

**FILED**

APR 20 2012

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 300021

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON

DIVISION III

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STATE OF WASHINGTON,

Respondent,

vs.

ISMAEL SANCHEZ,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY, WASHINGTON

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THE HONORABLE SUSAN L. HAHN, JUDGE

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BRIEF OF RESPONDENT

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JAMES P. HAGARTY  
Prosecuting Attorney

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I. ASSIGNMENTS OF ERROR

A. ISSUE PRESENTED BY ASSIGNMENTS OF ERROR.

1. Whether the trial court violated Ismael Sanchez' time-for-trial rights under JuCR 7.8?
2. In the alternative, whether Mr. Sanchez' constitutional right to a speedy trial under either the Sixth Amendment or Art. I, s. 22, was violated?
3. Whether the court's conclusions of law were supported by its findings of fact and the record?

B. ANSWER TO ASSIGNMENTS OF ERROR.

1. Sanchez mere presence in the courtroom, without more, did not constitute an appearance under the court rule, and therefore time-for-trial commenced at his next appearance before the court.
2. Sanchez has not demonstrated that his constitutional right to a speedy trial was violated.
3. In denying Sanchez' motion to dismiss, the court's conclusions were supported by its findings.

## II. STATEMENT OF THE CASE

The State is satisfied with the Statement of the Case in Appellant's opening brief, but will supplement that narrative herein. RAP 10.3(b).

## III. ARGUMENT

### **1. Sanchez' time-for-trial rights under JuCR 7.8 were not violated, as he did not make an appearance as contemplated by the court rule.**

JuCR 7.8 is the court rule which governs the time in which a juvenile adjudicatory hearing must be held. It closely mirrors the time-for-trial provisions found in both the Superior Court criminal rules, CrR 3.3, as well as the Courts of Limited Jurisdiction rules, CrRLJ 3.3.

JuCR 7.8 provides in relevant part that:

#### (a) General Provisions

(1) Responsibility of Court. It shall be the responsibility of the court to ensure an adjudicatory hearing in accordance with the provisions of this rule to each person charged with a juvenile offense.

#### (2) Definitions

...

(iii) "Appearance" means the juvenile's physical presence in the court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

Also, the commencement date is reset if a juvenile respondent fails to appear for any proceeding at which his or her appearance is required. JuCR 7.8(c)(2)(ii).

On appeal, Mr. Sanchez maintains that his JuCR 7.8 right was violated when the court found that he had not appeared for a March 24, 2009 pre-trial hearing, and that his commencement date under the rule was reset when he was next before the court in August of 2009. A plain reading of the current court rule does not support his position.

There is no dispute that Mr. Sanchez and his attorney were physically present in the courtroom on March 24, 2009, and that the case was not on the calendar or called. Also, neither Mr. Sanchez nor his attorney made their presence known to either the court or the prosecutor's office.

The time-for-trial provisions were fundamentally overhauled in 2003. The task force charged with drafting the new rules stated this:

Task force members are concerned that appellate court interpretation of the time-for-trial rules has at times expanded the rules by reading in new provisions. The task

force believes that the rule, with the proposed revisions, covers the necessary range of time-for-trial issues, so that additional provisions do not need to be read in. Criminal cases should be dismissed under the time-for-trial rules only if one of the rules' express provisions have been violated; other time-for-trial issues should be analyzed under the speedy trial provisions of the state and federal constitutions.

WASH. COURTS TIME-FOR-TRIAL TASK FORCE,  
FINAL REPORT II.B at 12-13 (October 2002)

Indeed, the Supreme Court has since observed that the “purpose of the 2003 reform was to clarify and simplify the time-for-trial rule, making it easier to apply, and thus avoiding the unpredictability that resulted from the due diligence standards imposed under the former rule. State v. George, 160 Wn.2d 727,738, 158 P.2d 1169 (2007).

Relevant to the issues raised here, it should be noted that the “Appearance” definition cited above is completely new to the post-2003 rule. Former JuCR 7.8(f) (2002) provided only that after a failure to appear in juvenile court, the time-for-adjudicatory hearing accrues anew when a juvenile is “actually present” in the county where the charge is pending, and his or her “presence appears upon the record of the court.”

Most of the case law interpreting time-for-trial predates the 2003 reform of the rules. Sanchez in particular relies upon a Court of Appeals decision from 1997, State v. Ledenko, 87 Wn. App. 39, 940 P.2d 280

(1997), *review denied*, 134 Wn.2d 1003, 953 P.2d 96 (1998). There, the court affirmed the lower court's dismissal on time-for-trial grounds, holding CrR 3.3(d)(2) did not operate to restart the time-for-trial period, as that provision only applied to defendants who had previously failed to appear in court. *Id.*, at 42. The facts are similar to those in the present case; Ledenko's case was not on the calendar due to the trial court's clerical error. He may have been in the courthouse, but did not announce himself. *Id.*, at 43. Observing that the phrase "known to the court on the record" referred to the time when a speedy trial period would begin to run again after a failure to appear, the court found that it "is not helpful in determining when a defendant has failed to appear and thus *interrupted* the speedy trial period." *Id.* (emphasis added).

A similar result was reached in State v. Helms, 72 Wn. App. 273, 864 P.2d 23 (1993), *review denied*, 124 Wn.2d 1001 (1994), as well as in State v. Raschka, 124 Wn. App. 103, 100 P.3d 339 (2004). In both of those cases, as well, the Court of Appeals held, in analyzing CrR 3.3(d)(2), the lack of a record as the defendant's absence did not trigger the extension of time-for-trial dictated by the court rule. Helms, 72 Wn. App. at 276; Raschka, 124 Wn. App. at 110.

The Supreme Court interpreted former CrR 3.3(d)(2) somewhat differently, again in the context of a defendant who had previously failed

to appear: “We conclude that the requirement of the rule that the defendant’s presence be made known to the court on the record means tell it to the judge and tell it in a way that puts it on the record.” State v. Hackett, 122 Wn.2d 165, 174, 857 P.2d 1026 (1993).

It cannot be emphasized enough, however, that in each of the cases cited, the appellate courts were limited to analyzing CrR 3.3(d)(2) (corresponding to former JuCr 7.8(f)), and were unable to identify a provision in the former rule that would have caused a restart of the time-for-trial period on the basis of an *initial* failure to appear. This has now been remedied with the reform of the court rules. Under the new definition of “Appearance”, Mr. Sanchez would only have appeared for purposes of the rule if his presence had been made known to both the court and the prosecutor. Simply being physically present in court, with nothing more, is not sufficient to constitute an appearance; the prosecutor was not notified, and no appearance noted on the record.

This is consistent with the opinion in George:

We believe the “failure to appear” provision is intended to apply to a defendant who thwarts the government’s attempt to provide a trial within the time limits specified under the rule by absenting himself from a proceeding. Thus, the phrase “failure to appear” refers to a defendant’s unexcused absence from a court proceeding. A defendant who negligently or even inadvertently fails to appear when required to do so forfeits the right to a trial within the statutory time-for-trial period, even if the defendant has not

deliberately or intentionally absconded. *See, e.g., State v. Newkirk*, 122 Wn.2d 174, 176, 857 P.2d 1030 (1993) (defendant failed to appear following car trouble en route to court); *State v. Wachter*, 71 Wn. App. 80, 856 P.2d 732 (1993) (trial court correctly reset time for trial when the defendant inadvertently failed to appear when her case was called).

*George*, 160 Wn.2d at 739.

A reviewing court interprets court rules as though they were drafted by the Legislature. As with statutes, the court is to give effect to the plain language of a court rule, by reading the rule in its entirety and harmonizing all of its provisions. *State v. Greenwood*, 120 Wn.2d 585, 592, 845 P.2d 971 (1993), *cited in George*, 160 Wn.2d at 735. Sanchez then “failed to appear” without excuse as contemplated by the court rule and *George*, 160 Wn.2d at 739.

Sanchez failed to appear without excuse as contemplated by the court rule and case law on March 24, 2009. The commence date was reset when Sanchez was in court on August 14, 2009, pursuant to JuCR 7.8(c)(2)(ii).

**2. Sanchez has not demonstrated a constitutional violation of his speedy trial rights.**

The method of analysis for determining whether a defendant’s constitutional right to a speedy trial has been violated is the same for both

the Sixth Amendment and Art. I. s. 22. State v. Iniguez, 167 Wn.2d 273, 290, 217 P.3d 768 (2009).

The Sixth Amendment analysis is in four parts: first, a defendant must demonstrate that a trial delay is presumptively prejudicial, then a reviewing court must engage the balance of the four-part inquiry pursuant to Barker v. Wingo, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972), *cited by Iniguez*, 167 Wn.2d at 283.

After a showing of presumptive prejudice, the court next addresses the reason for the delay, the extent to which the defendant asserts his speedy trial right, and finally the prejudice to the defendant as a result of the delay. Id.

Mr. Sanchez cannot now say that the time elapsed between arraignment and the ultimate date of the adjudicatory hearing in May of 2011, violated rights under either constitutional provision.

While it is true that the constitutional speedy trial right cannot be precisely quantified, a delay of more than 8 months has been held to be presumptively prejudicial after a fact-specific analysis. Iniguez, 167 Wn.2d at 293. However, it should be noted that the Supreme Court ultimately found that there was no violation of speedy trial in Iniguez, and very much unlike the facts in this case, the defendant there had objected to several continuances granted by the court. Id., at 277, 295-96.

Here, employing the Barker four-part inquiry, Sanchez' cannot show presumptive prejudice since he waived his right to a speedy trial on several occasions, and agreed to continuances, even after the court entered its findings on the rule-based challenge on September 30, 2009. (CP 16-42) Other than the motion to dismiss at issue on appeal, he did not assert his speedy trial right, and he has not shown how he was actually prejudiced by the delays.

Indeed, Sanchez' assertion on appeal that the continuances *subsequent* to September 2009 were necessitated in some way by the court's denial of his JuCR 7.8 challenge is simply not supported by the record.

The trial court correctly applied the law to the facts in this case, and did not err in denying the motion to dismiss.

#### IV. CONCLUSION

Based upon the foregoing arguments, this Court should affirm the conviction, as the issues raised on appeal are without merit.

Respectfully submitted this 19th day of April, 2012.

  
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