

FILED
October 8, 2014
Court of Appeals
Division III
State of Washington

NO. 32358-7-III

**STATE OF WASHINGTON
COURT OF APPEALS - DIVISION III**

STATE OF WASHINGTON,

Appellant,

vs.

MIGUEL ANGEL CASTILLO

Respondent.

**APPEAL FROM THE SUPERIOR COURT FOR
FRANKLIN COUNTY**

BRIEF OF APPELLANT

**SHAWN P. SANT
Prosecuting Attorney**

**by: Maureen Lorincz, #40987
Deputy Prosecuting Attorney**

**1016 N. Fourth Avenue
Pasco, WA 99301
Phone: (509) 545-3543**

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A. STATEMENT OF FACTS

The Defendant in this case is alleged to have sexually abused victim BJV and two of her sisters. During the investigation of one of her sister's cases, in 2009 victim BJV disclosed that the Defendant had also sexually abused *her* in 2005. This case was charged initially in Juvenile Court under Franklin County Cause No. 10-8-50199-6 by an Information dated May 25, 2010 which alleged one count of Indecent Liberties. (Information Attached as Exhibit A). During the pendency of that case, BJV became unavailable and would not appear in the prosecutor's office for a defense interview, despite multiple attempts. A deposition was scheduled but never completed. After a number of previous Failures to Appear on his part, a bench warrant was issued for the Defendant's arrest on October 6, 2011. (Clerk's Notes, Bench Warrant Attached as Exhibit B). He remained on warrant status until February of 2012, when he turned 18. The State, thereafter on February 17, 2012, dismissed the case without prejudice. (Dismissal Order Attached as Exhibit C).

On June 3, 2013, counsel for the State asked Oscar Dela Mora, the investigator for the Franklin County Prosecutor's Office, to attempt to locate BJV and to schedule a victim interview. He

was successful in his efforts and that interview was scheduled and took place in the Prosecutor's Office June 17, 2013. Counsel for the State wanted to meet BJV, make sure she would appear for an interview, make sure her story remained consistent and desired the case to be prosecuted. BJV is a troubled young woman and expressed in her interview and in a letter to the State the impact the Defendant's crimes have had on her life sending her in a downward spiral of drugs, alcohol, and self-harm. She expressed a sincere desire to proceed forward with the case. After counsel for the State was satisfied that BJV would be available, the case was re-filed in Franklin County Superior Court under Cause No. 13-1-50340-8 by an Information dated August 5, 2013. (CP at 19).

The Defense attorney filed a CrR 8.3 Motion to Dismiss in Superior Court. Both parties filed briefing (CP 11-13 and 14-18) and a hearing was held on the matter on February 25, 2014. (RP 1-8). The Honorable Judge Vic L. VanderSchoor dismissed the State's case (RP at 8, ll 2-3; CP at 5) and entered Findings of Fact and Conclusions of Law accordingly. (CP at 6-8). It is from this decision that the State now appeals pursuant to RAP 2.2(b)(1). It is clear that the Dismissal in this case under CrR 8.3(c) was a final decision from which the State is permitted to appeal.

B. ISSUE FOR REVIEW

The only issue for review submitted to this Court is whether there was a preaccusatorial delay in charging the Defendant.

C. ARGUMENT

1. THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS A PREACCUSATORIAL DELAY IN THIS CASE. DISMISSAL WAS NOT APPROPRIATE.

“A court ‘may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect[s] the accused’s right to a fair trial.’” State v. Oppelt, 172 Wash. 2d 285, 296-97, 257 P.3d 653 (2011) quoting CrR 8.3(b). The dismissal of a case under CrR 8.3(b) is reviewed by this Court under the manifest abuse of discretion standard. State v. Michielli, 132 Wn.2d 229, 240, 937 P.2d 587 (1997). “[A] trial court may not dismiss charges under CrR 8.3(b) unless the defendant shows by a preponderance of the evidence (1) ‘arbitrary action or governmental misconduct,’ *and* (2) ‘prejudice affecting the defendant’s right to a fair trial.’” (emphasis added) State v. Rohrich, 149 Wash.2d 647, 654, 71 P.3d 638 (2003) quoting Michielli, 132 Wn.2d at 239-

40,937 P.2d 587; see also State v. Starrish, 86 Wash.2d 200, 205, 544 P.2d 1 (1975). The Defendant here can do neither.

Aside from the dismissal in this case, there is an issue of preaccusatorial delay as the Defendant argued (and the trial court held) that the case could and should have been adjudicated in juvenile court. This court reviews whether due process rights are violated by a preaccusatorial delay de novo State v. Oppelt, 172 Wash.2d at 290, 257 P.3d 653, citing State v. Warner, 125 Wash.2d 876, 883, 889 P.2d 479 (1995). “Preaccusatorial delay can be understood as a subcategory of government misconduct under CrR 8.3(b).” State v. Oppelt, *Supra* at 297. In State v. Salavea, the Washington State Supreme Court articulated the test for due process violations as they relate to preaccusatorial delay:

First, the defendant must show the charging delay caused prejudice. If the defendant shows prejudice, the court then examines the State's reasons for the delay. Finally, the court balances the delay against the defendant's prejudice to decide if the delay violates the “fundamental conceptions of justice.

State v. Salavea, 151 Wash.2d 133, 139, 86 P.3d 125 (2004) (citing U.S. v. Lovasco, 431 U.S. 783, 97 S.Ct. 2044 (1977); State v. Calderon, 102 Wash.2d 348, 352-53, 684 P.2d 1293 (1984); State v. Dixon, 114 Wash.2d 857, 858-59, 792 P.2d 137 (1990)).

State v. Warner, 125 Wn.2d 876, 889, 889 P.2d 479 (1995) held that a delay that results in a loss of juvenile jurisdiction . . . satisfies the prejudice element of the above test” Id. at 889-90. The State concedes that if this case were never charged in juvenile court, the Defendant would be entitled to a dismissal. However, those are not the facts of this case; it is both factually and legally inaccurate to say that there was a preaccusatorial delay in this case. The case was charged in juvenile court and pending for over a year when it became impossible to prosecute due to the unavailability of BJV and of the Defendant who was completely unaccounted for from October 6, 2011 until he turned 18 on February 17, 2012. The loss of juvenile jurisdiction cannot be attributed to negligence on the part of the State when the issues that made the case untenable to move forward were beyond the State’s control.

A case directly on point involved a situation where a juvenile was charged with six counts of malicious mischief. When the defendant in that case turned 18, the case was dismissed in juvenile court without prejudice and later re-filed in Superior Court. The case was dismissed in Superior Court with prejudice for ineffective assistance of counsel and preaccusatorial delay. On review, the Court of Appeals for Division II held that preaccusatorial

delay did not cause the loss of juvenile court jurisdiction. State v. Maynard, 178 Wash.App.413, 418, 315 P.3d 545 (2013). The Court reasoned:

[A]ll cases affirming dismissal for preaccusatorial delay involve the loss of juvenile court jurisdiction before the State filed charges, and in this case, the juvenile court did not lose jurisdiction until after the State filed charges. That is a significant difference. The concept of “preaccusatorial delay” means before the accusation, or, stated another way, delay before the charging.

Id. at 417. (see also State v. Calderon, 102 Wash.2d 348, 353, 684 P.2d 1293 (1984)).

Indeed, “[a]ny delay after the defendant’s eighteenth birthday is not prejudicial because it does not result in the loss of juvenile court jurisdiction” State v. Brandt, 99 Wash.App. 184, 190, 992 P.2d 1034 (2000), so the time range from February 17, 2012 through August 5, 2013 did not prejudice the Defendant. It is through the Defendant’s own negligence in failing to appear for his scheduled court hearings that caused this unavoidable situation where the State lost juvenile jurisdiction over him. In dismissing the case against him, the trial court gave the Defendant a windfall; it sent a message to him that his contravention of his Conditions of Release would be rewarded with a dismissal of his criminal charge.

The trial court's own analysis in "not finding that the State deliberately did anything" (RP at 8), and acknowledging in the Findings of Fact and Conclusions of Law "...that the delay in charging was neither deliberate nor negligent on the State's part" (CP at 8), would clearly suggest that the Defendant did not meet his burden of showing that there was arbitrary action or governmental misconduct in this case.

In his argument to the trial judge, defense counsel repeatedly pointed out that the Defendant was eleven years old at the time the events in this case took place. (RP 2, I. 18; RP 4, II. 2, 17; RP 5, I. 3; RP 7, I. 17). Though that is factually accurate, it ignores the fact that these crimes were not reported until four years after their commission and the case was not filed until five years after their commission. It is common for sex crimes involving children to go years without reporting due to feelings of fear, shame, and guilt on the part of the victims; a delay in reporting by a victim cannot and should not be levied against the State. Sympathy for the Defendant should just as well be felt for the victim. Once the allegations were brought to light, the case was timely charged and prosecuted.

In making his ruling of dismissal, the trial court judge said “[i]n this particular case the State had statements from the victim. Even if the victim was not cooperative, there are ways to get those introduced . . .” (RP 7, ll. 24-25; RP 8, ll. 1-2). The trial court is incorrect in that analysis. BJV’s statements to law enforcement are hearsay and are not excepted under ER 803(a)(1) or ER 803(a)(2) as they were far removed in time from when the sexual abuse occurred. Her statements would likewise not be admissible under ER 804(b)(1), ER 804(b)(2), ER 804(b)(3), and ER 804(b)(4) as all of those exceptions are inapplicable. The Defendant, likewise, has a right to confront his accuser. Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004). Without the victim’s presence, this case could not proceed to trial. Because there was no preaccusatorial delay in this case, the matter should not have been dismissed.

D. CONCLUSION

The Defendant failed to show a purposeful delay in charging by the State which caused him to lose juvenile jurisdiction. There was no delay as the case was properly charged initially in juvenile court. The combination of reasons the State could not proceed in prosecuting this case in juvenile court were that the victim BJV was

unavailable, but also that the Defendant absented himself from court proceedings and was on warrant status. It would be an absurd result to allow the Defendant to abscond until after his eighteenth birthday and then use that as a windfall to argue an adult felony charge should be dismissed. Because there was no preaccusatorial delay, the Defendant cannot show prejudice which was caused by the State. Based on the foregoing, the State respectfully requests that this Court reverse the Order of the trial court and remand this matter for further proceedings.

Dated this 8th day of October, 2014.

Respectfully submitted,
SHAWN P. SANT
Prosecuting Attorney



By: Maureen Lorincz
WSBA #40987
Deputy Prosecuting Attorney

AFFIDAVIT OF MAILING

STATE OF WASHINGTON))
County of Franklin) SS.

COMES NOW Abigail D. Iracheta, being first duly sworn on oath, deposes and says:

That she is employed as a Legal Secretary by the Prosecuting Attorney's Office in and for Franklin County and makes this affidavit in that capacity.

I hereby certify that on the 8th day of October, 2014, a copy of the foregoing was delivered to Miguel Angel Castillo, Appellant, 14509 SE Bush Street, Portland OR 97236 by depositing in the mail of the United States of America a properly stamped and addressed envelope and to Kristina Nichols, opposing counsel, WA.Appeals@gmail.com by email agreement of the parties pursuant to GR30(b)(4).

A handwritten signature in blue ink, appearing to read "Miguel Angel Castillo", is written over a horizontal line.

Signed and sworn to before me this 8th day of October, 2014.

A handwritten signature in black ink, appearing to read "Deborah L. Ford", is written over a horizontal line.

Notary Public in and for
the State of Washington,
residing at Kennewick
My appointment expires:
May 19, 2014

EXHIBIT A

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MICHAEL J. KILLIAN

BY  DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN

STATE OF WASHINGTON,

Plaintiff,

vs.

MIGUEL ANGEL CASTILLO,
D.O.B.: 02/10/1994

Respondent,

and **NOE CASTILLO, Jr.,**

Interested Party

JUVENILE DIVISION

No. 10 8 50199 6

INFORMATION

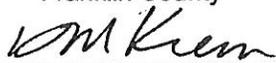
COMES NOW, Steve M. Lowe, Franklin County Prosecuting Attorney, and by this Information accuses **MIGUEL ANGEL CASTILLO** of the crime of **INDECENT LIBERTIES, [RCW 9A.44.100(1)(b)]**, a Class "B" Felony, committed as follows:

That the said **MIGUEL ANGEL CASTILLO** in the County of Franklin, State of Washington, during the time intervening between the 1st day of January, 2005, and the 31st day of August, 2005, then and there, did knowingly cause B.J.V, DOB 08/05/1992, a person not his spouse, incapable of consent by reason of being physically helpless, to have sexual contact with him, Miguel Castillo.

DATED this 25th day of May, 2010.

STEVE M. LOWE #14670\#91039
Prosecuting Attorney for
Franklin County

by:


Kim M. Kremer, #40724
Deputy Prosecuting Attorney

| DEFENDANT INFORMATION | | | |
|-----------------------|-------------------------------|----------------|----------------------|
| 1 | ADDRESS: 14509 SE BUSH STREET | CITY: PORTLAND | STATE: OR |
| 2 | ZIP: 97236- | SEX: M | SID: RO#: 10-R-01258 |
| 3 | FBI: | DOL: | JUVIS: 784615 DOC: |

3 LEA#: 09FS12819

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EXHIBIT B

FRANKLIN COUNTY JUVENILE OFFENDER MINUTES

CAUSE NO: 10-8-50199-6

TAPE: 2:39:34-2:41:00

HEARING: OMNIBUS HEARING

DATE: 10/06/2011

COURTROOM: 1

JUDGE/COMMISSIONER: MALONE, SCHNEIDER

CLERK: DUNCAN AGUILAR HAKKINEN Duncan

JUDGE PRO TEM: Darin Campbell

DEPUTY PA: AMY HARRIS, KIM KREMER

STATE OF WASHINGTON VS. CASTILLO, MIGUEL ANGEL

DEFENSE COUNSEL: MAGAN, LAURIE L. INTERPRETER:

JUV PRES _____ NOT PRES

RSP FTA-BENCH WARRANT TO ISSUE:

BW AUTHORIZED BY CRT UPON PROB CAUSE _____

WARRANT OF ARREST TO BE PRESENTED BY PROSECUTOR: _____

MATTER CONT TO: _____ AT _____

MATTER STRICKEN BY _____ ST _____ DFT _____ CRT

ARRAIGNMENT:

INFORMATION READ IN OPEN COURT _____ WAIVED _____

ADVISED OF CHARGES _____ MAXIMUM PENALTIES _____

JUVENILE ACKMNT OF ADVICE OF RIGHTS / NTC ADVICE / RECORDS _____

NOTICE OF MANDATORY REVOCATION OF DRIVERS LICENSE _____

PLEA ENTRY:

NOT GUILTY PLEA ENTERED TO ALL COUNTS _____ ACCEPTED _____

OMNIBUS HRS _____ 3.5 HRG. TRIAL _____

RSP ADVISED OR RIGHTS AS TO GUILTY PLEA _____ DIAGNOSTIC REPORT _____ WAIVED _____

STMT OF JUV ON PLEA OF GUILTY SIGNED BY RSP _____ SIGNED BY COURT _____

CONTINUED TO _____ FOR SENTENCING @ _____

ANSWER TO PROBATION VIOLATIONS:

ADMIT _____ DENIAL _____ PROVEN _____ RPT ADMITTED _____

MR. / MS. _____ ADVISED STATE RECOMMENDATION

MR. / MS. _____ CONCURS / ARGUES RESISTING

SENTENCING:

_____ MO PROB CONCURRENT / CONSECUTIVE CTS _____ CREDIT _____

_____ HRS COMMUNITY SERV COMP BY PO OR _____ CREDIT _____

_____ DAYS DETENTION _____ WORK CREW _____ CREDIT _____

\$ _____ PENALTY ASSESS CONVERTED TO _____ HRS OF COMM SERVICE _____ CREDIT _____

\$ _____ FINE

\$ _____ ATTORNEY FEE CONVERTED TO _____ HRS OF COMM SERVICE _____ CREDIT _____

\$ _____ RESTITUTION PAID IN FULL BY _____ JOINT & SEVERAL _____

JURISDICTION EXTENDED TO AGE _____

CUSTODY OF PARENTS _____ CURFEW _____ SCHOOL ATTENDANCE _____ WORK _____

MINUTES:

TIME ENDING: _____

40

Superior Court of Washington for Franklin County

STATE OF WASHINGTON

Plaintiff,

vs.

No. 10-8-50199-6

MIGUEL ANGEL CASTILLO

BENCH WARRANT

D.O.B: 02/17/1994

Defendant.

STATE OF WASHINGTON,

TO THE SHERIFF OF SAID FRANKLIN COUNTY, GREETING:

YOU ARE HEREBY COMMANDED, forthwith, to arrest MIGUEL ANGEL CASTILLO

defaulting defendant, and have him appear before this Court forthwith, then and there to show cause why he should not be punished for contempt, in disobeying an order of this Court, to wit:

FAILURE TO APPEAR FOR OMNIBUS HEARING ON THURSDAY, OCTOBER 06, 2011 @ 1:30PM

CHARGE: INDECENT LIBERTIES)

By order of the Honorable JUDGE PRO TEM DARIN CAMPBELL Magistrate and/or Judge of the Superior Court dated this 6TH day of OCTOBER 2011 this warrant may be transmitted by telegraph or teletype, and served by any Marshal, Sheriff, Constable or Policeman, all pursuant to revised code of Washington 10.31.060.

WITNESS, the Hon. JUDGE PRO TEM DARIN CAMPBELL Judge of said Court and the seal thereof this 6TH day of OCTOBER 2011



MICHAEL J. KILLIAN Clerk of said Superior Court.

By

[Signature]

SARA DUNCAN

DEPUTY CLERK

RESPONDENT SHALL NOT BE RELEASED UNTIL FURTHER ORDER OF THE COURT

*****LIMITED TO WASHINGTON STATE*****

COPY

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EXHIBIT C

FILED
FRANKLIN CO CLERK

2012 FEB 21 A 9:19

MICHAEL J. KILLIAN

BY *Michael Killian* DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN

STATE OF WASHINGTON,

Plaintiff,

vs.

MIGUEL ANGEL CASTILLO,
D.O.B.: 02/17/1984

Respondent,

) JUVENILE DIVISION

) No. 10-8-50199-6

) MOTION AND ORDER OF DISMISSAL OF
) INFORMATION AND ORDER QUASHING ALL
) WARRANTS ISSUED HEREUNDER

Comes now Shawn P. Sant, Prosecuting Attorney, by and through Kim M. Kremer,
Deputy Prosecuting Attorney, and respectfully moves the court, pursuant to CrRLJ 8.3(a), for an order
dismissing the above-entitled matter without prejudice to the right of further prosecution thereon upon the
following grounds, to wit: the above named respondent is now eighteen (18) years of age and this court
no longer has jurisdiction, and it would be in furtherance of justice and in the best interest of the public to
dismiss the charges against defendant herein.

DATED this 17th day of February, 2012

SHAWN P. SANT, #35535/#91039
Prosecuting Attorney for
Franklin County

by: *Kim M. Kremer*
Kim M. Kremer, #40724
Deputy Prosecuting Attorney

MOTION AND ORDER OF DISMISSAL OF INFORMATION AND
QUASHING ALL WARRANTS ISSUED HEREUNDER
Page 1 of 2

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✓

