

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
SAMUEL E. FERGUSON,)
(your name))
)
Appellant.)

10 JUL 12 AM 10:50
STATE OF WASHINGTON
BY *[Signature]*
CLERK

No. 39810-9-II

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

I, SAMUEL FERGUSON, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

1. AMENDED ADDITIONAL GROUND OF VIOLATION OF 60 DAY SPEEDY RIGHTS
ALSO SEE BARKER V. WINGO ON PAGE 2 of 4.

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 7-01-10

Signature: *Samuel Ferguson*

CERTIFICATE OF SERVICE
I certify that I mailed
1 copies of (mailed) SAG
to A. Cruser
& M. Kinne
7/2/10 KSC
Date Signed

GROUNDS

DID THE STATE OF WASHINGTON VIOLATE APPELLANT FERGUSON UNITED STATES CONSTITUTIONAL RIGHT OF 60 DAY SPEEDY TRIAL RIGHTS UNDER AMENDMENT 6?

ARGUMENT

I SAMUEL EUGENE FERGUSON, WAS ARRESTED ON 5-21-08. I HAD MY FIRST APPEARANCE ON 5-22-08. ON 6-05-08 MY READINESS HEARING WAS SET FOR 08-14-08 AND TRIAL SET FOR 08-18-08. DEFENSE COUNSEL REQUESTED CONTINUANCE, AND RECEIVED IT. I DID NOT ASK FOR ANY CONTINUANCES PERTAINING TO MY CASE. I WAS CONVINCED BY MY COURT APPOINTED ATTORNEY TO SIGN UNDER DURESS FOR THE CONTINUANCE. I WAS PERSUADED TO SIGN AFTER INITIALLY REFUSING. AS I UNDERSTAND A CONTINUANCE IS NOT A WAIVER OF THE RIGHT TO A SPEEDY TRIAL. I WAS INCARCERATED FOR MORE THAN 8 MONTHS BEFORE I WENT TO TRIAL.

A DEFENDANT CONFINED IN A JAIL PRIOR TO TRIAL IS OBVIOUSLY DISADVANTAGED BY ANY DELAY IN BRINGING HIM TO TRIAL. PREJUDICE TO A DEFENDANT CAUSED BY DELAYS IN BRINGING THE DEFENDANT TO A SPEEDY TRIAL SHOULD BE ASSESSED BY THE COURTS, IN THE LIGHT OF THE INTEREST OF THE DEFENDANT WHICH THE RIGHT TO A SPEEDY TRIAL WAS DESIGNED TO PROTECT. WHICH INTEREST INCLUDE (1) THE PREVENTIONS OF OPPRESSIVE PRETRIAL INCARCERATION. (2) THE MINIMIZATION OF ANXIETY AND OTHER CONCERNS OF THE ACCUSED AND (3) THE DESIRE TO LIMIT THE POSSIBILITY THAT THE DEFENSE WILL BE IMPAIRED. THE NATURE OF THE RIGHT TO A SPEEDY TRIAL MAKES IT IMPOSSIBLE TO PINPOINT A PRECISE TIME IN A JUDICIAL PROCESS WHEN THE RIGHT MUST BE ASSERTED OR WAIVED, BUT THAT FACT DOES NOT ARGUE FOR PLACING THE BURDEN OF PROTECTING THE RIGHT SOLELY ON THE DEFENDANT. FOR A DEFENDANT HAS NO DUTY TO BRING HIMSELF TO TRIAL. THE STATE HAS THE DUTY OF BRINGING A DEFENDANT TO A SPEEDY TRIAL AS WELL AS THE DUTY OF INSURING THAT THE TRIAL IS CONSISTANT WITH DUE PROCESS. THE RIGHT TO A SPEEDY TRIAL GARUNTEE THE ACCUSED BY THE UNITED STATES CONSTITUTION AMENDMENT 6, IS FUNDAMENTAL AND IS IMPOSED BY THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION AMENDMENT 14 ON THE STATE.

THE AMORPHOUS QUALITY OF THE RIGHT TO A SPEEDY TRIAL LEADS TO THE SEVERE REMEDY OF DISMISSAL OF THE PROSECUTION OF THE DEFENDANT.

THERE HAS BEEN SITUATION IN WHICH THE DEFENDANT HAS BEEN REPRESENTED BY INCOMPETENT COUNSEL, HAS BEEN SEVERELY PREJUDICED OR EVEN IN WHICH THE CONTINUANCES WERE GRANTED EX PARTE.

IN DETERMINING WHETHER THE DEFENDANT HAS BEEN DENIED HIS RIGHT TO A SPEEDY TRIAL DIFFERENT WEIGHTS SHOULD BE ASSIGNED BY THE COURTS TO DIFFERENT REASONS FOR DELAY OF THE CASE BY THE COURTS. A DELIBERATE ATTEMPT TO DELAY THE TRIAL IN ORDER TO HAMPER THE DEFENSE SHOULD BE WEIGHED HEAVILY AGAINST THE COURTS WHEREAS A MORE NEUTRAL REASON SUCH AS NEGLIGENCE OR OVERCROWDED COURTS SHOULD BE WEIGHED LESS HEAVILY BUT NEVER THE LESS SHOULD BE CONSIDERED. SINCE THE ULTIMATE RESPONSIBILITY FOR SUCH CIRCUMSTANCES MUST REST WITH THE STATE RATHER THAN WITH THE DEFENDANT. AGAIN I ASSERT THAT A CONTINUANCE IS NOT A WAIVER OF THE RIGHT TO A SPEEDY TRIAL.

VIOLATION OF APPELLANTS 60 DAY SPEEDY RIGHT TO TRIAL ASSERTED UNDER THE CONSTITUTION OF THE UNITED STATES AMENDMENT (6) AND IS FUNDAMENTAL AND IS IMPOSED BY THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION AMENDMENT (14) ON THE STATE. THIS SPECIFIC GROUND IS PURSUANT TO BARKER V. WINGO, 407 U.S. 514, 92 S. CT. 2182, 33 L. Ed.2d 101 (1972).

SANCTIONS FOR SPEEDY TRIAL VIOLATION

A DEFENDANT WHO IS DENIED THE CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL OR WHO IS NOT BROUGHT TO TRIAL WITHIN THE TIME PRESCRIBED BY CrR 3.3 CAN GENERALLY MOVE TO DISMISS THE PROSECUTION ON SUCH GROUNDS. A MOTION TO DISMISS FOR FAILURE TO ABIDE BY THE SPEEDY TRIAL MUST BE MADE PRIOR TO TRIAL. THE DEFENDANT HAS THE BURDEN TO ESTABLISH THAT THE SPEEDY TRIAL RIGHT HAS BEEN DENIED. DISMISSAL OF THE CHARGES AGAINST THE ACCUSED IS THE "ONLY POSSIBLE REMEDY" FOR A DEPRIVATION OF THE CONSTITUTIONAL RIGHT OF A SPEEDY TRIAL (STRUNK V. UNITED STATES, 412 U.S. 434, 93 S. Ct. 2260, 37 L. Ed. 2d. 56 (1973).

CONSTITUTIONAL PROVISIONS

THE RIGHT TO SPEEDY TRIAL IN CRIMINAL PROSECUTIONS IS SECURED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHICH PROVIDES IN PERTINENT PART: "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL...." A DEFENDANTS RIGHTS TO A SPEEDY TRIAL IS AS FUNDAMENTAL AS ANY OF THE RIGHTS SECURED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION. THE SPEEDY TRIAL GARUNTEE IS INCORPERATED INTO THE FOURTEENTH AMENDMENT AND IS APPLICABLE TO STATE PROSECUTIONS. STRUNK V. U.S.

THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION ALSO HAS APPLICATION TO THE RIGHT TO A SPEEDY TRIAL. A PREJUDICIAL PROSECUTORIAL DELAY IN BRINGING AN ACCUSED TO TRIAL MAY CONSTITUTE A VIOLATION OF DUE PROCESS UNDER THE FIFTH AMENDMENT WHICH GUARANTEES THAT AN INDIVIDUAL NOT BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW. UNITED STATES V. LOVASCO, 431 U.S. 783, 97 S. Ct. 2044, 52 L.Ed. 2d 752 (1977)

CONSTITUTIONAL PROVISIONS- SIXTH AMENDMENT SPEEDY TRIAL VIOLATION

THE BURDEN IS ORDINALLY UPON THE ACCUSED WHO ASSERTS DENIAL OF THE RIGHT TO A SPEEDY TRIAL TO SHOW THAT HIS SIXTH AMENDMENT CONSTITUTIONAL RIGHT THERE TO HAS BEEN DENIED AND THAT THE DELAY WAS ATTRIBUTABLE TO THE PROSECUTION. A CLAIM THAT AN ACCUSED HAS BEEN DENIED THE CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL, THEREFORE, IS SUBJECT TO A BALANCING TEST, WHICH MUST BE APPLIED ON AN AD HOC BASIS. WHEREIN THE CONDUCT OF BOTH THE PROSECUTION AND THE DEFENDANT ARE WEIGHED. THE FACTORS TO CONSIDER IN DETERMINING WHETHER A DEFENDANT HAS BEEN DEPRIVED OF HIS CONSTITUTIONAL SPEEDY TRIAL RIGHT ARE EXPLAINED BY THE UNITED STATES SUPREME COURT IN BARKER V. WINGO: (1) THE LENGTH OF THE DELAY; (2) THE REASON FOR THE DELAY; (3) THE DEFENDANT'S ASSERTION OF HIS RIGHT; AND (4) PREJUDICE TO THE DEFENDANT.

THE QUESTION ASKED IS: "WAS APPELLANT FERGUSON'S SPEEDY TRIAL RIGHT VIOLATED?" ALSO CITED, U.S. V. ROBINSON, 447 F.2d 1215, 145 U.S. App. D.C. 46, appeal after remand 471 F.2d. 1082, 153 U.S. App. dD.C. 114, certiorari granted 93 S.Ct. 1500, 410 U.S. 982, 36 L. d. 2d 177, reversed 94 S. Ct. 467, 414 U.S. 218, 260 38 L.Ed. 2d 447, concurring opinion 94 S. Ct. 494, 414 U.S. 218, 260, 38 L.Ed.2d.427, 456. C.A.D.C. 1971.

ARGUMENTS CONTINUE

UNDER THE FEDERAL GUIDELINES THAT GOVERNS THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY. CrR 3.3 TIME FOR TRIAL, SPECIFICALLY STRESSES; THAT 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 DISMISAL TO THE VICTIM AND AT THE COURTS 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.

APPELLANT FERGUSON OBJECTED TO CONTINUANCE ON 12-11-08, ON THE RECORD. WHICH CONTINUANCE VIOLATED APPELLANT FERGUSON'S RIGHT TO A SPEEDY TRIAL. DUE TO THE INEFFICIENCY AND ARBITRARY OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY. UNDER FEDERAL GUIDELINES THAT GOVERNS THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY, STATES; THAT CrR 7.8 (b) (1.) (2.) (3.) (4.) AND (5.) COVERS ALL RULINGS TO BE FOLLOWED. CrR 7.8 (c) (1.) (2.) AND (3) COVERS ALL RULING UNDER THE FEDERAL GUIDELINES, THEREFORE APPELLANT FERGUSON IS ENTITLED TO REDRESS OF HIS MOTIONS, UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, DUE PROCESS OF THE LAW.

THE SPEEDY TRIAL ACT (18 U.S.C. RULE 3161) THIS LAW SETS THE FOLLOWING TIME LIMITS; THE GOVERNMENT HAS TO FORMALLY CHARGE A DEFENDANT WITH A CRIME WITHIN 30 DAYS OF THE DEFENDANT'S ARREST. THE GOVERNMENT SHOULD BRING A CASE TO

TRIAL NOT LESS THAN 30 NOR MORE THAN 70 DAYS AFTER CHARGING A DEFENDANT WITH A CRIME. THEREFORE APPELLANT FERGUSON IS ENTITLED TO RELIEF OF VIOLATION OF 60 DAY SPEEDY RIGHT AND OF CONVICTIONS.

CITATIONS

SMITH V. HOOEY, 393 U.S. 374, 383 89 S.Ct. 575, 21 L Ed. 2d 607 (1969).

DOGGETT V. UNITED STATES, 505 U.S. 647, 651 n. 1, 112 S. Ct. 2686, 120 L. Ed. 520 (1992).

UNITED STATES V. BROOKS, 697 F. 2d 517, 520 (3d Cir. 1982).

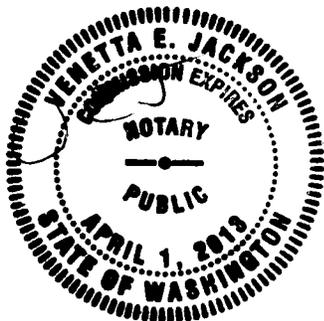
UNITED STATES V. LATTANY, 982 F.2d 866, 883 (3d Cir. 1992).

WASHINGTON STATE V. NESSETH, No. 36800-5-II WASH. APP. Div- II 03/24/2009.

I AM NOT REVISITING THE ISSUES FROM MY APPELLANT BRIEF. HOWEVER I AM FEDERALIZING FOR HABEAS CORPUS REVIEW.

James P. [Signature] 335077

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1ST DAY OF July, 2010.



Yenetta E. Jackson
NOTARY PUBLIC IN AND FOR
THE STATE OF WASHINGTON,
RESIDING IN WALLA WALLA,
WASHINGTON. MY COMMISSION
EXPIRES: April 1, 2013

Court of Appeals No. 39810-9-II
Clark County No. 08-1-00818-5

STATE OF WASHINGTON,
RESPONDENT,

vs.

SAMUEL E. FERGUSON
Appellant,

FILED
COURT APPEALS
10 JUL 12 04:10:20
STARTED BY
KAC

BRIEF OF APPELLANT

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PM 1-6-10

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