No. 30231-8-III and
No. 30239-3-III

WASHINGTON STATE COURT OF APPEALS
DIVISION III

STATE OF WASHINGTON,

Appellant/Cross-Respondent,

vs.

E. TROY HAWKINS,

Respondent/Cross-Appellant.

RESPONDENT/CROSS-APPELLANT'S REPLY BRIEF

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I. Summary of the Argument

The State argues that Troy Hawkins' speedy trial rights were not violated because no formal order for a new trial was entered until after Mr. Hawkins objected to the trial date set by the Douglas County Superior Court. To reach this conclusion, the State must assume Criminal Rule 3.3(c) allows the State and the trial court unfettered discretion over when the commencement date begins, regardless of the resulting delay.

The purpose of CrR 3.3 is to protect the defendant's constitutional right to a speedy trial. State v. Mack, 89 Wn.2d 788, 791-92, 576 P.2d 44 (1978). Rule 3.3 contemplates that the accused will be brought promptly before the court and that trial will commence while the underlying facts are still fresh. City of Seattle v. Hilton, 62 Wn. App. 487, 490-91, 815 P.2d 808 (1991). That did not happen in this case. Instead, the State elected to delay recommencement under CrR 3.3(c)(2)(iv) by waiting 90 days to require Mr. Hawkins' appearance following the issuance of this Court's mandate. And the trial court elected to wait nearly 11 months after granting Mr. Hawkins' motion for a new trial before entering a formal order.

Under the State's interpretation of CrR 3.3(c)(2), the State and the trial court could delay Mr. Hawkins' recommencement date as long as six weeks *after* Mr. Hawkins' new trial setting and 154 days after this Court

issued its mandate. (Reply Br. of App't/Cross-Resp't at 6-7) This Court should reject the State's call to circumvent the time-for-trial requirements through a reading of CrR 3.3(c)(2) that is contrary to the very purpose of the rule, and should instead hold CrR 3.3(c)(2)(iii) does not require entry of a formal order, and CrR 3.3(c)(2)(iii) and (iv) include an expectation that the State and trial court will timely set a new trial date within the time-for-trial requirements. See State v. Chhom, 162 Wn.2d 451, 465, 173 P.3d 234 (2007).

II. Argument

Past experience has shown that unless a strict rule is applied, the right to a speedy trial as well as the integrity of the judicial process cannot effectively be preserved. State v. Striker, 87 Wn.2d 870, 877, 557 P.2d 847 (1976). The application of the strict rule to the facts of this case is a question of law, reviewed de novo. State v. Duffy, 86 Wn. App. 334, 341, 936 P.2d 444 (Div. 3, 1997) (reviewing application of CrR 3.3 to decision not to prosecute). Under this standard, the Court should hold that under CrR 3.3(c)(2) the commencement date was reset to the date the mandate was received by the trial court, and hold Mr. Hawkins' speedy trial rights were violated when the trial court set his new trial date for 154 days after the issuance of the mandate.

A. CrR 3.3(c)(2) should not be interpreted to allow the State and the trial court to indefinitely delay the resetting of the commencement date.

When interpreting a court rule, courts should reject an interpretation that fails to accomplish the intent of the rule or that is inconsistent with a logical reading of the rule. Chhom, 162 Wn.2d at 458-59. Courts are to interpret court rules according to the rules of statutory interpretation. State v. Greenwood, 120 Wn.2d 585, 592, 845 P.2d 971 (1993). Thus, the court should give effect to the plain meaning of the rule, as determined from the rules as a whole. Estate of Bunch v. McGraw Residential Ctr., 174 Wn.2d 425, 432, 275 P.3d 1119 (2012). The court may not place a "narrow, literal and technical construction" on one part of the rules, while ignoring other relevant parts. In re Washington State Bar Ass'n, 86 Wn.2d 624, 627, 548 P.2d 310 (1976). Rather, the language should be construed consistent with the general purpose of the rule. Id.

The Criminal Rules "are to be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay." CrR 1.2. Specifically, "the purpose of the time-for-trial rule . . . is to 'provide a *prompt* trial for the defendant once prosecution is initiated.'" Chhom, 162 Wn.2d at 469 (quoting State v. Edwards, 94 Wn.2d 208, 216, 616 P.2d 620 (1980) (emphasis in original)). A prompt trial reduces the chance of substantial prejudice to

the defendant, including lost opportunities to serve sentences concurrently and an impaired ability to prepare for trial. Id.

The time-for-trial rules further those goals by imposing time constraints which minimize the discretion of the State and the courts. CrR 4.1(a)(1) requires the trial court to arraign the defendant no later than 14 days after the date an information is filed if the defendant is detained or subject to conditions of release. The trial court must set the initial trial date within 15 days of the arraignment. CrR 3.3(d)(1). CrR 4.1(a)(1) and CrR 3.3(d)(1) thus indicate that a reasonable period to wait for a trial setting for defendants like Mr. Hawkins, who are subject to conditions of release, is 29 days of the receipt of the mandate. (Appendix C; RP 48) Rule 3.3 includes no statement indicating the expectation of promptness is reduced for subsequent trial settings.

Rule 3.3(d)(2), in fact, reinforces the view that CrR 3.3 as a whole anticipates minimal, if any, delay between an event that triggers the resetting of a trial date and the actual resetting:

> (2) Resetting of Trial Date. *When the court determines* that the trial date should be reset for any reason, including but not limited to the applicability of a new commencement date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), *the court shall set* a new date for trial which is within the time limits prescribed and notify each counsel or party of the date set.

(Emphasis added.) Notably, CrR 3.3(d)(2) does not call for resetting to happen "after the court determines that the trial date should be reset," but "*[w]hen* the court determine that the trial date should be reset." (Emphasis added.) Nor does the rule recommend that the court "should" set a new date when the need for a new trial setting becomes apparent, but requires that it "shall."

Rule 3.3(e) also emphasizes the responsibility of the trial court to ensure the time-for-trial requirements are met. See CrR 3.3(a). Notably, the periods excluded for purposes of the speedy trial calculation are those which are not subject to discretionary delays by the State and trial court. See CrR 3.3(e). The State's discretion over the ultimate trial date is also limited by CrR 3.3(f)'s requirement that the State obtain the permission of the Defendant for continuances and other delays, unless the trial court finds the continuance is required in the administration of justice and the defendant will not be prejudiced. CrR 3.3(f).

The State's interpretation of the rules to allow a trial setting date 90 days after the mandate has issued and almost 11 months after a new trial has been granted is contrary to the expectation of CrR 3.3 as a whole that the State and trial court will act to ensure a defendant receives a prompt trial, regardless of whether it is the defendant's initial or subsequent trial. An interpretation of CrR 3.3(2)(iii) and (iv) to include no

limitations on when the order for new trial must be entered or when a defendant must be made to appear following the issuance of a mandate would allow the State and the trial courts an indefinite amount of time before they are required to reset the commencement date. This is inconsistent with the limitations on the trial court's and State's discretion found in CrR 3.3 and 4.1. This Court should, therefore, reject the State's implicit assumption that CrR 3.3(c)(2)(iii) and (iv) allow the prosecutor and the trial court to delay the recommencement date indefinitely.

B. For purposes of CrR 3.3(c)(2)(iii), the order for new trial was entered on October 7, 2010, when the trial court issued its written decision.

This Court should reject the State's claim that the time for speedy trial did not recommence until a formal order was entered on August 30, 2011. The State's interpretation of CrR 3.3(c)(2)(iii) produces the absurd result of having the time for speedy trial recommence over six weeks after the trial court set a new trial date, although no order of continuance was entered. The State implicitly concedes the procedural history makes its interpretation implausible by claiming both that the trial court's order setting trial established a new commencement date and that a new commencement date could not occur until a formal order was entered. (Reply Br. of App't/Cross-Resp't at 6, 8-10)

The State's confusion arises out of its reliance on case law defining an order for purposes of determining the time for appeal rather than considering the purpose of CrR 3.3(c)(2)(iii). For example, in State v. Knox, the court considered whether the State had timely filed a motion for discretionary review under RAP 5.2(b). 86 Wn.App. 831, 835, 939 P.2d 710 (1997), overruled on other grounds by State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003). The Knox court found the memorandum opinion at issue did not trigger the time for appeal because the appellate court could not be certain it was reviewing a final order or judgment. Id. at 837; see also, Chandler v. Doran Co., 44 Wn.2d 396, 400, 267 P.2d 907 (1954) (addressing when the time within which an appeal must be perfected where the trial court issues a tentative decision that demurrers would not be sustained); Nicacio v. Yakima Chief Ranches, Inc., 63 Wn.2d 945, 947-48, 389 P.2d 888 (1964) (addressing whether a memorandum decision on granting summary judgment qualifies as a final judgment for purposes of motion for reconsideration).

For purposes of speedy trial, however, it is the trial court that is calculating time-for-trial based upon its own decision to grant a new trial. See Steinmetz v. Call Realty, Inc., 107 Wn. App. 307, 312, 23 P.3d 1115 (Div. 3, 2001) (holding a letter memorandum was an order for purposes of a motion for reconsideration, and distinguishing Knox, 86 Wn.App 831,

Nicacio, 63 Wn.2d 945, and Chandler, 44 Wn.2d 396). Should the trial court change its decision, speedy trial becomes a moot issue. Therefore, the same concerns which led the courts in Knox, Chandler, and Nicacio to require a formal order or judgment do not apply here.

The State also errs in representing that the Decision on Motion for New Trial does not trigger recommencement because it is not captioned "order" and does not set forth findings of fact and conclusions of law from which the State could have appealed. (Reply Br. of App't/Cross-Resp't at 10) Again, because the entry of the order triggers the time for speedy trial and not the time for appeal, it need not satisfy the requirements of an appealable order; nor should the Court infer such a requirement. Even if the requirements were the same, however, Division Three has rejected the language in Knox which appears to require a formal caption designating any reviewable decision as an "order" or "judgment." Steinmetz, 107 Wn. App. at 312. Instead, the Steinmetz court relied upon the unequivocal language of the order stating "judgment is entered in favor of Defendant." Id.

Similarly, here, the trial court unequivocally stated "Defendant's motion for new trial is granted." (CP 1127) Therefore, if the mandate had already issued, the Court's Decision and Memorandum would have been sufficient to trigger the court's duty to ensure Mr. Hawkins was brought to

trial within 90 days of the entry of the trial court's decision. Because the Decision on Motion for New Trial was issued prior to this Court's mandate, however, CrR 3.3(c)(2)(iv) determines Mr. Hawkins' re-commencement date.

C. Mr. Hawkins' commencement date is the date the mandate was received because the State agreed the mandate triggered recommencement and then delayed taking any action that would reset the commencement date.

Washington courts have repeatedly interpreted CrR 3.3(c) and (e) to limit exclusions or the delay of commencement dates where the State has a mechanism in place to bring the defendant before the trial court. See, e.g., Chhom, 162 Wn.2d at 462-63, 471 (holding the time for exclusion for detention under former CrRLJ 3.3(g)(5) is limited to time during which a defendant is detained by another county because "[a] defendant's right to a timely trial should not depend on where a city or county *elects* to confine the defendant" (emphasis added)); State v. George, 160 Wn.2d 727, 739, 158 P.3d 1169 (2007) (acknowledging the restrictions of CrR 3.3(a)(4), but holding "CrRLJ 3.3(c)(2)(ii) was not intended to apply when the State *elects* not to transport the defendant to a proceeding" (emphasis added)).

As discussed in §A above, Rule 3.3(c)(2)(iv) anticipates the State and the trial court will act to ensure the defendant's appearance before the

trial court will occur shortly after the trial court receives the mandate from the Court of Appeals. Hilton, 62 Wn. App. at 492; State v. Huffmeyer, 145 Wn.2d 52, 63, 32 P.3d 996 (2001); see also, State v. Nelson, 26 Wn. App. 612, 615, 613 P.2d 1203 (Div. 2, 1980) (finding receipt of the mandate puts the trial court on notice that the appellate review process has terminated). If the defendant is not brought before the court within a reasonable time, the court must calculate speedy trial from the date the trial court received the mandate. Hilton, 62 Wn. App. at 493. Here, although the State acknowledged the commencement date could not occur until the mandate was issued, it delayed Mr. Hawkins' first appearance following the mandate for 90 days. The State has provided no justification for this delay. See id. at 494.

In Hilton, then-Municipal Court Judge Barbara Madsen granted Mr. Hilton's motion to dismiss based on the City's violation of his speedy trial right. Id. at 489-90 and n.3. Mr. Hilton had appealed his conviction and was granted a new trial. Id. at 488. On May 31, the municipal court received the mandate, but the court did not set Mr. Hilton's arraignment until August 31 — 92 days after it received the mandate for a new trial, which the Court of Appeals found to be excessive. Id. at 489, 494.

The Hilton court noted the defendant had no duty to bring himself to trial, but that his appearance before the court was dependent upon the

actions of the State. 62 Wn. App. at 491. Because the State failed to bring Mr. Hilton before the trial court within a reasonable time after the mandate is issued, the expectation of CrR 3.3(c)(2)(iv) was not met. Id. at 493. The Hilton court, therefore, held the time-for-trial must commence from the date the mandate was received. Id. at 493. "Otherwise, the prosecution of the new trial could be delayed indefinitely. This result would directly conflict with the public's interest in having criminal matters resolved in a timely manner." Id.

Here, the State received a copy of the mandate when it was issued, and at that point had an obligation to set Mr. Hawkins' next appearance within a reasonable time. See Hilton, 62 Wn. App. at 494. Although the parties and the trial court had discussed that speedy trial would commence when the mandate was received by the trial court, the State elected to not bring Mr. Hawkins before the court until 90 days after the mandate was issued. (Appendix C, RP 37-41) As in Hilton, the State far exceeded the presumptively reasonable time limits set by CrR 4.1(a)(1), by waiting until the time for speedy trial itself expired before bringing Mr. Hawkins before the trial court. See 62 Wn. App. at 489.

The Court should also consider that the State elected not to respond to the Court of Appeals directive to file a motion under RAP 7.2 for permission to file a formal order of new trial, and the State elected not

to notify this Court that a formal order of new trial would not change or modify the issues on appeal. (Appendix D) The State and trial court elected to delay entry of a formal order of new trial until August 30, 2011, *after* the trial court already had set a new trial date and over four months after the mandate was issued.

The State's implicit claim that CrR 3.3(c)(2) grants the State and the trial court discretion to elect to delay indefinitely the entry of the court's order and the appearance of the defendant is contrary to logic and the purpose of the time-for-trial rule, and contrary to the holdings of Hilton and Chhom. This Court should hold that where, as here, the State elects to not require the defendant's appearance within a reasonable time, the defendant is deemed to have appeared as of the date of the receipt of the mandate and that, therefore, Mr. Hawkins' recommencement date under CrR 3.3(c)(2)(iv) was April 12, 2011.

III. Conclusion

The trial court entered its memorandum decision unequivocally granting Mr. Hawkins a new trial on October 7, 2010. No formal order was required, particularly as the trial court delayed entry of that order until August 30, 2011. Therefore, CrR 3.3(c)(2)(iv), and not CrR 3.3(c)(2)(iii), determines the recommencement date.

On April 12, 2011, the trial court received the mandate of this Court terminating review. Because the State waited 90 days to bring Mr. Hawkins back to the trial court after agreeing the mandate would recommence the time for speedy trial, Mr. Hawkins should be deemed to have appeared on April 12, 2011, and the time for speedy trial commenced on that same date. On the 90th day following commencement, the trial court set trial for 154 days following April 12, 2012, far outside the time required under CrR3 3.3(b)(2). Mr. Hawkins' case should therefore be dismissed.

DATED this 27th day of November, 2012.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington as follows: That on November 27, 2012, I served a copy of the foregoing document by causing a true and correct copy of said document to be delivered to counsel and the party named below at the addresses shown below in the manner(s) indicated:

Eric C. Biggar Douglas County Prosecutor's Office P.O. Box 360 Waterville, WA 98858	VIA REGULAR MAIL VIA EMAIL HAND DELIVERED BY FACSIMILE VIA FEDERAL EXPRESS	☒ ☐ ☐ ☐ ☐
E. Troy Hawkins P.O. Box 66 Manson, WA 98831 Served by email per agreement with E. Troy Hawkins	VIA REGULAR MAIL VIA EMAIL HAND DELIVERED BY FACSIMILE VIA FEDERAL EXPRESS	☐ ☒ ☐ ☐ ☐
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DATED at Spokane, Washington, on November 27, 2012.

Cheryl Hansen

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