion be noted for hearing precludes an oral objection from being sufficient.

Here, Mr. Navarro never noted a motion with respect to any of the continued or reset trial dates he challenges on appeal. In accordance with CrR 3.3(d)(3), we deem his challenges as unpreserved.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, A.C.J.

WE CONCUR:

Pennell, J.

Cooney, J.

**DECLARATION OF FILING AND MAILING OR DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 38958-8-III**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent David Wall, DPA
[davidw@klickitatcounty.org]
Klickitat County Prosecutor's Office

☐ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: October 24, 2023
Washington Appellate Project

## WASHINGTON APPELLATE PROJECT

## October 24, 2023 - 4:44 PM

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| **Filed with Court:** | Court of Appeals Division III |
| **Appellate Court Case Number:** | 38958-8 |
| **Appellate Court Case Title:** | State of Washington v. Juan Carlos Navarro |
| **Superior Court Case Number:** | 21-1-00054-0 |

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