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COURT OF APPEALS
DIVISION II

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NO. 37458-7-II

STATE OF WASHINGTON
BY _____

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

STATE OF WASHINGTON,

Respondent,

v.

TRAMAINE GREGORY MILES,

Appellant.

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

The Honorable Susan K. Serko

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

DISMISSAL IS REQUIRED BECAUSE THE TRIAL COURT VIOLATED MILES' CONSTITUTIONAL RIGHT TO SPEEDY SENTENCING BY UNREASONABLY DELAYING HIS SENTENCING AND THE DELAY WAS PURPOSEFUL AND OPPRESSIVE.

The State argues that Miles' right to speedy sentencing was not violated because he suffered no prejudice, citing State v. Garibay, 67 Wn. App. 773, 777, 841 P.2d 49 (1992), where sentencing was delayed 77 days. Brief of Respondent at 7-9. In Garibay, Division Three of this Court concluded that the trial court properly exercised its discretion to extend the time for sentencing because Garibay did not raise the issue of delay nor assert that he was prejudiced by it. Id. Garibay is clearly distinguishable because defense counsel here stated that he was prepared for sentencing and urged the court to proceed with sentencing to avoid any prejudice to Miles. 9RP 5-6. It is apparent from the record that Miles attempted to object to the continuance but the court interrupted him, and he refused to sign the order rescheduling sentencing to March 14, 2008. 9RP 9; Supp CP ____ (Scheduling Order, 02/29/08).

The State argues further that "[d]efendant's legal argument regarding this issue is inapplicable to the present case because it relies on the analyses (sic) used in restitution cases." Brief of Respondent at 9. The State is obviously mistaken because the cases cited in appellant's brief do

not involve delays in ordering restitution but pertain to delays in sentencing. See Appellant's brief at 9-13, citing State v. Ellis, 76 Wn. App. 391, 884 P.2d 1360 (1994); State v. Halgren, 87 Wn. App. 525, 942 P.2d 1027 (1997); State v. Johnson, 100 Wn.2d 607, 674 P.2d 145 (1983); State v. Modest, 106 Wn. App. 660, 24 P.3d 1116 (2001); State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987).

The record substantiates that the State was unprepared for the agreed sentencing hearing and confused about the sentencing requirements under RCW 9.94A.500(1):

THE COURT: Is there any issue with speedy sentencing, Mr. Oishi?

MR. OISHI: Your Honor, my understanding is speedy sentencing is essentially 40 days. So we're 29th, 3 -- we are essentially at day 32. So if the court were to grant the State's request of the 14th, that we potentially are going to be --

THE COURT: Beyond.

MR. OISHI: -- beyond speedy sentencing as outlined by the RCW. . . .

9RP 4-5.

Although the State mistakenly believed that the statute required sentencing within 40 days, in any event, it is evident that the State was unconcerned with Miles' right to speedy sentencing. The State unabashedly asserted that the speedy sentencing rule is "illusory" because

there is “no real remedy for that violation.” 9RP 5. The State’s expectation that it would face no ramifications for its lack of diligence constitutes a blatant disregard for a fundamental right guaranteed by the Sixth Amendment of the United States Constitution and article I, section 22 of the Washington State Constitution.

Contrary to the State’s conclusory argument that Miles was not prejudiced because he was going to remain in jail until March 14, 2008 anyway, the record substantiates that the needless delay in Miles’ sentencing was purposeful and oppressive under the balancing factors articulated in State v. Ellis, 76 Wn. App. 391, 394, 884 P.2d 1360 (1994). See Brief of Appellant at 9-13. Consequently, dismissal is required, or in the alternative, this Court should remand for resentencing. At the sentencing hearing on February 29, 2008, defense counsel stipulated that Miles’ offender score was an eight based on certified copies of judgment and sentences provided by the State. 9RP 6. Miles should therefore be resentenced based on the stipulation rather than the judgment and sentences presented at the delayed sentencing on March 14, 2008.

As the Washington State Supreme Court emphasized, “Sentencing is a critical step in our criminal justice system. The fact that guilt has already been established should not result in indifference to the integrity of the sentencing process.” State v. Ford, 137 Wn.2d 472, 484, 973 P.2d

452 (1999). The purposeful and oppressive delay in Miles' sentencing, as a consequence of the State's dilatory and cavalier conduct, requires dismissal or a remand for resentencing.

B. CONCLUSION

For the reasons stated here, and in the opening brief, this Court should dismiss Miles' convictions, or remand for resentencing based on Miles' stipulation to his criminal history at the sentencing hearing on February 29, 2008.

DATED this 3rd day of March, 2009.

Respectfully submitted,

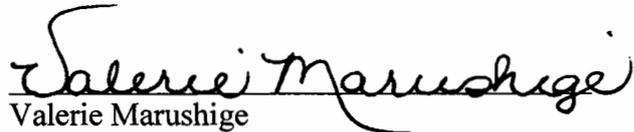

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DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Michelle Luna-Green, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 3rd day of March, 2009 in Kent, Washington.


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