NO. 44958-7-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

ALLEN GENE ENGLUND,

Appellant.

BRIEF OF APPELLANT

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Assignment of Error

1. The trial court's refusal to grant the defendant's timely and unequivocal demand to act as his own attorney denied the defendant his right of self-representation under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment.

2. The trial court violated the defendant's right to speedy trial under CrR 3.3 when it continued the trial in order to allow new counsel to prepare in lieu of granting the defendant's timely, unequivocal demand to represent himself and go to trial on the date already set.

3. The defendant's conviction should be reversed and the case remanded for a new trial because the trial court violated the defendant's right under Washington Constitution, Article 1, § 22, to be present at every critical stage of his trial.

Issues Pertaining to Assignment of Error

1. Does a trial court's refusal to grant a defendant's timely and unequivocal demand to act as his own attorney deny that defendant the right of self-representation under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment?

2. Does a trial court violate a defendant's right to speedy trial under CrR 3.3 if it continues a trial in order to allow new counsel to prepare in lieu of granting that defendant's timely, unequivocal demand to represent himself or herself and go to trial on the date already set?

3. Does a trial court's decision to hear a motion to continue a trial date and a motion to commit a defendant for a competency evaluation violate that defendant's right under Washington Constitution, Article 1, § 22, to be present at every critical stage of proceedings when the court hears and decides the motions without allowing the defendant to be present?

STATEMENT OF THE CASE

Factual History

The defendant lives at 13151 Independence Road SW in a rural area outside the city of Rochester in south west Thurston County and has for many years. RP 215-217, 257-259[1]. Two trailers and a shed sit on the property, a portion of which borders the Chehalis River. RP 105-109. The defendant has been friends for many years with two individuals by the names of Mark Christensen and Arthur Parrish who also live in rural Thurston County. RP 215-217, 257-259. On December 15, 2012, Mr. Christensen went out to the defendant's place to visit with him. RP 223-227. As he drove up into the long dirt driveway he accidentally slid into the defendant's truck. *Id.* When the defendant came out Mr Christensen showed him what had happened and said he would take care of the damages. *Id.* According to Mr. Christensen they had a pleasant visit and he left after about 20 minutes. *Id.*

Later that day Mr. Christensen was driving on Independence Road by the defendant's property when he heard what he believed was a shotgun

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[1]The record on appeal includes two volumes of continuously numbered verbatim reports of the hearing held on 2/20/13, the CrR 3.5 hearing and bench trial held on 5/28/13 and 5/29/13, and the sentencing hearing held on 6/4/13. These are referred to herein as "RP [page #]." The record on appeal also includes five other individually numbered volumes for the pretrial hearings held on 1/30/13, 2/12/13, 2/28/13, 5/2/13 and 5/16/13. They are referred to herein as "RP [date] [page #]."

going off. RP 229-232. He didn't think much of it and drove on. *Id.* The next day Mr. Christensen had occasion to visit Mr. Parrish at his home. *Id.* Once he arrived he commented on hearing the shotgun blast the day previous and the two of them looked at Mr. Christensen's truck. RP 233-234, 263-266. When they did they saw what they believed to be marks from shotgun pellets on the bed and on one rear tire of the truck. *Id.* After inspecting the damage they drove into Rochester. *Id.* The return trip again brought them along Independence Road by the defendant's property. RP 241-245, 268-270. As they drove by they saw the defendant standing outside his trailer holding a shotgun. *Id.*

According to Mr. Christensen the defendant had just existed one of the trailers. RP 241-245. According to Mr. Parrish the defendant had been away from the trailer holding the shotgun and he ran up to a location next to the trailer. RP 268-270. However, while the two were not in agreement as to how the defendant ended up next to the trailer they were both in agreement as to what happened next. RP 241-245, 268-270. According to both Mr. Christensen and Mr. Parrish as they passed by the defendant pulled up the gun and shot at them. *Id.* A number of pellets from the shotgun hit the hood and grill of the vehicle. *Id.* Both men thought that the defendant intended to kill them. *Id.* After the shot Mr. Christensen drove to Mr. Parrish's home where they called the sheriff's office. *Id.* A deputy arrived in response to this

call, took their statements, inspected the truck and then called for backup to help arrest the defendant. RP 155-176.

Once out at the defendant's residence a number of deputies ordered the defendant to come out of his trailer, which he did. RP 179-182. They then placed him under arrest. *Id.* They later searched the defendant's trailer's pursuant to a warrant and found a .22 caliber rifle, a shotgun and related ammunition. RP 183-185. In fact the defendant has a 1976 Thurston County conviction for second degree burglary and a 2009 Thurston County conviction for unlawful possession of a firearm. RP 250-255.

Procedural History

By information filed on December 26, 2012, and later amended on May 24, 2013, the Thurston County Prosecutor charged the defendant with two counts of second degree assault while armed with a firearm and two counts of second degree unlawful possession of a firearm. CP 17-18, 83-84. On December 26, 2012, the defendant appeared in court for arraignment with his appointed attorney Les Ching. CP 19, 21. At that time the defendant entered a plea of not guilty to each charge and the court set a trial date of February 19, 2013. CP 20. The defendant was then in custody and remained so during the entirety of these proceedings. RP 5/28/13 12-14.

On January 17, 2013, Attorney Ching filed a written motion to withdraw stating that he could not continue representing the defendant

without violating the Rules of Professional Conduct. CP 26-27. On that same day the parties appeared before the court on the motion, which the court granted. CP 29. The court's written order granting the motion further states "that OAC will appoint another attorney as soon as possible." *Id.* Twelve days later on January 29, 2013, the Office of Assigned County entered a Notice indicating that it had appointed Attorney Richard Woodrow to represent the defendant. CP 32. The next day Mr. Woodrow filed his Notice of Appearance, a Demand for Discovery, and the Defendant's Omnibus Application. CP 34, 35-42, 43-45.

On January 30, 2013, the parties appeared before the court with the defendant now represented by Mr. Woodrow. RP 1/30/13 1. At that time Mr. Woodrow informed the court that he had met with the defendant, that the defendant refused to accept him as his attorney, and that the defendant demanded the right to represent himself. RP 1/30/13 4-5. On this basis Mr. Woodrow moved to withdraw. *Id.* The court then inquired of the defendant, who twice demanded the right to represent himself. RP 1/30/13 5-6, 14. In spite of Mr. Woodrow's statements and the defendant's demands to represent himself the court did not engage in any colloquy with the defendant about self-representation. RP 1/30/13 1-14. Rather, the court told the defendant that it would not even consider his request to represent himself unless he first put it in writing. RP 1/30/13 5-6; CP 48. The court then granted Mr.

Woodrow's motion to withdraw and did not appoint a new attorney for the defendant. RP 1/30/13 7; CP 49.

After granting Mr. Woodrow's motion to withdraw the court asked him whether or not the current trial date was "reasonable." RP 1/30/13 7. Mr. Woodrow replied: "I don't believe it would be for an attorney coming on board, Your Honor." *Id.* At this point the defendant twice objected to any continuance of his trial date. RP 1/30/13 8-9. The defendant's statements were as follows:

> THE COURT: Thank you. And I believe – correct me if I'm wrong, Mr. Englund. But I believe the last time that you were before the court asking – or agreeing with the motion of counsel to withdraw from your case, you understood that that may very well mean an extension of dates, including the trial date; right?
>
> THE DEFENDANT: No.
>
> THE COURT: I'm sorry?
>
> THE DEFENDANT: What would you mean an extension? No. What's that?
>
> THE COURT: You understood that your agreement with the request to allow your counsel to withdraw may mean that the trial date would continue out further than when it currently is.
>
> THE DEFENDANT: If it has to be – a speedy trial is 60 days.
>
> THE COURT: I'm sorry. I can't hear you.
>
> THE DEFENDANT: It should still be a fast, speedy trial, 60 days.
>
> THE COURT: So you are not in agreement with the continuation

of the trial?

THE DEFENDANT: No.

THE COURT: You are not?

THE DEFENDANT: No.

RP 1/30/13 8-9.

At this point the court found good cause for a continuance, struck the current trial date, set a new trial for the week of March 11, 2013, and set an "attorney status hearing" for February 12, 2013. RP 1/30/13 9. The court's written order on this ruling states:

> IT IS HEREBY ORDERED that the Jury Trial in this case is hereby continued to the week of March 11, 2013 and the Status Hearing is continued to March 6, 2013 at 9 a.m. This continuance is granted on the basis of the court having found good cause, in that a determination still needs to be made concerning the legal representation of the defendant in this cause and the present trial date for the week of Feb. 19, 2013. At attorney status hearing is scheduled for Feb 12, 2013.

CP 27.

On February 12, 2013, the defendant again appeared before the court for the attorney status hearing. CP 30. The court's minute sheet and the verbatim report of this hearing lists "James Shackleton" of the Office of Public Defense as the defendant's attorney. CP 50; RP 2/12/13 2. However, Mr. Shackleton stated on the record that he was not appearing as the defendant's attorney. *Id.* His statement was as follows:

THE COURT: Mr. Shackleton, you are not appointed on this matter.

MR. SHACKLETON: That's my understanding, that we're here for attorney status conference. Is that right?

RP 3/12/13 3.

After making this clarification and receiving a summary from the prosecutor the court undertook a colloquy with the defendant. RP 3/12/13 4-5. The initial portion of this colloquy went as follows:

THE COURT: Mr. Englund, Judge Murphy set the date today as attorney status hearing to determine how you're going to proceed in this matter. Previously, you had two different lawyers appointed to represent you, and, based upon my reading of the record and based upon the statements by the prosecutor, Mr. Powers, at least at the hearing in front of Judge Murphy at the last hearing, you indicated you wanted to represent yourself in this matter. Is that correct?

THE DEFENDANT: Yeah, I do.

THE COURT: I need you to speak up a little bit.

THE DEFENDANT: Yes.

THE COURT: Okay. Today, is it your indication or your desire that you represent yourself in the two cases that are before the Court, or are you requesting that the Court appoint counsel to you again under both cases to represent you?

THE DEFENDANT: I'll represent myself.

THE COURT: All right. And Mr. Englund, Judge Murphy ordered that if you wanted to represent yourself, then you needed to file a motion in both of your cases and set forth your reason for requesting that you represent yourself. And I've reviewed the file, and it does not appear that you have filed any such motion. Have you filed the motion that Judge Murphy ordered?

THE DEFENDANT: No.

RP 3/12/13 4-5.

At this point the defendant admitted to the court that he had never studied the law. RP 3/12/13 4-5. The court then reviewed each charge and each potential penalty with the defendant, who stated that he understood each charge and each potential penalty. RP 3/12/13 5-9. The court then informed the defendant that if he represented himself he would be "on his own", that he would be subject to the rules of evidence, that he would be subject to the rules of criminal procedure and that if he wanted to testify on his own behalf he would have to ask himself the questions he answered. RP 3/12/13 9-11. The defendant acknowledged each of these warnings. *Id.* The following gives the end of the colloquy along with the court's refusal to allow the defendant to represent himself:

> THE COURT: At this point, I need to advise you that, in the Court's opinion, you would be far better served if you were defended by a trained lawyer than representing yourself. It's unwise to represent yourself. You face extremely stiff penalties if, in fact, you are found guilty. You are not familiar with the law.
>
> THE DEFENDANT: Well, I know –
>
> THE COURT: Don't interrupt me. You clearly don't know the rules of evidence based upon the statements you made to the Court. It does not appear that you know the rules of criminal procedure, and because you're facing such a stiff penalty, it appears that you would be better served by being represented by a lawyer. Is it still your desire to represent yourself and give up your right to be represented by a lawyer?

THE DEFENDANT: Yeah. The procedure is illegal all the way through.

THE COURT: I couldn't hear you, I'm sorry.

THE DEFENDANT: It's all illegal all the way through. You're trying to prosecute the innocent. Innocent. You go too far with it.

THE COURT: First of all, this Court isn't charging anyone or anything. That is the job for the state of Washington. This Court simply conducts the cases that come before it, and I do not find that you have the ability to represent yourself in this matter. I'm denying your right to represent yourself, and I'm going to appoint the Office of Assigned Counsel to represent you in this matter. I'm sorry.

RP 3/12/13 11-12.

The court then entered the following written order denying the defendant's demand to represent himself:

On this date, the defendant appeared for an Attorney Status Hearing. The Defendant requested to represent himself in this matter. Based upon the Court's colloquy with the Defendant, the Court

FINDS that the defendant would not have the capacity to understand and follow the procedural rules in this matter and would thereby be unable to provide for his defense. Therefore, the Court

ORDERS that an attorney shall be chosen by the Office of Assigned Counsel to represent the defendant in all further proceedings in this Cause.

CP 52.

Pursuant to the court's order the case was called for review on February 20, 2013. RP 7. At that time the prosecutor appeared as did the defendant's new appointed attorney Margaret Brammall. *Id.* However the

defendant was not brought into the courtroom. *Id.* Rather, both attorneys and the judge signed an order requiring an evaluation by Western State Hospital at the defense attorney's request. RP 7-8; CP 54-55. The following gives the entire transcription of that hearing.

> THE COURT: Is Mr. Englund present?
>
> MS. BRAMMALL: Your Honor, he is in custody. I don't believe he needs to be brought up. We're entering a Western State order because I believe he's incompetent.
>
> THE COURT: And there are two separate matters, correct?
>
> MS. BRAMMALL: Correct.
>
> THE COURT: Mr. Powers?
>
> MR. POWERS: Yes, Your Honor. The state's in agreement with the request of the defense for a competency evaluation.
>
> THE COURT: And are there any contested matters with regard to the order?
>
> MS. BRAMMALL: No, Your Honor.
>
> THE COURT: I'm signing those two orders at this time.
>
> MR. POWERS: Thank you, Your Honor.
>
> THE COURT: Thank you.

RP 7-8.

Apparently the defendant did not agree with the court signing the Western State order because eight days later the state put the matter on for hearing on its motion to have the defendant remanded to Western State

Hospital because he had refused to cooperate with an evaluation attempted at the Thurston County jail. RP 2/20/13 1-11. The court signed the requested order. CP 54-55. Two months later the parties again appeared and invited the court to enter an agreed order finding the defendant competent. RP 5/2/13 4-5. The court signed the order. RP 5/2/13 4-5; CP 65. The court then set a trial date of May 28, 2013, to which the defendant twice objected on the basis that any trial date set was out of the time for speedy trial. RP 5/2/13 4, 5.

Following entry of the order of competency defendant's appointed attorney filed a motion and supporting affirmation asking the court to reconsider its decision refusing to allow the defendant to represent himself. CP 69-70. Counsel's affirmation stated as follows:

> 1. I am over 18 years of age and I represent the Defendant in the above-entitled cause.
>
> 2. On February 12, 2013 this Court, the Honorable Christine Schaller presiding, entered an order denying Defendant's request to represent himself in this matter after conducting a colloquy with the defendant and determining that he would not have the capacity to understand and follow the procedural rules sufficiently to provide for his own defense.
>
> 3. Since then, the defendant has undergone an inpatient evaluation at Western State Hospital. In a report dated March 25, 2013, Dr. Lezlie A. Pickett opined that "There was no clinical evidence available to suggest that Mr. Englund would lack the capacity to understand that nature of the proceedings against him or that he lacked the capacity to assist counsel." She describes his congnitions as "clear, logical, and goal-directed" and states that he

was able to provide a rational explanation of his defense strategy.

4. Since the defendant was initially denied the right to represent himself, he has stated his intent not to cooperate in any way with assigned counsel. I am his third appointed attorney and although he did talk to me on one occasion and was polite, he declined my offer of assistance.

5. I have given defendant a 3-page letter containing relevant legal research and, an analysis of his case. I believe that the research I provided combined with his own defense strategy will enable him to defend himself with as good a result as could be obtained by an attorney. I will be happy to provide other assistance as required in the capacity of standby counsel.

6. I informed Mr. Englund that he face over 13 years incarceration if he loses at trial compared with a plea offer of an 18-month sentence on lesser charges.

CP 70.

On May 16, 2013, the parties appeared before the court on the new motion for self-representation. RP 5/16/13 1. During this hearing defendant's counsel argued that the defendant did have a constitutional right to represent himself, that there was no basis to deny this right, and that the court should engage in a new colloquy with the defendant. RP 5/16/13 3-6. The court refused a new colloquy and denied the motion. RP 5/16/13 7-8. Although the record is somewhat unclear, apparently up to this point the unlawful possession of firearms charges had been filed under a separate cause number. RP 5/16/13 8-9. After denying the defendant's request for self-representation the court granted a defense motion to consolidate all of the

charges under one cause number. RP 5/16/13 8-9; CP 79.

On May 28, 2013, the court called the case for hearing under CrR 3.5. RP 1-22. After testimony from two officers and the defendant the court ruled that all of the defendant's statements would be admissible at trial. RP 22-64, 65-71. Following this hearing the defendant indicated that he wanted to proceed to trial before the bench instead of a jury. RP 73-75. The defendant then signed a jury waiver after which the court engaged in a colloquy with the defendant. CP 128; RP 75. The case then proceeded to trial before the bench with the state calling nine witnesses and the defendant testifying as the only witness for the defense. RP 78-323. These witnesses testified to the facts set out in the preceding factual history. *See* Factual History, *supra*.

Following the close of the defendant's case the parties presented closing arguments. RP 324-347. At this point the court rendered its verdicts finding the defendant guilty on each count. RP 347-356. The court also found the firearms enhancements proven. *Id.* The court later entered written findings of fact and conclusions of law in support of its decision in the case. CP 146-156. About a month after trial the court imposed a sentence within the standard range. CP 169-179. The defendant thereafter filed timely notice of appeal. CP 140.

ARGUMENT

I. THE TRIAL COURT'S REFUSAL TO GRANT THE DEFENDANT'S TIMELY AND UNEQUIVOCAL DEMAND TO ACT AS HIS OWN ATTORNEY DENIED THE DEFENDANT HIS RIGHT OF SELF-REPRESENTATION UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 22, AND UNITED STATES CONSTITUTION, SIXTH AMENDMENT.

Under both Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, a defendant in a criminal proceeding is guaranteed the right to self representation. *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); *State v. Woods*, 143 Wn.2d 561, 23 P.3d 1046 (2001). Where a defendant asserts this right, the court's duty is solely to determine whether or not the request is knowing, intelligent, and unequivocal and not made for an improper purpose such as delay. *State v. Breedlove*, 79 Wn. App. 101, 900 P.2d 586 (1995); *see also State v. Fritz*, 21 Wn. App. 354, 585 P.2d 173 (1978). A trial court's decision whether or not to grant a defendant's request for self-representation is reviewed under an abuse of discretion of standard. *State v. Madsen*, 168 Wn.2d 496, 505, 229 P.3d 714 (2010). An abuse of discretion occurs when the trial court's exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Neal*, 144 Wn.2d 600, 30 P.3d 1255 (2001). In addition, a trial court abuses its discretion when it categorically refuses to consider one or more available alternatives, or if it simply fails to exercise

that discretion when required. *State v. Khanteechit*, 101 Wn.App. 137, 5 P.3d 727 (2000).

A defendant's ability to represent himself has no bearing on whether or not he should be allowed to assert this right; rather, the issue is whether or not the waiver of the right to counsel is knowing, intelligent and unequivocal. *State v. Canedo-Astorga*, 79 Wn.App. 518, 903 P.2d 500 (1995); *Godinez v. Moran*, 509 U.S. 389, 113 S.Ct. 2680, 125 L.Ed2d 32 (1993). Erroneous deprivation of this constitutional right is conclusively prejudicial thus compelling automatic reversal. *Breedlove*, 79 Wn. App. at 110; *McKaskle v. Wiggins*, 465 U.S. 168, 177 n. 8, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984).

For example, in *Godinez v. Moran, supra*, the defendant was charged in Nevada with multiple murders following two separate incidents. After the second incident the defendant unsuccessfully attempted to commit suicide. He later called the police to his hospital bed and confessed to the offenses. After arraignment the court found the defendant competent after two psychiatrists evaluated the defendant and provided a report in which both indicated that the defendant understood the nature of the charges and proceedings and was capable of assisting counsel. The defendant thereafter informed the court that he wanted to represent himself because he wanted to plead guilty and he wanted to prevent his attorneys from presenting any

mitigating evidence during sentencing. Upon hearing this the court entered into a colloquy with the defendant and granted his request. The defendant then pled guilty. The court ultimately sentenced him to death.

The defendant later filed a petition for habeas corpus in federal court arguing that he should be allowed to withdraw his guilty plea because (1) the standard of competency to waive the right to counsel or plead guilty was higher than the level of competency necessary to stand trial, and (2) while he had been competent to stand trial, he had not been sufficiently competent to waive his right to counsel and represent himself. A Federal District court denied his requested relief but the Ninth Circuit Court of Appeals accepted the defendant's arguments and granted the relief requested. The United States Supreme Court then accepted review and held under the due process clause the level of competence necessary to stand trial was the same as the level of competence to waive the right to counsel and continue *pro se*. The court held:

> [T]he competence that is required of a defendant seeking to waive his right to counsel is the competence to waive the right, not the competence to represent himself. In *Faretta v. California*, we held that a defendant choosing self-representation must do so "competently and intelligently", but we made it clear that the defendant's "technical legal knowledge" is "not relevant" to the determination whether he is competent to waive his right to counsel, and we emphasized that although the defendant "may conduct his own defense ultimately to his own detriment, his choice must be honored". Thus, while "[i]t is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance

> than by their own unskilled efforts,"... a criminal defendant's ability to represent himself has no bearing upon his competence to choose self-representation.

Godinez v. Moran, 509 U.S. at 400, 113 S.Ct. at 2687 (some citations and footnotes omitted).

In *Faretta v. California, supra,* mentioned in *Godinez*, the court accepted an appeal from a defendant in a California Criminal Proceeding who argued that the trial court erred when it ultimately decided to refuse his request for self-representation. In fact the court had initially granted the request after holding a colloquy in which it informed the defendant of his potential peril if convicted. However, the court later reversed itself after holding a colloquy in which it became evident that the defendant did not understand any of the hearsay rules or procedures associated with voir dire. In addressing this issue the court first noted the following concerning the trial court's belief that the defendant did not have the ability to represent himself.

> It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant can only lead him to believe that the law contrives against him. Moreover, it is not inconceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense. Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is

> to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for the individual which is the lifeblood of the law.'

Faretta v. California, 422 U.S. at 834, 95 S.Ct. at 2240-2241 (quoting *Illinois v. Allen*, 397 U.S. 337, 350-351, 90 S.Ct. 1057, 1064, 25 L.Ed.2d 353 (Brennan, J., concurring)).

The court then held that since the record established that the defendant had been informed of the perils of self-representation and knowingly waived the right to counsel, the trial court erred when it denied the defendant's request. The court stated:

> Here, weeks before trial, Faretta clearly and unequivocally declared to the trial judge that he wanted to represent himself and did not want counsel. The record affirmatively shows that Faretta was literate, competent, and understanding, and that he was voluntarily exercising his informed free will. The trial judge had warned Faretta that he thought it was a mistake not to accept the assistance of counsel, and that Faretta would be required to follow all the 'ground rules' of trial procedure. We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule and the California code provisions that govern challenges of potential jurors on voir dire. For his technical legal knowledge, as such, was not relevant to an assessment of his knowing exercise of the right to defend himself.

Faretta v. California, 422 U.S. at 835-836, 95 S.Ct. at 2540-2541 (footnotes omitted).

In the case at bar the trial court denied the defendant the right to self-representation of three separate occasions. The first occurred on January 30, 2013. During that hearing the defendant's attorney informed the court that

he had met with the defendant, that the defendant refused to accept him as his attorney, and that the defendant demanded the right to represent himself. RP 1/30/13 4-5. The court then inquired of the defendant, who twice demanded the right to represent himself. RP 1/30/13 5-6, 14. In spite of defense counsel's statements and the defendant's demands to represent himself the court refused to engage in any colloquy with the defendant about self-representation or even consider his request. RP 1/30/13 1-14. Rather, the court told the defendant that it would not consider allowing him to proceed *pro se* unless he first put his request in writing. RP 1/30/13 5-6; CP 48.

By refusing to consider this timely and unequivocal request the trial court abused its discretion by failing to exercise it. There is nothing within Washington Constitution, Article 1, § 22, United States Constitution, Sixth Amendment, or the case law interpreting the right to self-representation that remotely suggests that the defendant must file a written motion before the court will even exercise its discretion in determining whether or not the defendant should be allowed to represent himself. The defendant's demands were timely and unequivocal. They were further supported by defense counsel's statements to the court. Thus, by refusing to even enter into a colloquy with the defendant the trial court abused its discretion and denied the defendant his right to represent himself under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment.

The second occasion in which the trial court denied the defendant his right to represent himself occurred on February 14, 2013. At that time the defendant again twice demanded the right to represent himself. Although the defendant had not filed a written motion, the court did engage in a colloquy with the defendant. The initial portion of this colloquy went as follows:

> THE COURT: Mr. Englund, Judge Murphy set the date today as attorney status hearing to determine how you're going to proceed in this matter. Previously, you had two different lawyers appointed to represent you, and, based upon my reading of the record and based upon the statements by the prosecutor, Mr. Powers, at least at the hearing in front of Judge Murphy at the last hearing, you indicated you wanted to represent yourself in this matter. Is that correct?
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> THE DEFENDANT: Yeah, I do.
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> THE COURT: I need you to speak up a little bit.
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> THE DEFENDANT: Yes.
>
> THE COURT: Okay. Today, is it your indication or your desire that you represent yourself in the two cases that are before the Court, or are you requesting that the Court appoint counsel to you again under both cases to represent you?
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> THE DEFENDANT: I'll represent myself.
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> THE COURT: All right. And Mr. Englund, Judge Murphy ordered that if you wanted to represent yourself, then you needed to file a motion in both of your cases and set forth your reason for requesting that you represent yourself. And I've reviewed the file, and it does not appear that you have filed any such motion. Have you filed the motion that Judge Murphy ordered?
>
> THE DEFENDANT: No.

RP 3/12/13 4-5.

At this point the defendant admitted to the court that he had never studied the law. RP 3/12/13 4-5. The court then reviewed each charge and each potential penalty with the defendant, who stated that he understood each charge and each potential penalty. RP 3/12/13 5-9. The court then informed the defendant that if he represented himself he would be "on his own", that he would be subject to the rules of evidence, that he would be subject to the rules of criminal procedure and that if he wanted to testify on his own behalf he would have to ask himself the questions he answered. RP 3/12/13 9-11. The defendant acknowledged each of these warnings. *Id.* The following gives the end of the colloquy along with the court's refusal to allow the defendant to represent himself:

> THE COURT: At this point, I need to advise you that, in the Court's opinion, you would be far better served if you were defended by a trained lawyer than representing yourself. It's unwise to represent yourself. You face extremely stiff penalties if, in fact, you are found guilty. You are not familiar with the law.
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> THE DEFENDANT: Well, I know –
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> THE COURT: Don't interrupt me. You clearly don't know the rules of evidence based upon the statements you made to the Court. It does not appear that you know the rules of criminal procedure, and because you're facing such a stiff penalty, it appears that you would be better served by being represented by a lawyer. Is it still your desire to represent yourself and give up your right to be represented by a lawyer?
>
> THE DEFENDANT: Yeah. The procedure is illegal all the way through.

THE COURT: I couldn't hear you, I'm sorry.

THE DEFENDANT: It's all illegal all the way through. You're trying to prosecute the innocent. Innocent. You go too far with it.

THE COURT: First of all, this Court isn't charging anyone or anything. That is the job for the state of Washington. This Court simply conducts the cases that come before it, and I do not find that you have the ability to represent yourself in this matter. I'm denying your right to represent yourself, and I'm going to appoint the Office of Assigned Counsel to represent you in this matter. I'm sorry.

RP 3/12/13 11-12.

The court then entered the following written order denying the defendant's demand to represent himself:

On this date, the defendant appeared for an Attorney Status Hearing. The Defendant requested to represent himself in this matter. Based upon the Court's colloquy with the Defendant, the Court

FINDS that the defendant would not have the capacity to understand and follow the procedural rules in this matter and would thereby be unable to provide for his defense. Therefore, the Court

ORDERS that an attorney shall be chosen by the Office of Assigned Counsel to represent the defendant in all further proceedings in this Cause.

CP 52.

Both the trial court's oral as well as written order denying the defendant the right to represent himself suffer from the same fatal defect as did the denial in *Faretta*. The defendant's colloquy in this case demonstrates that the defendant was aware of his right to counsel, was aware of the difficulty in representing himself, and was aware of the potential penalties for

the offenses for which he was charged. In light of this knowledge he repeatedly and unequivocally demanded the right to represent himself. The same situation existed in *Faretta*. In spite of this unequivocal, knowing, and intelligent waiver of the right to counsel, the trial court none the less refused his request because the court found "that the defendant would not have the capacity to understand and follow the procedural rules in this matter and would thereby be unable to provide for his defense." Although a little less specific than the reason for the denial in *Faretta,* the justification was exactly the same: the trial court did not believe the defendant had the "capacity" to represent himself.

In so ruling the trial court abused its discretion because it exercised that discretion on an "untenable ground or reason." As the court in *Faretta* made crystal clear, the defendant's "capacity" to represent himself "was not relevant to an assessment of his knowing exercise of the right to defend himself." *Faretta v. California*, 422 U.S. at 835-836, 95 S.Ct. at 2540-2541. Simply put the defendant's "capacity" to effectively represent himself was not a criteria for the court's consideration. Thus, in the same manner that the trial court in *Faretta* denied the defendant his right to self-representation under United States Constitution, Sixth Amendment, so the trial court in the case at bar denied the defendant his right to self-representation under Washington Constitution, Article 1, § 22, and United States Constitution,

Sixth Amendment.

The third occasion on which the trial court abused its discretion in refusing to allow the defendant to represent himself occurred on May 16, 2013, two weeks after the trial court entered an agreed order of competency. During this hearing defendant's counsel argued that the defendant did have a constitutional right to represent himself, that there was no basis to deny this right, and that the court should engage in a new colloquy with the defendant. RP 5/16/13 3-6. Trial counsel backed this demand up with a written motion and affirmation in which counsel summarized the findings of the doctors at Western State that the defendant was fully competent to stand trial. In spite of this unequivocal request, in spite of the filing of the Western State report, and in spite of the court having specifically found the defendant competent to stand trial, the court refused to even engage in a colloquy with the defendant or consider the defendant's request.

The trial court's stated reason for refusing to consider the defendant's demand appears to have been that it was a Motion for Reconsideration of the decision made three months previous by another judge. However, there is nothing in either the constitution or the case law to support a view that once a trial court denies a motion for self-representation that decision forecloses the issue at all future times. Thus, by refusing to even consider the defendant's request to represent himself the trial court abused its discretion

and denied the defendant his right to self-representation under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment. As a result this court should reverse the defendant's convictions and remand for a new trial.

II. THE TRIAL COURT VIOLATED THE DEFENDANT'S RIGHT TO SPEEDY TRIAL UNDER CrR 3.3 WHEN IT CONTINUED THE TRIAL IN ORDER TO ALLOW NEW COUNSEL TO PREPARE IN LIEU OF GRANTING THE DEFENDANT'S TIMELY, UNEQUIVOCAL DEMAND TO REPRESENT HIMSELF AND GO TO TRIAL ON THE DATE ALREADY SET.

Under CrR 3.3(b), the time for trial for a person held in jail is "60 days after the commencement date specified in this rule," or "the time specified under subsection (b)(5)." CrR 3.3(b)(1)(i)&(ii). The "[t]he initial commencement date" under CrR 3.3(c)(1) is "the date of arraignment as determined under CrR 4.1." Under CrR 3.3(h), "[a] criminal charge not brought to trial within the time period provided by this rule shall be dismissed with prejudice." CrR 3.3(h). The purpose of CrR 3.3 is to prevent undue and oppressive incarceration prior to trial. *State v. Kingen*, 39 Wn.App. 124, 692 P.2d 215 (1984).

Under CrR 3.3(f)(2), the trial court may grant a motion to continue a trial to a specific date outside of the time limits for speedy trial upon a showing of good cause if such continuance is "required in the administration of justice" and it will not prejudice the defendant. This section states:

> (f) Continuances. Continuances or other delays may be granted as follows:
>
> . . .
>
> (2) Motion by the Court or a Party. 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.

CrR 3.3(f)(2).

While the trial court bears the responsibility for assuring a defendant's right to speedy trial under this rule, the decision whether or not to grant a continuance beyond the time required under CrR 3.3 lies within the sound discretion of the trial court and will only be overruled upon an abuse of that discretion. *State v. Nguyen*, 131 Wn.App. 815, 129 P.3d 821 (2006). An abuse of discretion occurs "when the trial court's decision is arbitrary or rests on untenable grounds or untenable reasons." *State v. Lawrence*, 108 Wn.App. 226, 31 P.3d 1198 (2001).

In the case at bar the defendant's arraignment was held on December 26, 2012. CP 19-20. Since he was in custody, his right to a speedy trial under the rule ran out on February 24, 2013. The trial court set the trial on February 19, 2013, five days before the expiration of speedy trial. CP 19-20. On January 30, 2013, the defendant's attorney moved to withdraw after

informing the court that the defendant insisted on representing himself. The defendant also made an unequivocal demand to represent himself and go to trial on the date set. As was set out in Argument I in this brief, the trial court violated the defendant's constitutional right to self-representation when it refused to even consider the defendant's request. Rather, the court granted the defense attorney's request to withdraw and struck the trial date over the defendant's objection. The sole basis to justify the court's action was its refusal to allow the defendant to proceed to trial on the date already set representing himself. Thus, in the same manner that the trial court abused its discretion when it denied the defendant's demand to represent himself and go to trial on the date set, so the trial court abused its discretion when it continued the defendant's trial beyond the time required under CrR 3.3. As a result, under CrR 3.3(h) the defendant is entitled to vacation of his convictions and a remand with instructions to dismiss with prejudice.

III. THE DEFENDANT'S CONVICTIONS SHOULD BE REVERSED AND THE CASE REMANDED FOR A NEW TRIAL BECAUSE THE TRIAL COURT VIOLATED THE DEFENDANT'S RIGHT UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 22, TO BE PRESENT AT EVERY CRITICAL STAGE OF HIS CASE.

Under Washington Constitution, Article 1, § 22, a defendant in a criminal case has the right to "to appear and defend in person." This constitutional guarantee is embodied in the rule that a defendant has the right to be present at "every critical stage of a criminal proceeding." *In re the*

Personal Restraint of Lord, 123 Wn.2d 296, 868 P.2d 835 (1994). In *State v. Chappel*, 145 Wn.2d 210, 36 P.3d 1025 (2001), the Washington Supreme Court stated this rule as follows:

> A criminal defendant has a constitutional right to be present in the courtroom at all critical stages of the trial arising from the confrontation clause of the Sixth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment. The Washington State Constitution also provides a criminal defendant with "the right to appear and defend in person." Wash. Const. Art. I, § 22. Additionally, Washington's criminal rules state that "[t]he defendant shall be present ... at every stage of the trial ... except ... for good cause shown." CrR 3.4(a).

State v. Chapple, 145 Wn.2d 210, 318, 36 P.3d 1025 (2001)

At a minimum, "critical stages" in a criminal case include any hearing at which "evidence is being presented or whenever the defendant's presence has a relation, reasonably substantial, to the opportunity to defend against the charge." *State v. Bremer*, 98 Wn.App 832, 991 P.2d 118 (2000).

Our case law recognizes two facts patterns under which a defendant can be deemed to have waived the right to be present at a critical stage of the proceeding: (1) when the defendant voluntarily absents himself or herself from the proceeding, and (2) when the defendant acts in a contemptuous and disruptive manner. *See State v. Garza*, 110 Wn.2d 360, 77 P.3d 347 (2003), and *State v. DeWeese*, 117 Wn.2d 369, 816 P.2d 1 (1991). However under the first exception, the trial court cannot simply presume a waiver from mere absence, and under the second exception, the trial court must use the least

restrictive alternative available and allow a defendant to return to the courtroom if he or she promises to behave. *Garza, supra; DeWeese, supra.* The hallmark of both these exceptions to the defendant's right to be present at any critical stage of the proceedings is that it is the defendant's own improper conduct that results in exclusion, and that defendant always has the power to return to the proceeding upon a promise of good conduct.

On February 20, 2013, the trial court called this case for a hearing on a request for a competency evaluation. At that time the defendant's new attorney called for a competency evaluation. The state did not oppose the request. The court signed the order. All of these actions were taken in open court while the defendant was in jail and excluded from the courtroom, apparently because the defendant's new attorney did not think it "necessary" to have him brought into the court room. However, this argument was incorrect. It was necessary. Since the court was making a factual determination on whether or not there was sufficient evidence to order a competency evaluation this hearing constituted a critical stage of the proceedings. In addition, the defendant's presence was substantially related to the purpose of the hearing as he was opposed to his attorney's request. In fact, he refused to even participate in an evaluation and the court had to order him taken to Western State Hospital in order to facilitate the completion of the evaluation. Excluding the defendant from the courtroom denied him the

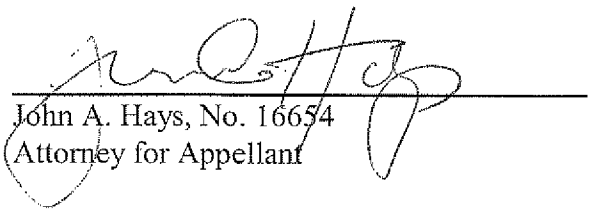
right to contest an evaluation that ultimately proved what the defendant would have said at the hearing: that he was competent. As a result, the failure to allow the defendant to be in the courtroom denied the defendant his right under Washington Constitution, Article 1, § 22, to be present at "every critical stage of a criminal proceeding." As a result, this court should reverse the defendant's conviction and remand for a new trial.

CONCLUSION

The defendant's convictions should be vacated and the charges dismissed with prejudice based upon the trial court's failure to bring the defendant to trial within the time required under CrR 3.3. In the alternative, this court should vacate the defendant's convictions and remand for a new trial based upon the trial court's denial of the defendant's right to represent himself and the trial court's denial of the defendant's right to be present at every critical stage of the proceedings.

DATED this 18th day of November, 2013.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

WASHINGTON CONSTITUTION
ARTICLE 1, § 22

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

UNITED STATES CONSTITUTION,
SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

CrR 3.3

(a) General Provisions.

(1) Responsibility of Court. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

(2) Precedence Over Civil Cases. Criminal trials shall take precedence over civil trials.

(3) Definitions. For purposes of this rule:

(i) 'Pending charge' means the charge for which the allowable time for trial is being computed.

(ii) 'Related charge' means a charge based on the same conduct as the pending charge that is ultimately filed in the superior court.

(iii) 'Appearance' means the defendant's physical presence in the adult division of the superior court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) 'Arraignment' means the date determined under CrR 4.1(b).

(v) 'Detained in jail' means held in the custody of a correctional facility pursuant to the pending charge. Such detention excludes any period in which a defendant is on electronic home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

(4) Construction. The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) Related Charges. The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) Reporting of Dismissals and Untimely Trials. The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(b) Time for Trial.

(1) Defendant Detained in Jail. A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified under subsection (b)(5).

(2) Defendant Not Detained in Jail. A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(3) Release of Defendant. If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) Return to Custody Following Release. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60-day limit shall apply.

(5) Allowable Time After Excluded Period. If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

(c) Commencement Date.

(1) Initial Commencement Date. The initial commencement date shall be the date of arraignment as determined under CrR 4.1.

(2) Resetting of Commencement Date. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) Waiver. The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) Failure to Appear. The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) New Trial. The entry of an order granting a mistrial or new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) Appellate Review or Stay. The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the superior court of the mandate or written order terminating review or stay.

(v) Collateral Proceeding. The entry of an order granting a new trial pursuant to a personal restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the superior court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) Change of Venue. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) Disqualification of Counsel. The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(d) Trial Settings and Notice – Objections – Loss of Right to Object.

(1) Initial Setting of Trial Date. The court shall, within 15 days of the defendant's actual arraignment in superior court or at the omnibus hearing, set a date for trial which is within the time limits prescribed by this rule and notify counsel for each party of the date set. If a defendant is not represented by counsel, the notice shall be given to the defendant and may be mailed to the defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment and the date set for trial.

(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.

(3) Objection to Trial Setting. 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.

(4) Loss of Right to Object. If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) Excluded Periods. The following periods shall be excluded in computing the time for trial:

(1) Competency Proceedings. All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) Proceedings on Unrelated Charges. Arraignment, pre-trial proceedings, trial, and sentencing on an unrelated charge.

(3) Continuances. Delay granted by the court pursuant to section (f).

(4) Period between Dismissal and Refiling. The time between the dismissal of a charge and the refiling of the same or related charge.

(5) Disposition of Related Charge. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in superior court on a related charge.

(6) Defendant Subject to Foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington.

(7) Juvenile Proceedings. All proceedings in juvenile court.

(8) Unavoidable or Unforeseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) Disqualification of Judge. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

(f) Continuances. Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties, which must be signed by the defendant or all defendants, the court may continue the trial date to a specified date.

(2) Motion by the Court or a Party. 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.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

(h) Dismissal With Prejudice. A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

State of Washington, Respondent, vs. Allen Gene Englund, Appellant.	No. 44958-7-II AFFIRMATION OF OF SERVICE

Donna Baker states the following under penalty of perjury under the laws of Washington State. On November 18, 2013, I personally e-filed and/or placed in the United States Mail the following document with postage paid to the indicated parties:

1. Brief of Appellant
2. Affirmation of Service

Allen Englund-DOC#249192
H2A-4
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA. 98520

Carol LaVerne
Prosecuting Attorney
2000 Lakeridge Dr., S.W.
Building 2
Olympia, WA. 98502

Dated this 18th day of November, 2013, at Longview, Washington.

Donna Baker
Legal Assistant

HAYS LAW OFFICE

November 18, 2013 - 1:01 PM

Transmittal Letter

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Case Name: State vs Allen Englund

Court of Appeals Case Number: 44958-7

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Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

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Statement of Additional Authorities

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Affidavit

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Copy of Verbatim Report of Proceedings - No. of Volumes: ____
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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

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Petition for Review (PRV)

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Comments:

No Comments were entered.

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