

No. 31165-1-III

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

STATE OF WASHINGTON,

Respondent,

v.

JAMES GREGORY CASTILLO,

Appellant.

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

The Honorable David A. Elofson

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

A. ARGUMENT..... 1

 1. MR. CASTILLO’S REQUEST TO PROCEED
 PRO SE WAS UNEQUIVOCAL AND TIMELY
 MADE WHEN VIEWED IN LIGHT OF THE
 RESULTS OF THE JANUARY 31, 2012,
 HEARING 1

 2. MR. CASTILLO’S CONSTITTUIONALLY
 PROTECTED RIGHT TO A SPEEDY TRIAL
 WAS VIOLATED NECESSITATING A NEW
 TRIAL 3

 a. Reason for the delay. 4

 b. Assertion of the right. 5

 c. Prejudice suffered from the unjustified delay..... 6

B. CONCLUSION..... 7

TABLE OF AUTHORITIES

FEDERAL CASES

Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101
(1972)..... 3

Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d
520 (1992)..... 6

Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562
(1975)..... 3

United States v. Aguirre, 994 F.2d 1454 (9th Cir. 1993) 4

United States v. Sandoval, 990 F.2d 481 (9th Cir.), *cert. denied*, 510
U.S. 878 (1993)..... 4

WASHINGTON CASES

State v. Iniquez, 167 Wn.2d 273, 217 P.3d 768 (2009)..... 3

State v. Lawrence, 166 Wn.App. 378, 271 P.3d 280, *review denied*, 174
Wn.2d 1009 (2012)..... 2

State v. Madsen, 168 Wn.2d 496, 229 P.3d 714 (2010)..... 3

State v. Monson, 84 Wn.App. 703, 929 P.2d 1186, *review denied*, 133
Wn.2d 1015 (1997)..... 5

A. ARGUMENT

1 MR. CASTILLO'S REQUEST TO PROCEED
PRO SE WAS UNEQUIVOCAL AND TIMELY
MADE WHEN VIEWED IN LIGHT OF THE
RESULTS OF THE JANUARY 31, 2012,
HEARING

The State argues *ad nauseum* regarding proceedings prior to the January 13, 2013, hearing where Mr. Castillo unsuccessfully sought to represent himself. While this information provides some background, it does not deal with Mr. Castillo's request *at the January 13, 2013*, hearing. At the January 13, 2012, hearing, Mr. Castillo unequivocally moved to represent himself. 1RP 212-13. Mr. Castillo not only made this request orally, he also made his request in a written motion. CP 91-93.

If this Court is inclined to review all of the hearings to determine whether Mr. Castillo's request was unequivocal, his request on January 13, 2012, was the same request as on January 31, 2012, where the court, following a colloquy, found his request unequivocal and timely, and allowed him to proceed *pro se*. This fact alone undercuts the State's argument that Mr. Castillo's request was unequivocal and also undercuts the State's argument that his request was untimely. If his request was both unequivocal and timely on

January 31, 2012, *a fortiori* it was unequivocal and even more timely made on January 13, 2012. The State conveniently ignores this fact.

The State's reliance on this Court's decision in *State v. Lawrence*, 166 Wn.App. 378, 271 P.3d 280, *review denied*, 174 Wn.2d 1009 (2012), is not helpful in light of the issues in that case involving mental illness. *Lawrence* involved a defendant who had issues involving competency which were intertwined with issues involving his desire to represent himself. The trial court's decisions in determining whether Mr. Lawrence was competent were also factors in its decisions on whether to allow him to represent himself. The fact that the court issued conflicting decisions at different hearings was impacted by its decisions on these two related factors, factors which are not involved here.

Here, Mr. Castillo's request was the same and presented the same facts yet led to two different outcomes at two different hearings a mere two weeks apart, leading to the inescapable conclusion that one decision was wrong. In light of his constitutionally protected right to represent himself, Mr. Castillo contends the decision to deny his request to represent himself was erroneous. *Faretta v. California*, 422

U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975); *State v. Madsen*, 168 Wn.2d 496, 229 P.3d 714 (2010).

Further, whether Mr. Castillo was allowed to subsequently represent himself at his trial(s) is of no moment. The motion to dismiss was a potentially dispositive motion and Mr. Castillo had the constitutional right to represent himself at that hearing, as well as at trial. Mr. Castillo's right to represent himself was denied without a valid basis. Thus, he is entitled to reversal of his conviction and remand for a new trial where he can renew the motion to dismiss.

2. MR. CASTILLO'S CONSTITUTIONALLY PROTECTED RIGHT TO A SPEEDY TRIAL WAS VIOLATED NECESSITATING A NEW TRIAL

The State begins its argument by applying the factors set forth in *Barker v. Wingo*, 407 U.S. 514, 526 n.2, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). Respondent's brief at 27. These factors are used after a finding of presumptive prejudice. *State v. Iniquez*, 167 Wn.2d 273, 283, 217 P.3d 768 (2009). Thus, one must assume that the State concedes that the 12 year lapse was presumptively prejudicial. *See* Respondent's brief at 27.

a. Reason for the delay. In attempting to deflect responsibility for the delay, the State's brief shows that it misunderstands who bears the burden of proof on this motion. The State bears the burden of bringing the defendant to trial in a timely manner. *United States v. Sandoval*, 990 F.2d 481, 485 (9th Cir.), *cert. denied*, 510 U.S. 878 (1993). Central to this analysis is whether the State's actions were diligent in bringing the defendant to trial. *United States v. Aguirre*, 994 F.2d 1454, 1457 (9th Cir. 1993).

Despite this standard, the State mistakenly argues that Mr. Castillo failed to present any evidence he was amenable for service. Respondent's brief at 28. To the contrary, the State ignores the ample evidence that Mr. Castillo was living openly in Nevada and did not attempt to hide where he was living. CP 27-28. Mr. Castillo registered his car in Nevada, had a Nevada driver's license, and paid his taxes, all in his true name. CP 44-46. In 2007, while crossing the United States border, Mr. Castillo was detained by the Department of Homeland Security, fingerprinted, then released. Under the circumstances, the State acted negligently for failing to diligently pursue Mr. Castillo while he lived openly in Nevada.

The State's reliance on *State v. Monson*, 84 Wn.App. 703, 929 P.2d 1186, *review denied*, 133 Wn.2d 1015 (1997), for the proposition that, since Mr. Castillo was required to register as a sex offender, and never did following this incident, this somehow excused its failure to locate him. Certainly had Mr. Castillo registered it may have made the State's task easier, but that did not excuse its failure to locate him in Las Vegas given the fact he was living there openly. His failure to register was a separate offense for which Mr. Castillo was charged and convicted. But his failure in no way was the reason for the State's delay in bringing Mr. Castillo to trial; the State's dilatory actions resulted in the failure to bring him to trial in a timely manner. The State's failure to do anything given Mr. Castillo's openly living in Las Vegas was the major reason for the delay.

b. Assertion of the right. The State contends, without support in the record, that Mr. Castillo absconded immediately after the alleged rape. Respondent's brief at 36. This presupposes that the State proved Mr. Castillo had knowledge that he had been charged with rape. The State never did provide such proof. In fact, the only evidence in the record was that Mr. Castillo was unaware of the charge until after he was arrested.

c. Prejudice suffered from the unjustified delay. The State claims that “Castillo fails to present a single word of how this alleged delay prejudiced his case.” Respondent’s brief at 36. Yet, if the State is negligent in pursuing the defendant, prejudice is presumed. *Doggett v. United States*, 505 U.S. 647, 657, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). As Mr. Castillo has repeatedly argued, the reason for the delay was the State’s failure to act with good faith and diligence in its pursuit of him. Therefore, prejudice must be presumed. *Doggett*, 505 U.S. at 657.

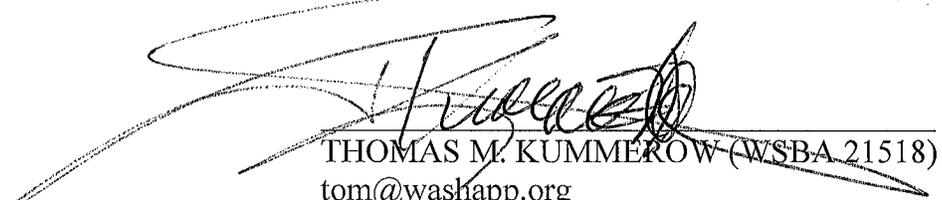
In light of the failure of the State to bring Mr. Castillo to trial in a timely manner, he asks this Court to reverse his convictions for a violation of his right to a speedy trial.

B. CONCLUSION

For the reasons stated in the instant reply brief as well as the previously filed Brief of Appellant, Mr. Castillo requests this Court reverse his conviction and dismiss the matter for a violation of his right to a speedy trial. Alternatively, Mr. Castillo asks this Court to reverse his conviction and remand for either a new trial or resentencing to a standard range sentence.

DATED this 24th day of September 2013.

Respectfully submitted,



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DIVISION THREE**

STATE OF WASHINGTON,)	
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Respondent,)	
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v.)	NO. 31165-1-III
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JAMES CASTILLO,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF SEPTEMBER, 2013, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 24TH DAY OF SEPTEMBER, 2013.

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