

NO. 43415-6-II

IN THE COURT OF APPEALS OF WASHINGTON  
DIVISION II

**STATE OF WASHINGTON**

Appellant,

vs.

**HELEN DEEDEE SHALE**

Respondent.

---

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
FOR JEFFERSON COUNTY  
Cause Number: 12-1-00069-2  
The Honorable Craddock Verser

---

**BRIEF OF APPELLANT**

---

SCOTT ROSEKRANS  
Jefferson County Prosecuting Attorney  
Attorney for Respondent

P.O. Box 1220  
Port Townsend, WA 98368  
(360) 385-9180

Date: October 3, 2012

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... iii

ASSIGNMENT OF ERROR..... 1

ISSUE PERTAINING TO ASSIGNMENT OF ERROR..... 1

STATEMENT OF THE CASE ..... 1

ARGUMENT.....4

CONCLUSION ..... 5

**TABLE OF AUTHORITIES**

	<u>Page</u>
<b>Rules</b>	
CrR 3.3(b).....	4

### **ASSIGNMENT OF ERROR**

1. The trial court erroneously determined that Ms. Shale's speedy trial period had expired.

### **ISSUE PERTAINING TO ASSIGNMENT OF ERROR**

The court improperly dismissed the case against Ms. Shale with prejudice as a result of its error in determining her speedy trial period had expired.

### **STATEMENT OF THE CASE**

Ms. Shale was arraigned in Jefferson County District Court on February 16, 2012, for Driving under the Influence. VRP 3. She was held on \$25,000 bail. VRP DC 6<sup>1</sup>.

On March 16, 2012, a hearing to set dates was held in District Court. The defense requested the court not set a trial date because they expected to resolve the charge with a plea. The court agreed and rescheduled the hearing for April 4, 2012. VRP DC 11-12.

---

<sup>1</sup> District Court proceedings are designated VRP DC xx, Superior Court proceedings are designated VRP SC xx.

On April 4, 2012, Ms. Shale attempted to plead guilty to DUI, however, the State declined to accept this plea since there were indications that Ms. Shale had actually committed felony DUI based on her past history out of another jurisdiction but further research was needed to be certain. The District Court continued the case for one week so the State could obtain clarification from the other jurisdiction whether a felony was committed. VRP DC 15-18.

On April 11, 2012, the court again continued the case for one week because the other jurisdiction had not responded to the State's request for additional information. VRP DC 21-27.

On April 16, 2012, the court dismissed the charge of DUI against Ms. Shale in District Court. VRP DC 31-33. On the same day the State filed a charge of felony DUI against Ms. Shale in Superior Court.

On April 27, 2012, a pretrial hearing was held in Jefferson County Superior Court. Ms. Shale argued the court should dismiss the case since her speedy trial period had already elapsed. The State responded that since the defense had been granted a continuance on April 4, 2012, the speedy trial clock had stopped at that point and there were still 31 days on the clock when the felony DUI charge was filed in Superior Court. Additional argument followed and the judge ended the hearing with a promise to have a ruling on Monday, April 30, 2012. VRP SC 2-8.

At the April 27, 2012, Superior Court hearing, the State asked the court to grant a 14 day cure period. VRP SC 6-7.

On April 30, 2012, the Superior Court dismissed the charge against Ms. Shale for violation of the speedy trial rule. CP 18-21.

The Superior Court reasoned that the period after Ms. Shale's request for continuance on April 4, 2012, was not excluded from her speedy trial period. The court stated,

Excluded periods from the calculation of time required by CrR 3.3 are set out in CrR 3.3(e). Delay granted by the Court pursuant to section (f) of CrR 3.3 are "excluded" periods. CrR 3.3(f) references either written agreements to continue a trial date or a continuance of the "trial date" after motion of one of the parties. There is no portion of CrR 3.3 that provides that any continuance of any pretrial hearing results in time being excluded from the calculation of the time required for trial by CrR 3.3. The excluded period rule refers only to continuance of the "trial date." This court does not have a record of any trial date being continued in District Court, only the "PTR" hearing was continued. CP 19.

On May 1, 2012, the State filed a Motion to Reconsider and a Motion Invoking the Cure Period with the Superior Court. CP 31-35 and CP 22-27, respectively. Both were denied.

## ARGUMENT

The Superior Court erroneously combined the time periods for the dismissed District Court Driving Under the Influence charge against Ms. Shale and her Superior Court Felony Driving Under the Influence charge to find her speedy trial period had expired.

CrR 3.3(b) requires that a defendant who is incarcerated shall be brought to trial within 60 days of arraignment. Ms. Shale was incarcerated when the charge of Felony DUI was filed against her on April 16, 2012. On April 30, 2012, following a hearing, the Superior Court dismissed the charges against Ms. Shale with prejudice although only eleven days had passed since the filing of charges. CP 18-21.

In this case, Ms. Shale had already spent 60 days in jail awaiting trial on the District Court charge. The delay was due to failed plea negotiations and a lengthy delay needed to obtain her earlier conviction records from Grays Harbor County. When that information was finally obtained, the State determined she had committed Felony DUI in the latest crime, dismissed the DUI charge in District Court and filed the felony DUI charge in Superior Court.

Ms. Shale was neither tried nor convicted in District Court. She did not file a RALJ appeal. The State correctly dismissed the DUI charge and filed the felony DUI charge which the evidence supported. It was

error for the Superior Court to determine her speedy trial period had expired when her charges were only eleven days old.

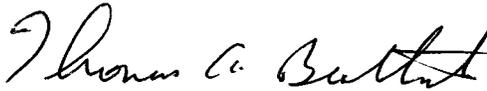
This decision should be reversed.

**CONCLUSION**

The State respectfully requests that this Court reverse the Superior Court, reinstate the charge of Felony DUI, and remand for trial.

Respectfully submitted this 3<sup>rd</sup> day of October, 2012.

SCOTT ROSEKRANS, Jefferson County  
Prosecuting Attorney



---

By: Thomas A. Brotherton, WSBA # 37624  
Deputy Prosecuting Attorney

## PROOF OF SERVICE

I, Janice N. Chadbourne, certify that on this date:

I filed the State's BRIEF OF RESPONDENT electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of the brief, using the Court's filing portal, to:

Catherine E. Glinski  
[cathyglinski@wavecable.com](mailto:cathyglinski@wavecable.com)

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Port Townsend, Washington on October 3, 2012.



Janice N. Chadbourne  
Lead Legal Assistant

# JEFFERSON COUNTY PROSECUTOR

**October 03, 2012 - 1:11 PM**

## Transmittal Letter

Document Uploaded: 434156-Appellant's Brief.tif

Case Name: State of Washington v. Helen DeeDee Shale

Court of Appeals Case Number: 43415-6

**Is this a Personal Restraint Petition?**  Yes  No

### The document being Filed is:

- Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_\_
- Answer/Reply to Motion: \_\_\_\_\_
- Brief: Appellant's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Jan N. Chadbourne - Email: [jchadbourne@co.jefferson.wa.us](mailto:jchadbourne@co.jefferson.wa.us)

A copy of this document has been emailed to the following addresses:

[cathyglinski@wavecable.com](mailto:cathyglinski@wavecable.com)