

RECEIVED
DEC 04 2015
Nielsen, Broman & Koch, P.L.L.C.

No. 47588-0-II

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

STATE OF WASHINGTON,

Respondent,

V.

FLOYDALE ECKLES, JR.,

Appellant.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW, RAP 10.10

Floydale Eckles, Jr.

Appellant, Pro-se
Stafford Creek Corr. Ctr.,
191 Constantine Way,
Aberdeen, WA., 98520

TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR.....11

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....11

III. STATEMENT OF THE CASE.....1

ARGUMENT:

1. THE DEFENDANT'S CONVICTION WAS A DIRECT RESULT OF VIOLATION OF THE SPEEDY TRIAL COURT RULE, THEREBY DEPRIVING THE DEFENDANT OF RIGHTS GUARANTEED BY THE SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.....6

2. [In The alternative]:
THE DEFENDANT WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF TRIAL-COUNSEL, IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION...9

IV. CONCLUSION.....12

ATTACHMENT 1: Eckles Motion To Dismiss, Filed January-27, 2015]

I. ASSIGNMENTS OF ERROR

1. The trial court erred in granting the state's motion for continuance without making adequate findings that "good cause" was shown in the administration of justice.

2. Defense counsel was ineffective in failing to object to the state's motion for continuance as Eckles informed counsel that he did not want to waive his speedy trial right prior to the hearing. See [Attachment 1, Motion To Dismiss].

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Docket congestion is not considered "good cause" to justify a trial court's delayed trial setting. Did the trial court err in granting the state a continuance in the administration of justice?

2. Did the defendant receive ineffective assistance of counsel by counsel's failure to object to the State's motion for continuance of the trial date?

III. STATEMENT OF THE CASE

1. Background

Following a bench trial in the County of Kitsap, the appellant was convicted in the superior court with two counts of second degree rape, [counts I and II] third degree rape, [count III] and attempted third degree rape, [count IV] (of a child). RP[March 11, 2015], at 43. As for counts-II and III, the sentencing court found that one of the alleged victims was a willing participant because she and the appellant were in a dating relationship at the time. The sentencing court declined to depart from the standard range of the offense above as it concluded that count I was absent mitigation. Id.

Inevitably, Eckles received the low-end minimum sentence of 17.5 years, and community service for life. CP 42-46; RCW 9.94A.507; RCW 9A.44.076.

2. Violation of CrR 3.3

On January 20, 2015, the stand-in prosecution moved for continuance of appellant's trial date essentially based on the states' docket congestion, as the prosecution failed to elaborate specifically on the unavailability of the prosecution. RP[January 20, 2015], at 2. Neither defense counsel or the trial court asked for elaboration as to this continuance, and Eckles assigns error to counsel's failure to object. Eckles, through his counsel, filed motion to dismiss, pursuant to CrR 3.3(h), which is attached hereto-

STATEMENT OF ADDITIONAL GROUNDS - 1

timely filed - on January 27, 2015. See ATTACHMENT 1.

The state believed that under CrR 3.3(f)(2), the availability of the prosecution for trial was "good cause" for the continuance. RP[January 20, 2015], at 3. As a consequence of defense counsel's failure to object on this ground, the trial court found 'good cause' to continue the trial date "because of the lack of a prosecutor who is "involved in another trial," which was not specifically pointed out by the state, nor elaborated by defense counsel. RP[January 20, 2015], at 4.

Eckles' speedy trial was scheduled to expire on January-26, 2015. As a consequence, his right to speedy trial was moved to February 9, 2015, and set to expire on March 11, 2015.

3. Trial Testimony

K.T. testified she met the appellant when she was 12-years of age through friends at the Viking Fest in Poulsbo. RP[-February], at 59. Approximately one month later, K.T. was spending the night at her friend Ashley's residence, and the appellant had come over. RP 62. K.T. claimed that she had fell asleep but woke up because the appellant was having sex with her. RP 62. She testified that she "didn't know what to do" and eventually went back to sleep. RP 88-89.

K.T. testified that she knew she was 12 years old at the time because they smoked marijuana that night, not -

methamphetamine, [hereafter "meth"]. RP 82-85. K.T. had begun smoking meth a few days after her 13th. birthday. RP-85. She also testified that Eckles did not ask about her age until approximately two years later when she was 14. RP-63. K.T. had begun prostituting to support her meth - addiction. She testified that she had sex with Eckles on one occasion when she was 13 years old. RP 70. On this occasion, K.T. had skipped school and were spending the morning at her friend Courtney's residence. RP 70-71. K.T. invited Eckles there, and the two had sex in one of the bedrooms. RP 71, 98.

When K.T. was 14 years old, she and Eckles had begun spending a lot of time together, and frequently engaged in what she characterized as consensual sex. RP 64-65; 73.

At one point in time, K.T. and Eckles no longer spoke to each other. RP 105. According to K.T., it was because she was on probation and could not afford to run away with friends at that time. However, she often ran away with her friend K.R. RP 67. K.T. introduced K.R. to meth and harder drugs. RP 67.

K.R. testified that when she was 15, the appellant and some of his friends picked her and K.T. up to go to "Crazy-Mike's" house. RP 121-22. She further testified that she and K.T. told Eckles' friends they were 18 years old. RP 128,-
STATEMENT OF ADDITIONAL GROUNDS - 4

142-43. While at Crazy Mike's house, they all consumed heroin, meth,, marijuana, and pills. RP 121-22. Thereafter, the "18-year old" K.R. went to sleep in the same bed as K.T. and Eckles, but with her head at the opposite end of the bed. RP 124.

K.R. testified that she awoke at one point and asked K.T. if she was okay [K.T. and Eckles had apparently been arguing]. RP 125. K.T. stated that she was fine and K.R. went back to sleep. RP 125, 146. According to K.R., she awoke the second time with her pants down. RP 125. She claimed that it was the appellant who hopped off her and pretended to be asleep. RP 125. She did not know if anything had happened. Id.

The appellant was interviewed by Detective Martin - Garland as part of an investigation. RP 161. Appellant admitted to having sexual relations with K.T. on one occasion. Based upon K.T.'s lifestyle, and appearance, and the fact that K.T. stated that she was 18 years old, Eckles believed that K.T. was either 16 or 17. RP 171. Eckles has ended his relationship with K.T. when he found out that she had lied about her age; she was really only 14 years old. RP 171-72. No questions were asked in regards to K.R. RP 175.

Mr. Albert Glover, the appellant's stepfather, testified that Eckles lived with him and Eckles' mother continuously-

except for a period of time between May 2013 and February-2014. RP 195, 199. During this time, Glover recalled receiving telephone calls from the appellant from a possible-out-of-state area code. RP 197-98.

Eckles confirmed that there was a time his stepfather had mentioned when he was living in Astoria, Oregon. RP 212. Eckles had in fact met K.T. for the first time when she lied concerning her age. CP 8-12; RP 214. Eckles had first become acquainted with K.T. while doing drugs at his friend Craig's house, although he had briefly met K.T. previously at Viking Fest. RP 214.

On the night in question, Eckles, K.T., and K.R. smoked marijuana and meth. RP 218. Eckles remembered that he, K.T., and K.R. shared a bed together, but he had no sexual contact with either female. RP 222. Eckles and K.T. did not have sexual relations until a couple of months thereafter. RP 225-27. Since K.T. had indicated that she was above age, and that the females she had hung out with her 16 and 17, appellant believed her. RP 227-28. Eckles was shocked the next day when one of his friends informed him as to K.T.'s true age. RP 228.

1. THE DEFENDANT'S CONVICTION WAS A DIRECT RESULT OF VIOLATION OF THE SPEEDY TRIAL COURT RULE, THEREBY DEPRIVING THE DEFENDANT OF RIGHTS GUARANTEED BY THE SIXTH, AND FOURTEENTH AMENDMENTS

The determination of whether a defendant's time-for-trial deadline has passed requires an application of court rules to particular facts, which is reviewed de novo. See State v. Swenson, 150 Wash.2d 181, 186, 75 P.3d 513 (2003).

Here, Eckles first argues that docket congestion is not considered "good cause" for a continuance of the speedy trial date. The state, in being familiar with "good cause" in granting a continuance, did not elaborate as to whether the prosecution was "attending another trial" or that the state was not available to be present simply due to its mismanagement of the case.

The decision to grant or deny a motion for continuance rests within the sound discretion of the trial court and will not be disturbed unless there is a clear showing that it is based on untenable grounds or on untenable reasons. See State v. Flinn, 154 Wash.2d 193, 199, 110 P.3d 748 (2005); State v. Downing, 151 Wash.2d 265, 272, 87 P.3d 1169 (2004); State ex rel. Carroll v. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

Here, the state made an attempt to circumvent the speedy trial court rule by stating that the prosecution was with another case instead of stating that docket congestion was the actual reason for the prosecution's absence. In this regard, the trial court failed to have the state elaborate-

as to the state's actual contentions. In this regard, the trial court erred in granting the state's continuance in the "administration of justice" under CrR 3.3(f)(2).

The state knew that "docket congestion" was not considered "good cause" warranting setting the appellant's trial beyond the mandated 60-day period. See State v. Mack, 89 Wash.2d 788, 793, 576 P.2d 44 (1978).

There, in Mack, our Supreme Court cited the Task Force as to its promulgation of CrR 3.3:

"(1) The defendant can be prejudiced by delay whatever the source, (2) such delays are contrary to the public interest in the prompt disposition of criminal cases; (3) if congestion excuses the long delays, there is lacking sufficient inducement for the state to remedy congestion; and (4) the calendar problems which arise out of trying to make maximum use of has shown that unless a strict rule is applied the right to a speedy trial ... is hindered."
[emphasis added].

Id. at 793-94.

Here, Eckles submits that he timely filed motion to dismiss based upon the speedy trial rule, and therefore, he did not waive the speedy trial rights by his counsel's failure to object to the state's continuance.

In conclusion, since there was no "good cause" to justify the delayed trial setting, appellant's motion to dismiss should have been granted under CrR 3.3(h). Accordingly, this court should reverse Eckles' convictions, and remand with instructions to dismiss with prejudice.

2. THE DEFENDANT WAS DEPRIVED OF
EFFECTIVE ASSISTANCE OF TRIAL-
COUNSEL, IN VIOLATION OF THE SIXTH
AND FOURTEENTH AMENDMENTS

In the alternative, Eckles argues that he received ineffective assistance of counsel by counsel's failure to object to the State's motion for continuance of his trial-date. If an appellate court holds that a defendant waived his right to speedy trial by his counsel's failure to object, a defendant may not have received effective assistance as guaranteed by the Sixth Amendment.

A. Ineffective - Failure to Object

In order to show ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient by showing counsel's conduct fell below an objective standard of reasonableness, and defendant must show counsel's deficient performance resulted in prejudice by establishing there was a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceedings would have been different. See - Strickland v. Washington, 466 U.S. 668, 687-88, 694, 104-S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Grier, 171 Wash.2d 17, 32-34, 246 P.3d 1260 (2011).

An appellate court, in reviewing claims of ineffective-assistance of counsel de novo, State v. Sutherby, 165 Wash.2d 870, 883, 204 P.3d 916 (2009), the remedy for counsel's-

ineffectiveness "can be only to put the defendant back in the position he would have been in if the Sixth Amendment violation had not occurred." State v. Crawford, 155 Wash.2d 86, 107, 147 P.3d 1288 (2006).

B. Counsel's Deficient Performance

An appellate court gives 'great deference' to trial counsel's performance, and starts its analysis with a presumption that counsel's performance was reasonable. Grier, 171 Wash.2d, supra at 33, 246 P.3d 1260. If trial-counsel's conduct may be characterized as legitimate trial strategy, there can be no claim of ineffective assistance. Id. "There is a sufficient basis to rebut such a presumption where there is no conceivable legitimate tactic explaining counsel's performance." State v. Aho, 137 Wash.-2d 736, 745-46, 575 P.2d 512 (1999); Grier, 171 Wash.2d, supra, at 33.

Here, Eckles argues that his counsel's performance was deficient because (1) he did not ask for elaboration from the state as to whether the prosecution was "in" trial on another case, or (2) whether the state was actually stating its mismanagement of its enormous case-load.

Furthermore, there was no conceivable strategic reason for Eckles trial counsel to have failed to object for the state's continuance of the trial date.

STATEMENT OF ADDITIONAL GROUNDS - 10

Eckles elaborates by noting that a defendant who is in-custody, must be brought to trial within 60-days after the date of arraignment. CrR 3.3(c)(1). Of course, the trial court may grant extensions of the CrR 3.3 speedy trial date due to "unavoidable or unforeseen circumstances beyond the control of the court or the parties." CrR 3.3(d)(8).

In addition, a trial court may grant a continuance "when required in the administration of justice, and the defendant will not be substantially prejudiced[.]" CrR 3.3(h)(2).

In the instant case, moving to object on the ground of the state's negligence or mismanagement of the case would not have involved any risk to Eckles. If he had prevailed, the charges would have been dismissed.

In its essentials, there was no strategic reason for counsel's failure to object to the state's continuance on the ground of mismanagement. Eckles had informed counsel that he did not wish to waive his speedy trial under any circumstances prior to the January 20th. hearing. In this regard, when counsel failed to object, Eckles had no meaningful opportunity to express his objections to the trial court. Rather, he filed within the 10-day period, motion to dismiss on speedy trial grounds. See ATTACHMENT.

In conclusion, Eckles did however take the necessary steps to put the trial court on notice that he found the delay unacceptable at the time it was granted.

STATEMENT OF ADDITIONAL GROUNDS - 11

An appellate court should not retreat from the principle that a defendant is entitled to an attorney who acts as his advocate. Accordingly, this court should hold that but for counsel's failure to object, the result of the proceedings would have been different. Strickland, 466 U.S. supra at 694.

IV. CONCLUSION

Based on the foregoing reasons, Mr. Floydale Eckles respectfully request that this court reverse his convictions and remand with instructions to dismiss with prejudice. In the alternative, he asks that the court find that he was denied effective assistance of trial counsel.

DATED THIS 1st. day of November, 2015.

RESPECTFULLY SUBMITTED,

Floydale Eckles Jr,
Appellant

CERTIFICATE OF SERVICE BY MAIL
[28 U.S.C. §1746]

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

I, Floydale Eckles, Jr., certify and says:

That, on the _____ day of NOVEMBER, 2015, I delivered through prison authorities at the STAFFORD CREEK-CORRECTIONS CENTER, by Legal Mail, the following documents under COA. #47588-0-II:

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW, RAP 10.10;

ATTACHMENT 1: Motion To Dismiss, [filed in Kitsap County-Superior Court].

TO:

COURT OF APPEALS, DIV. II
950 BROADWAY, #300, M/S TB-06
TACOMA, WA., 98402-4454

AND:

KITSAP COUNTY PROS. ATTY. OFFC.,
MS-35, 614 DIVISION STREET,
PORT ORCHARD, WA., 98366

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true, correct, and complete, and based upon my personal knowledge, that on the Monday day of November 30th, 2015, I mailed the above documents to the above parties.



STAFFORD CREEK CORR. CTR.,
191 CONSTANTINE WAY,
ABERDEEN, WA., 98520

ATTACHMENT 1

ECKLES MOTION TO DISMISS
FILED IN OPEN COURT
[2 pages]

ATTACHMENT 1

KITSAP COUNTY DISTRICT COURT
STATE OF WASHINGTON (Plaintiff)

VS

(DEFENDANT) — FLOYDA L. ECKLES JR

FILED

KITSAP COUNTY CLERK CASE NO

14-1-01149-9

2015 JAN 27 PM 1:54

Motion to dismiss the defendants CRIMINAL COMPLAINT

Comes now the defendant, FLOYDA L. ECKLES JR, by and thru his Attorney, _____, moves

this said court to GRANT defendants motion for

dismissal on the grounds, that the STATE failed to bring

said defendant to trial within the Sixty-day time

line, and the STATES failure to adhere to STATUTORY

time REQUIREMENTS SET by the WASHINGTON STATE CONSTITUTION,

AS WELL AS the UNITED STATES CONSTITUTION, and dismiss

the defendants CRIMINAL CHARGES due to the STATES

Lack of Ability to meet the Sixty-day SPEEDY TRIAL DATE

AS IS STATED IN WASHINGTON SUPERIOR CT. CRIM. R. 33

"90 days if NOT IN custody. 60 days otherwise.

60 days from time of ARRAINMENT." THEREFORE NOT

the 90 days the STATE IS NOW CLAIMING.

1.5 CRIMINAL PROC. 18.1 (A) (3d Ed.) STATES

"THE SIXTH AMENDMENT OF THE CONSTITUTION PROVIDES THAT

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY

THE RIGHT TO A SPEEDY TRIAL." THAT THIS RIGHT, THE SUPREME COURT

HAS NOTED IS FUNDAMENTAL AS ANY RIGHT SECURED BY THE

6th AMENDMENT." THIS SAID DEFENDANTS SIXTY-DAY SPEEDY

TRIAL DATE EXPIRED ON THE 25th DAY OF DECEMBER 2014,

JAN 26th 2015. THIS SAID DEFENDANT HAS NOT SIGNED

14/Jan

CONTINUOUS

ATTACHMENT 1

of Washington STATE AND the United STATES Constitution.
IN CRL DEF ERIC of the Washington Constitutional
defense UNDER the 6th AMENDMENT of STATE LAW. IT STATES:

" THE SIXTH AMENDMENT GUARANTEES THE RIGHT TO A
SPEEDY TRIAL, AND ANY VIOLATION OF THIS RIGHT RESULTS IN A
DISMISSAL WITH PREJUDICE, AND THIS RIGHT IS TRIGGERED BY ARREST
OR FORMAL CHARGES."

Therefore SAID DEFENDANT RESPECTFULLY REQUEST THIS COURT
TO GRANT DEFENDANTS MOTION TO DISMISS, DUE TO THE STATES
FAILURE TO MEET THE 60 DAY SPEEDY TRIAL DATE AND TIME LINE,
THE FAILURE OF THE STATE TO ADHERE TO STATUTORY TIME
REQUIREMENT GOVERNED BY BOTH THE WASHINGTON STATE
CONSTITUTION, AS WELL AS THE UNITED STATES CONSTITUTION.

Therefore this defendant sincerely AND RESPECTFULLY
THANK THE COURT FOR ITS TIME AND CONSIDERATION
CONCERNING THIS IMPORTANT MATTER.

DATE 22nd JAN 2015

SIGNED *[Signature]*

def. Signature *[Signature]*

NIELSEN, BROMAN & KOCH, PLLC

December 04, 2015 - 3:48 PM

Transmittal Letter

Document Uploaded: 3-475880-Floydale Eckles - SAG.pdf

Case Name: Floydale Eckels, Jr.

Court of Appeals Case Number: 47588-0

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: _____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: Statement of Additional Grounds for Review

Comments:

No Comments were entered.

Sender Name: Patrick P Mayavsky - Email: mayovskyp@nwattorney.net

A copy of this document has been emailed to the following addresses:

kcpa@co.kitsap.wa.us