Supreme Court No. 93263-8
COA No. 33158-0-III

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent

v.

SCOTT MICHAEL WILLIAMS,

Defendant/Petitioner.

ANSWER TO DEFENDANT'S PETITION FOR REVIEW

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INDEX

TABLE OF AUTHORITIES

WASHINGTON CASES

I. IDENTITY OF PARTY

Respondent, State of Washington, was the plaintiff in the trial court and the appellant in the Court of Appeals.

II. STATEMENT OF RELIEF SOUGHT

Respondent seeks denial of Defendant William's petition for review of the opinion issued by the Court of Appeals on May 10, 2016.

III. ISSUES PRESENTED

1. Whether the decision by the Court of Appeals is of substantial public interest. RAP 13.4(b)(4).

2. Does the record support the trial court's finding that "[t]he State's choice of dismissal and filing/refiling created too much of an ambiguity in the change of evidence, and the discovery and rendered it impossible to be able to prepare for trial within the confines of the defendant's speedy trial rights." CP 87.

IV. STATEMENT OF THE CASE

Factual Background

On September 17, 2014, at approximately 13:35 hours, Washington State Patrol Communications was advised that there was an erratically driven white Chevrolet pickup traveling westbound on I-90 at milepost 286 in Spokane County. CP 3.

Soon thereafter, a second reporting party advised that the erratic Chevrolet was at milepost 281 on westbound I-90. The defendant's erratic driving was described as excessive speed near 100 miles per hour or higher in the posted 60 mile per hour zone. *Id.* At 13:43 hours, Sergeant D. Jacobs caught up to Mr. Williams' Chevrolet and attempted to stop the vehicle. CP 50-51. Sergeant Jacobs was driving a fully marked Washington State Patrol vehicle with emergency lights and siren. *Id.* Trooper R. Snowden and Trooper M. Weberling also caught up to the Chevrolet, becoming the second and third vehicles in pursuit. *Id.* Trooper Snowden's vehicle was also fully marked and had all emergency equipment active. CP 50.

The defendant made several lane changes to pass slower traffic and drifted across the skip line on numerous occasions. CP 50. He acknowledged the officers and kept waving out the window. *Id.* The defendant's speeds ranged from 80 miles per hour to 100 miles per hour. *Id.* The pursuit continued through Lincoln County and entered Adams County, where Troopers M. Shepherd and D. Burt joined in the pursuit. *Id.* At milepost 235, Mr. Williams drove into the median and crossed over into the eastbound lanes of I-90, still travelling westbound at well over 100 miles per hour, narrowly missing oncoming traffic. *Id.* The defendant crossed the median again and re-entered the westbound lanes of I-90. *Id.*

Trooper Raymond ultimately deployed a spike strip at approximately milepost 203, successfully puncturing the defendant's tires. *Id.* The defendant continued on for about two miles until he pulled over onto the outside shoulder and was taken into custody. *Id.* Defendant Williams' license was suspended in the first degree. CP 3. He had four prior convictions for DUI within the last ten years. *Id.* An ignition interlock device was required on his vehicle, but no such device was installed in the Chevrolet. *Id.* Trooper Weberling applied for and was granted a search warrant for Defendant's blood. *Id.* The blood test results from the Washington State Toxicology Lab showed a blood alcohol content of .16 ng/ml. CP 54.

Procedural Background

Mr. Williams made his first appearance in Adams County on September 18, 2014. CP 28-29. On September 22, 2014, an information was filed in Adams County charging him with one count of attempting to elude a pursuing police vehicle and one count of felony driving under the influence. CP 27, 30-31. Mr. Williams was arraigned October 6, 2014. CP 33; 1 RP 4. Trial was set for November 18, 2014. CP 33. On October 24, 2014, 18 days after Mr. Williams's arraignment in Adams County, the State refiled the charges in Spokane County. CP 34. The charges were filed in Spokane because the respective prosecutors from both Adams and Spokane

Counties believed that Spokane would be the more appropriate place to charge and try Mr. Williams. CP 41. On October 28, 2014, Adams County dismissed its charges against Mr. Williams. CP 80.

Mr. Williams was transported to Spokane. He had his first appearance in Spokane Superior Court on October 31, 2014. CP 10-12. At that time he was represented by attorney John H. Whaley of the Spokane County Public Defender's Office. CP 12. Mr. Williams was arraigned on the Spokane charges on November 4, 2014. 1 RP 3-5. At the Spokane arraignment, Mr. Williams was represented by Attorney Derek Reid, *also* of Spokane County Public Defender's Office. CP 14. The court set trial for December 1, 2014. CP 14.[1]

The third attorney from the Spokane County Public Defender's Office to represent the defendant was David Loebach. He filed a notice of appearance on behalf of the defendant on November 5, 2015. CP 15. The parties appeared before the court again on November 14, 2014. RP 6. The December 1, 2014 trial date remained unchanged. On November 18, 2014, nearly two weeks before trial was set to commence and speedy trial was set to expire, Defendant, through his counsel Mr. Loebach, moved the court to

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[1] Mr. Williams's Adams County arraignment was October 6, 2014. Sixty days from October 6, 2014 (time for trial) would have been December 5, 2014.

dismiss the charges based on CrR 8.3, alleging "the case should be dismissed under CrR 8.3(b) because the State's mismanagement has caused violations of Mr. Williams' right to a speedy trial and right to counsel" (CP 20). CP 17-37. The court denied the defendant's motion to dismiss, reasoning:

> This progression does not rise to the level of mismanagement that we saw in the ... I want to say Michelli (sic) case. It really does not add as a matter of law the kind of circumstances that the Court would need to find for dismissal.

2RP 30; CP 58.

However, the court gave leave to defense counsel to re-note the issue at a later date. CP 58. At that point, defense counsel moved to continue the matter, citing that defense counsel had a scheduling conflict, *not that* defense counsel needed more time to prepare for trial. Specifically, on December 1, 2014, the date Mr. Williams was scheduled for trial, defense counsel had two other trials scheduled. CP 56–57.

The court granted defense counsel's motion to continue, thereby excluding the period until the next trial date under CrR 3.3(e)(3). Thus, when the parties appeared again before the court on January 22, 2015, Mr. Williams was still on day 45 of his speedy trial clock.

On January 22, 2015, the defendant reargued his CrR 8.3(b) motion to dismiss. The trial court dismissed the charges, finding in pertinent part:

> 15. There was no misconduct by the state, but [t]he decision of the State to move the proceedings from Adams County to Spokane County was an arbitrary action that resulted in unfair circumstances forcing Mr. Williams to make an impossible choice between exercising his speedy trial right and being competently prepared for trial.

CP 86.

The trial court's conclusions of law were:

> 1. The arbitrary action of the State resulted in a violation of CrR 8.3(b) that prejudiced the rights of Mr. Williams and materially affected Mr. Williams's right to a fair trial.
>
> 2. The State's choice of dismissal and filing/refiling created too much of an ambiguity in the change of evidence, and the discovery and rendered it impossible to be able to prepare for trial within the confines of the defendant's speedy trial rights.

CP 86-87.

The State timely appealed. CP 83. The appellate court reversed, holding:

> Thus, the only question we face is whether the State's explanation meets the rule's terms. We hold it does. The State's decision to pursue charges in the county where the commencement and bulk of the defendant's alleged conduct took place is a reasoned one. It is not discriminatory and did not infringe on any fundamental rights.[1] Consequently, the State's decision to switch venues does not qualify as arbitrary and cannot justify dismissal under CrR 8.3(b), regardless of prejudice.
>
> > Fn. 1 Venue choices do not implicate fundamental rights, triggering heightened

> scrutiny. *See Burlington N. R.R. Co. v. Ford,* 504 U.S. 648, 651, 112 S.Ct. 2184, 119 L.Ed.2d 432 (1992). The same is true for decisions implicating rule-based (as opposed to constitutional) speedy trial rights. *State v. Smith,* 117 Wn.2d 263, 278–79, 814 P.2d 652 (1991); *State v. White,* 94 Wn.2d 498, 501, 617 P.2d 998 (1980). Although Mr. Williams had the constitutional right to effective assistance of counsel, the State's action did not directly impinge on this right since counsel was able to ask for a continuance beyond the normal speedy trial period. *State v. Hoffman,* 116 Wn.2d 51, 76–77, 804 P.2d 577 (1991).

State v. Williams, No. 33158-0-III, 2016 WL 2651726, at *3 (Wash. Ct. App. May 10, 2016).

V. ARGUMENT

A. THE APPELLATE COURT'S HOLDING WAS BASED UPON ESTABLISHED LEGAL PRINCIPLES AND DOES NOT PRESENT AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST BECAUSE "THE STATE'S DECISION TO PURSUE CHARGES IN THE COUNTY WHERE THE COMMENCEMENT AND BULK OF THE DEFENDANT'S ALLEGED CONDUCT TOOK PLACE [WAS] A REASONED ONE" AND IT WAS "NOT DISCRIMINATORY AND DID NOT INFRINGE ON ANY FUNDAMENTAL RIGHTS."[2]

The *only* grounds for review alleged by Petitioner is that the appellate court ruling presents an issue of substantial public interest. Petitioner's Br. at 9, citing RAP 13.4(b)(4). However, as discussed by the

[2] *Williams*, at *3.

appellate court, the law is well-settled in the area of dismissals granted pursuant to CrR 8.3:

> To prevail on a motion to dismiss under this provision, "the defendant must show by a preponderance of the evidence both (1) arbitrary action or governmental misconduct, and (2) actual prejudice affecting the defendant's right to a fair trial." *State v. Martinez,* 121 Wn. App. 21, 29, 86 P.3d 1210 (2004). No amount of prejudice can sustain a dismissal order if the defendant is unable to establish arbitrary action or misconduct. *State v. Michielli,* 132 Wn.2d 229, 240, 937 P.2d 587 (1997).

Williams, at *1.

Additionally, and as noted by the appellate court, dismissal "is an extraordinary remedy." *Id.* at *2, quoting *State v. Moen,* 150 Wn.2d 221, 226, 76 P.3d 721 (2003). "CrR 8.3(b) was not designed to grant courts 'the authority to substitute their judgment for that of the prosecutor.' *State v. Starrish,* 86 Wn.2d 200, 205, 544 P.2d 1 (1975)." *Id.* at 2.

As noted by the Court of Appeals, the decision to file the charges in the county where the commencement and bulk of the defendant's conduct took place was a reasoned one, was not discriminatory, and did not infringe on any fundamental rights. Therefore, as held by the Court of Appeals, "the State's decision to switch venues does not qualify as arbitrary and cannot justify dismissal under CrR 8.3(b)." *Id.* at 3. Because the decision is limited to the particular and peculiar facts of this case, review is not warranted under RAP 13.4(b)(4)(issue of substantial public interest).

B. THE RECORD IS DEVOID OF ANY FACTUAL FINDINGS SUPPORTED IN THE RECORD EXPLAINING WHY THE ATTORNEYS FOR THE DEFENDANT COULD NOT BE COMPETENTLY PREPARED FOR TRIAL.

If review is accepted, this Court should also accept the issues raised on direct appeal regarding the trial court's conclusion that "the State's choice of dismissal and filing/refiling created too much of an ambiguity in the change of evidence, and the discovery and *rendered it impossible to be able to prepare for trial within the confines of the defendant's speedy trial rights.*"[3] The record is devoid of any explanation from defense counsel explaining why he or the other two attorneys from his office, together or separately, could not be competently prepared for trial within the speedy trial period.

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[3] State's assignments of error, below, included the following:

> 2. Substantial evidence does not support the trial court's finding of fact 15, that the State's action resulted in unfair circumstances forcing Mr. Williams to make an impossible choice between exercising his speedy trial right and being competently prepared for trial.
>
> 3. Substantial evidence does not support the court's finding that the State's action prejudiced the rights of Mr. Williams, listed as Conclusions of Law 1 and 2.

Appellant's Br. at 1.

The trial court never made any finding regarding what defense trial preparation had been done, or had not been done (and why it had not been done), or what preparation was necessary that could not be accomplished by the three seasoned attorneys from the Public Defender's Office who passed the defendant back and forth.[4] The trial court found that it would be impossible to prepare for trial within the *remaining* time for speedy trial without conducting a hearing on what had or had not been done and why it had or had not been done in the previous month. By their own calculations, the defendant and his three attorneys had, at a minimum, from October 31, 2014, to December 5, 2014, to prepare for trial. Why three experienced attorneys could not prepare for a simple DUI/eluding trial within that period of time was neither inquired into by the trial court, nor explained by the defense attorneys.

Additionally, it is apparent that the trial court did not apply the correct legal standard when it held "the State's choice of dismissal and filing or refiling created *too much of an ambiguity in the charges, the evidence, and the discovery* and rendered it impossible to be able to prepare of trial within the confines of the defendant's speedy trial rights." CP 87. How the

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[4] John H. Whaley, WSBA# 14644 (CP 11-13) (admitted 1984); Derek Reid, WSBA #34186 (CP 14; VRP 3-5) (admitted 2003); and David Loebach, WSBA #38125 (CP 13, *et. seq.*) (admitted 2006).

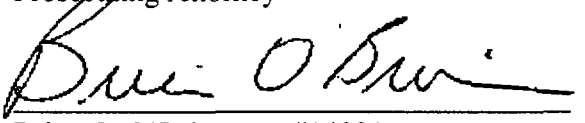
charges, evidence, and discovery were rendered "ambiguous" by the State refiling charges is unclear, at best. *See State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (the trial court abuses its discretion in basing its ruling on an erroneous view of the law); *see also*, *State v. Foxhoven*, 161 Wn.2d 168, 174, 163 P.3d 786 (2007).

VI. CONCLUSION

For the reasons stated above, Respondent requests the Court deny the petitioner's request for review.

Respectfully submitted this 11 day of July, 2016.

LAWRENCE H. HASKELL
Prosecuting Attorney



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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. SCOTT MICHAEL WILLIAMS, Appellant,	NO. 93263-8 COA No. 33158-0-III CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on July 11, 2016, I e-mailed a copy of the Answer to Defendant's Petition for Review in this matter, pursuant to the parties' agreement, to:

Marie Trombley
marietrombley@comcast.net

7/11/2016 (Date) Spokane, WA (Place) (Signature)

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