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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

No. 54910-3-I

King County Superior Court No. 03-1-04753-4 SEA

STATE OF WASHINGTON
Petitioner/Appellant,

v.

DENNIS STEEVER,
Respondent.

RESPONDENT'S BRIEF

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I ISSUE PERTAINING TO ASSIGNMENT OF ERROR

While this case was pending, Mr. Steever was serving sentences imposed by Seattle Municipal Court and the King County District Court (Southwest Division) for the City of Burien and, thus, he was available for prosecution on the pending charges. Those cities have contracted with Yakima County to jail some of its prisoners. But for this financial arrangement, Mr. Steever would have been jailed in King County. Under these circumstances, was Mr. Steever incarcerated "outside the county" for purposes of the tolling provision in former CrRLJ 3.3(g)(5)? For purposes of this rule, was he constructively held inside the county?

II. STATEMENT OF THE CASE

Mr. Steever was arraigned on this case on January 23, 2003. CP 6; CP 101-118 (Motion To Dismiss). In two unrelated matters, sentences were imposed in Seattle Municipal Court and King County District Court (Southwest-Burien Courthouse) for the City of Burien. CP 102. The Burien sentence was imposed by a judge in King County District Court which provides court services to the City of Burien. CP 226. The Seattle Municipal Court contracts with jail facilities inside and outside of King County. CP 228. Mr. Steever was serving the SMC and Burien sentences in the Yakima

County Jail while this case was pending. CP 7, 102.

On March 19, 2003, the district court continued the case for the State to arrange Mr. Steever's transport from Yakima. CP 7, 102. Failing to make any such effort, the State requested a bench warrant to ensure Mr. Steever's transport at the end of his sentence. CP 7, 179-82. Mr. Steever requested to be transported. CP 172. The bench warrant was issued and no court date was set.

The warrant was eventually served on June 4, 2003, while Mr. Steever was on electronic home monitoring. CP 102, 7. The arrest on the warrant caused Mr. Steever's EHM to be revoked and he was returned to custody in Yakima. CP 173.

On June 20, 2003, Mr. Steever was transported from Yakima to the King County Jail for the June 23 hearing in this case. CP 224. In an unrelated case, a defendant serving an SMC sentence in Yakima was transported to King County District Court for hearings in that prosecution. CP 216.

Mr. Steever's trial was finally set for July 14, 2003. CP 7-8. Mr. Steever moved to dismiss for violation of his right to a speedy trial. The motion was granted. CP 101-118, 171-183. The district court held that

speedy trial was not tolled when he was incarcerated in Yakima. CP 172-182. The district court recognized the problems recently created now that some municipalities jail their prisoners in other counties. Id..[1] The district court further noted the State's ability to have prisoners transported from Yakima and the prejudice incurred when such transport does not occur. CP 179-82.

> Mr. Steever [] at the same time that he was held over in Yakima on a City of Burien case another defendant due in this court was being held in Yakima on a Seattle Municipal case and this case, Mr. Steever's case the court signed a [] ordered a bench warrant with the intent that at the conclusion of his service he would be directly transported to this court and that was the best way to secure his appearance. In the other case the court was asked and did sign a transport order uh which resulted in the other defendant, speaking about Boular in an unrelated case was transported uh much faster and didn't have to await the end of his term and the transport order worked and so -- two different paths. . . .
>
> The other thing I wanted to mention that's interesting about what to see that it isn't simply a situation of a couple of months or some time but also a question of um the inability to grant concurrent jail sentence time which of course is fairly often an outcome when there are multiple cases going. And the [] revocation of the [electronic home] monitoring.
>
> It's my decision at this point that the Anderson case does require good faith and due diligence. Now that doesn't

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[1]The district court found, "This is relatively new that people are being housed in Yakima on [] King County and local jurisdictions sentencing." CP 181.

> answer the question entirely because I guess the State could argue due diligence is shown by the fact that they uh were able to [] come up with information about where he was and what he was serving on and asked for a warrant that in fact ultimately did get him before the court without the passage of too much time. [] I would find that there has been no indication that the State didn't act in good faith. [] [T]he reasons I say that even in the face of the State acting differently in this case versus the other is because again this is new. . . .
>
> The question is whether due diligence which I think Anderson imposes on the State um whether due diligence requires the request of [] an effort to make a transport. [] [A]nd I'm going to find that it does. And I think I'm bound to find that it does when in fact the State has done that on other occasions un and was met with success. . . . But if the State can order a transport of one defendant from Yakima to get him here for a case in a more timely way the court's going to find that they need to endeavor to do that. And we'll see whether there's a resource issue and an inability to comply with that. I can see that that's a possible outcome but again the State would of at lest made that [] minimal undertaking.
>
> So based on the speedy trial violation the court finds because of the failure to ask for a transport order, the court is going to find speedy trial has run and the case is dismissed.

III. ARGUMENT & AUTHORITY

A. Introduction

By shipping their prisoners to serve sentences in Yakima County, King County's municipalities have created a significant speedy trial question: how can the rule be fairly applied where cities are jailing some, but not all,

of its prisoners outside the county? The only rational answer is that those persons are deemed to be held inside the county. This conclusion is supported by the structure and purpose of the rule.

The speedy trial rule assumes that prisoners serving sentences are available for prosecution in another case. CrRLJ 3.3(e)(2). The rule further assumes that persons held within the charging county are similarly available. Former CrRLJ 3.3(g)(5); current CrRLJ 3.3(e)(6). This rule has long existed alongside the laws which authorize the county's cities to run municipal courts and jails. RCW 35.20, 3.46 (Municipal Department of District Courts), 3.58 (Municipal Courts); and RCW 70.48.190. The language of the tolling provision acknowledges the well established law that counties and their political subdivisions are the same jurisdiction for purposes of criminal prosecutions. State v. Mason, 34 Wn.App. 514, 518, 663 P.2d 685 (1983).

But the rule clearly did not anticipate the recent practice of municipalities contracting with far away counties to house its prisoners. The question presented here is not how to deal with "prolific and mobile misdemeanants." Brief of Appellant at 8. Mr. Steever was not "mobile" by choice. He did not ask to be sent to Yakima. He brought his case to the court's attention and asked to be brought to court. The question is how the

district and municipal courts can apply the speedy trial rule in a manner which is rational and fair in light of these new jailing practices.

The lower courts's application of the speedy trial rule to this case was proper and supported by the law and the facts. Both courts construed the rule to avoid an absurd or strained result. Morris v. Blaker, 118 Wn.2d 133, 142-43, 821 P.2d 482 (1992). Under the facts of this case, it cannot be said that no reasonable jurist would not have ruled as the district court did here. State v. Smith, 118 Wn.App. 288, 294, 75 P.3d 986 (2003). Also, this court may affirm the trial court for any reason supported by the record. State v. Bobic, 140 Wn.2d 250, 258, 996 P.2d 610 (2000).

Moreover, the lower courts's decisions do not conflict with City of Seattle v. Guay, 150 Wn.2d 288, 76 P.3d 231 (2003). Guay did not address the issue before this court and is not dispositive.

B. Speedy Trial Did Not Toll Because Mr. Steever Was Constructively Held *Inside The County*

Former CrRLJ 3.3(g)(5) authorized the tolling of the speedy trial period when the accused was jailed "outside the county." Appendix 1.[2] In this case, the district court correctly found that Mr. Steever was in Yakima

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2 While the rule was broadly amended, effective September 1, 2003, the current tolling provision contains the same language as the former rule. CrRLJ 3.3(e)(6). Appendix 2.

serving a sentence imposed by two political subdivisions of King County, the cities of Seattle and Burien. CP 179-182.[3] But for the fact that those cities decided to house some of its prisoners in Yakima County, Mr. Steever would have been jailed inside King County. CP 179-82. Thus, for purposes of the speedy trial rule, Mr. Steever was constructively held within the county.

A rational reading of the speedy trial rule supports the district court's decision. The rules of statutory construction apply to court rules. State v. Greenwood, 120 Wn.2d 585, 592, 845 P.2d 971 (1993).

> General rules of statutory construction require that we interpret the statute in a manner that best advances the perceived legislative purpose. Unlikely, absurd or strained results are to be avoided. The spirit and intent of the statute should prevail over the literal letter of the law.

Morris v. Blaker, 118 Wn.2d 133, 142-43, 821 P.2d 482 (1992) (internal citations omitted).[4]

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3 The State did not assign error to any of the district court judge's specific factual findings, only to the conclusion that speedy trial had not been tolled. As such, the district court's findings are verities on appeal. State v. Stenson, 132 Wn.2d 668, 697, 940 P.2d 1239 (1997). This court reviews the district court in the same manner as the superior court pursuant to RALJ 9.1. State v. Hodgson, 60 Wn.App. 12, 15, 802 P.2d 129 (1990).

4 The goal of the speedy trial rule is to expedite criminal prosecutions.

> Delay in bringing a matter to trial can result in substantial prejudice to defendants, including lost opportunities to

The State argues for a literal reading of the rule that would lead to arbitrary and absurd results. The State claims that speedy trial tolls whenever an accused is jailed outside the county for whatever reason. A simple example illustrates the fatal flaw in this position. If Mr Steever had been detained in the Renton City Jail on a sentence imposed by the City of Renton (or some other municipality that contracts to use the Renton City Jail), Mr. Steever would have been jailed inside the county. The speedy trial period would not have tolled. 5 But since Mr. Steever was serving his Bellevue sentence in Yakima, the State asserts that speedy trial is tolled. This arbitrary application of the speedy trial rule should not be sanctioned.

When read as a whole, the tolling provision applies only where the

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> serve at least partially concurrent sentences, potential increased duration of imprisonment under the sentence the defendant is presently serving, and diminished ability to prepare for trial, including inability to consult with counsel and problems of stale evidence.

State v. Anderson, 121 Wn.2d 852, 862, 855 P.2d 671 (1993).

5 In this scenario, speedy trial is not tolled even though some logistical arrangements must be made to bring the accused prisoner to court. Thus, the speedy trial rule is not concerned with this problem which the State argues is dispositive. Brief of Appellant at 8. The rule does not toll the time for trial when the accused is incarcerated by some other political subdivision or the county of some other court of limited jurisdiction within the county.

accused is outside the control of the charging county or its political subdivisions.[6] Each part of the rule must be read in relation to the whole and harmonized. State v. Thorne, 129 Wn.2d 736, 762, 921 P.2d 514 (1996). The time for trial tolls in three circumstances. When the accused is 1) detained "outside the [charging] county" or 2) in federal lockup or 3) is subject to conditions of release imposed by a foreign jurisdiction's court. Former CrRLJ 3.3(g)(5), Appendix 1. The phrase "outside the county" must be read consistently with the remainder of the sentence. That language identifies circumstances where the accused is under the control of a foreign jurisdiction. Thus, the phrase "outside the county" includes those situations where the accused is detained by another county, not simply in another county.[7]

This distinction is illustrated by the two cases consolidated in City of Seattle v. Guay, 150 Wn.2d 288, 295, 76 P.3d 231 (2003). In the Akerman

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6 The cities of Seattle and Burien are political subdivisions of King County. See State v. Durham, 87 Wn.2d 206, 211, 550 P.2d 685 (1976). For other purposes related to criminal prosecutions, the county and its municipalities are considered the same sovereignty. State v. Mason, 34 Wn.App. 514, 518, 663 P.2d 137 (1983).

7 The scope of the tolling provision is expressed in the title added to the current version of the rule: (e) Excluded Periods . . . . (6) Defendant Subject to Foreign or Federal Custody or Conditions. Appendix 2.

case, the time for trial was tolled for the King County DUI because Mr. Akerman was in the Clark County jail serving a sentence imposed by a Clark County district court. For this reason, the court held that the State had no obligation to bring Mr. Akerman to trial in King County. Guay, 150 Wn.2d at 303-04.

In contrast, Mr. Guay was imprisoned in a Washington State Department of Corrections facility located in Pierce County. A statute requires DOC to transport its prisoners to local jails for court proceedings. See Guay, 150 Wn.2d at 303, citing RCW 72.68.020(1)(b). Thus, the court ruled against Mr. Guay not because he was "detained . . . outside the county." Rather, the court ruled that Mr. Guay's right to a speedy was not violated because he did not make his location known and the City of Seattle did not have an obligation "when serving criminal process, to search the state's prisons and county jails to locate a defendant when he has left no forwarding address." Guay, 150 Wn.2d at 303.

Here, the State knew that Mr. Steever was in Yakima and that he was not serving a sentence imposed by another county. The State did not have to search for Mr. Steever or otherwise "keep track of him." Brief of Appellant at 8. Even when the district court and prosecutor were promptly

notified of Mr. Steever's location and status, nothing was done.

Thus, "detained . . . outside the county" cannot be construed to apply to the facts of this case. The holding in Guay, which relieves the State of its due diligence obligation when the accused is detained by another county, does not apply. That holding was premised on the fact that the accused was outside the control of the county where the current charges were pending. In this case, the State was obligated to exercise due diligence to bring Mr. Steever before the court for trial or take other steps to preserve the case.

The State argues that speedy trial is tolled whenever the accused is incarcerated outside the county, regardless of the reason. The State advocates for an enforcement of the rule based on the vagaries of the municipalities's recently adopted jailing practices. At worst, this application of the tolling provision rule suspends operation of the speedy trial rule and, at best, invites arbitrary enforcement.

The State's position is also inconsistent with the interplay between the speedy trial rule and the sentencing law. The speedy trial rule anticipates that accused persons will be available to address pending matters once they have been sentenced on other cases. CrRLJ 3.3(e)(2). With regard to sentencing, the law gives the judge imposing the second or subsequent sentence the

authority to decide whether the punishments should run concurrently or consecutively. RCW 9.92.080. The State's argument effectively eliminates the possibility of concurrent sentences by creating a situation in which the first sentence is served before the accused even has an opportunity to resolve pending matters. This practice creates undue hardship and prejudices for accused persons attempting to resolve various legal matters, all arising in King County, in an expeditious manner.

The State asserts, without citation to authority, that King County and its municipalities are different "jurisdictions." Brief of Appellant at 20-21. This is contrary to the well settled law that counties and their political subdivisions –municipalities– are a single sovereignty for purposes of criminal prosecutions. State v. Mason, 34 Wn.App. 514, 517-18, 663 P.2d 137 (1983) (to determine whether an equal protection violation arises when the a municipal code and state law punish differently the same conduct, the State of Washington and the City of Seattle are the same entity).

> Political subdivisions of States –counties, cities, or whatever– never were and never have been considered as sovereign entities. Rather they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist the carrying out of state governmental functions.

Waller v. Florida, 397 U.S. 387, 392, 90 S.Ct. 1184, 25 L.Ed.2d 435 (1970)

(State, counties, and municipalities are one sovereign for purposes of double jeopardy); Accord State v. Roybal, 82 Wn.2d 577, 579-80, 512 P.2d 718 (1973).

C. *Guay* Is Not Dispositive

The district court judge did not err when her application of the law to the facts of this case produced a result different from City of Seattle v. Guay, 150 Wn.2d 288, 295, 76 P.3d 231 (2003).[8] The facts of this case present a very different scenario.

In Guay, the Washington Supreme Court held that speedy trial was tolled by operation of former CrRLJ 3.3(g)(5) where the accused was jailed "outside the county." Guay, 150 Wn.2d at 291, 304. The court's holding was premised on the respective power of different counties over a single defendant. The court held that a court of limited jurisdiction in one county could not compel another county's court to release an incarcerated person for trial. The crux of the court's holding lay in the fact that an entirely different county detained the accused.[9] Guay, 150 Wn.2d at 298, 304. The court did

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8 A court does not abuse its discretion where its rulings are within the range of acceptable choices given the facts and the applicable legal standard. State v. Runquist, 79 Wn.App. 786, 793, 905 P.2d 922 (1995).

9 Mr. Akerman was being detained in Clark County on a sentence imposed in a district court of that county. Guay, 150 Wn.2d at 292-94.

not announce a blanket rule that speedy trial was tolled when an accused was detained "outside the county" for any reason.[10] The supreme court was not faced with the situation here where the accused was detained in the county and would have remained there, but for the fiscal decision of the cities to jail some of its prisoners in Yakima county.

These circumstances were not presented to the Guay court and were not contemplated by the speedy trial rule.

D. *Davidson* Has No Application To This Case

The State argues that the district court can issue an arrest warrant, but cannot execute it if the person is incarcerated in another county, citing State v. Davidson, 26 Wn.App. 623, 625, 613 P.2d 564 (1980). The State ignores the limitation of that court's holding. The Court of Appeals held that district courts cannot issue a search warrant to be executed in another county unless the district court has authority to hear the case. Davidson, 26 Wn.App. 625,

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10 Mr. Guay was being held by the Department of Corrections prison at McNeil Island in Pierce County. He was serving a sentence imposed by the King County Superior Court. The court acknowledged that a statutory "mechanism" exists for the transportation of prisoners to local jails for court proceedings. See Guay, 150 Wn.2d at 303. Nonetheless, the court ruled against Mr. Guay because the City did not have an obligation to search for him and he did not make his location known or present a demand for a speedy trial. Guay, 150 Wn.2d at 303.

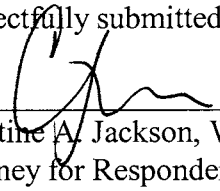
citing RCW 3.66.100. Davidson does not limit the authority of the district court to issue process in a case over which it has jurisdiction. Also, arrest warrants also have a different legal origin than search warrants. Compare Davidson, 26 Wn.App. at 626-27 with State v. Werner, 129 Wn.2d 485, 494, 918 P.2d 916 (1996), citing RCW 2.20.010, .020. District courts may issue arrest warrants for persons charged with felonies, even though those courts lack jurisdiction to try such felons. Werner, 129 Wn.2d at 494.

This argument was also rejected in Guay. There the court held that courts of limited jurisdiction have the inherent authority to issue transport orders. Guay, 150 Wn.2d at 298. The Guay court simply held that the King County district court could not compel Clark County to release Mr. Akerman and that the City of Seattle had no obligation to search for Mr. Guay among this state's many correctional facilities. Guay, 150 Wn.2d at 298, 303-04.

IV. CONCLUSION

For the foregoing reasons, this court should affirm the district court's dismissal of this case.

Respectfully submitted this 10th day of June, 2005.



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APPENDIX 1

Former CrRLJ 3.3 (2003)

CrRLJ 3.3 TIME FOR TRIAL

(g) Excluded Periods. The following periods shall be excluded from computing the time for arraignment and the time for trial:

(5) The time during which a defendant is detained in jail or prison outside the county in which the defendant is charged or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington . . . .

APPENDIX 2

Current CrRLJ 3.3 (Amended effective 9/1/03 and 11/25/03)

CrRLJ 3.3 TIME FOR TRIAL

(E) Excluded Periods. The following periods shall be excluded from computing the time for trial:

(6) Defendant Subject to Foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the county in which the defendant is charged or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington . . . .