

IN THE COURT OF APPEALS THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

RESPONDENT,

v.

LARRY DARNELL DUNOMES,

APPELLANT.

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

THE HONORABLE JAMES R. ORLANDO, JUDGE

Additional Grounds
BRIEF OF APPELLANT

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VIOLATION OF APPELLANT DUNOMES 60 DAY SPEEDY RIGHT UNDER THE CONSTITUTION OF THE UNITED STATES AMENDMENT 6 AND 14. WHICH REQUIRES DISMISSAL OF THE CHARGES AGAINST THE ACCUSED IS "THE ONLY POSSIBLE REMEDY" FOR A DEPRIVATION OF THE CONSTITUTION RIGHT OF A SPEEDY TRIAL.

ADDITIONAL GROUND (2)

VIOLATION OF APPELLANT'S 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 DEFENDANT'S RIGHT 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 GUARANTEE IS INCORPORATED 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)

UNDER THE FEDERAL GUIDE LINES THAT GOVERNS THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE 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 GUIDE LINES, THEREFORE APPELLANT DUNOMES IS ENTITLED TO REDRESS OF HIS MOTIONS, UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, DUE PROCESS OF THE LAW.

UNDER APPELLANT'S MOTION AND DECLARATION FOR TO SEEK REVIEW AT PUBLIC EXPENSE, (filed 12-18-09) APPELLANT DID MAKE A SUBSTANTIAL MERITORIOUS ISSUE, SHOWING THAT HE IS ENTITLED TO RELIEF FROM JUDGMENT, UNDER DECLARATION (b).

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 DUNOMES IS ENTITLED TO RELIEF OF VIOLATION OF 60 DAY SPEEDY RIGHT AND DISMISSAL 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.2d 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-2

03/24/2009.