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NO. 55335-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SARUN CHHOM,

Appellant.

King County Superior Court Cause No. 03-1-04820-4 SEA
King County District Court Cause No. C0434184

2005 JUN 16 PM 4:55
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[Signature]

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. The trial court (King County District Court) granted defendant Sarun Chhom's motion to dismiss the State's charge against him for DWLS 2 on grounds his speedy trial rights were violated. The court refused to exclude speedy trial time under CrRLJ 3.3(g)(5) in calculating speedy trial while Chhom was in custody out of county on a commitment issued by the municipal court of the City of Bellevue during the same time that charges were pending in the present King County case. The court ruled that Chhom's case was distinguishable from the defendants in Seattle v. Guay, 150 Wn.2d 288, 76 P.3d 231 (2003) because Chhom's incarceration was ordered by a court located in King County. Guay, inter alia, followed the plain language of CrRLJ 3.3(g)(5), holding that time in custody out of county by order of another jurisdiction is excluded from speedy trial calculation in district court. The King County Superior Court on RALJ appeal reversed the trial court's decision. Should this court affirm the superior court decision reversing the trial court because dismissal was an abuse of the trial court's discretion under Guay?

B. STATEMENT OF THE CASE

On June 5, 2002 the Defendant was arrested for Driving While License Suspended/Revoked in the Second Degree (DWLS 2), RCW

46.20.342. CP 2-5, 16-17.¹ On February 5, 2003, the State filed its complaint on that charge. CP 2, 65. On February 13, 2003, the Defendant appeared for arraignment, and a pretrial hearing was set for March 14, 2003. On March 14, 2003, the Defendant failed to appear for the pretrial hearing. CP 2-5.

At the time of the State's pending charge, the Defendant failed to appear for a 120-day jail commitment on a separate DWLS 2 conviction of February 10, 2003 conviction in Bellevue Municipal Court. A warrant issued and on April 3, 2003 the Defendant was booked on that warrant. Just two days later the Defendant was transported to Yakima County Jail, to serve his sentence on the City of Bellevue Municipal Court (hereafter, "City case") charge. RP 2-3 (CP 69-70).

On April 16, 2003, Defendant's attorney filed a letter with the Shoreline District Court (hereafter "State case"). CP 59. The entire letter read:

Dear Court and Prosecutor:

Please note that Mr. Chhom is in custody in Yakima, pursuant to a conviction for DWLS 2nd Degree out of Bellevue Municipal/District Court, cause # BC0132246. Mr. Chhom will be in custody until 6/21/03, and he wishes to have the above referenced case adjudicated.

¹ The usual "RP" designation for report of proceedings is also designated hereinafter by CP numbers because that is the designation in the record as transmitted to the Court of Appeals by the superior court. Thus "RP" will be followed by (CP __).

While the letter is directed to the prosecutor and the court, there is nothing in the record to show that the prosecutor's office was ever personally served with a copy of the letter.

On June 19, 2003 Chhom was transported back to King County Jail. CP 3, RP 3 (CP 69). He was "released" from the City charge and held on the State's warrant. RP 3 (CP 69). On June 20, 2003 the court released the Defendant on his personal recognizance, with notice to appear in Shoreline District Court on July 3, 2003. The Defendant filed a Motion to Dismiss the State's case for a violation of CrRLJ 3.3. See, Dendant's Brief in Support of Motion to Dismiss, CP 32-34.

On October 30, 2003 the parties appeared for argument on the Defendant's motion. Defense argued that the State had failed to exercise due diligence in bringing the Defendant to trial while he was in Yakima on the city charge. RP 4-7 (CP 71-74). Defense argued that although the Defendant was being held on a municipal matter, he was still being held on a county charge, because the City of Bellevue is in King County. Defense attempted to distinguish City of Seattle v. Guay, 150 Wash.2d 288, 76 P.3d 231 (2003):

...I think the Supreme Court said there actually is some duty on behalf of the plaintiff the prosecution in these kind of situations but it's really lessened because there is no mechanism for these out-of-county holds. For these clients who are in these courts of limited jurisdiction. Certainly there's plenty of stuff for a Superior Court and that's what this case really was about. I mean, getting that cleared up for us. Unfortunately for defense it didn't go away. But this situation is so different because it's just like that he was down at the King County Jail...

RP 5-6 (CP 75-76).

The State argued that under CrRLJ 3.3 and the Guay decision, the Defendant was being held out of county and that time is an excluded period. RP 7 (CP 77). The court² disagreed:

I think that under this rule, the new rule or the old rule that if the defendant is held uh through the jurisdiction of a court in this county, whether it's municipal, the district court or a superior court that the court and the prosecutor have to be responsible for the running of the statute of the ST trial period. I don't think its material that Bellevue sent him to Yakima. He's still in custody as I read the rule and interpret the rule uh in this county for purposes of that rule.
...

RP 9 (CP 79). The case was dismissed with prejudice. The State filed a RALJ appeal in the King County Superior Court.³ The superior court reversed the trial court's decision. Defendant timely filed notice for discretionary review in this court. At the Motion

²King County District Court, Shoreline, Honorable Arthur C. Chapman.

³King County Cause 03-1-04820-4 SEA; decision by Honorable Julie Spector.

for Discretionary Review, the parties agreed with Commissioner Ellis that this appeal should be linked with State v. Steever, No. 54910-3-I, for briefing and argument as the cases involve the same attorneys and issues, and are both appeals from King County Superior Court.

C. ARGUMENT

**1. WHERE THE TRIAL COURT
ERRONEOUSLY GRANTED CHHOM'S
MOTION TO DISMISS, THE SUPERIOR
COURT PROPERLY REVERSED THE
TRIAL COURT BECAUSE SPEEDY
TRIAL WAS TOLLED DURING THE
PERIOD OF TIME HE WAS IN CUSTODY
IN YAKIMA COUNTY BY ORDER OF
THE CITY OF BUELLEVUE MUNICIPAL
COURT.**

The trial court granted the defendant Chhom's motion to dismiss on grounds his right to a speedy trial was violated. The court erroneously found that speedy trial expired on the State's King County District Court case while Chhom was in jail in Yakima County on a commitment ordered by the City of Bellevue Municipal Court. The district court ruled that the State should have transported Chhom within the expiration of his case in the district court. However, speedy trial was tolled under then-in-effect

CrRLJ 3.3(g)(5)⁴ during the period of time the defendant was in Yakima County on a City of Bellevue (i.e., non-King County) charge. The superior court properly reversed that decision. The State urges this court to accept the superior court decision reversing the trial court because the trial court failed to properly exercise its discretion when it refused to follow Seattle v. Guay, 150 Wn.2d 288, 76 P.3d 231 (2003).

A defendant's right to a speedy trial is statutorily required under CrRLJ 3.3.⁵ A defendant who is not detained in jail must be brought to trial within 90 days of the commencement date, the date of arraignment. CrRLJ 3.3(b)(2), (c)(1). A criminal charge not brought to trial within the time limits outlined in CrRLJ 3.3 "shall be dismissed with prejudice." CrRLJ 3.3(h). However, "The time during which a defendant is detained in jail or prison outside the county in which the defendant is charged," is an excluded period. CrRLJ 3.3(e)(6).

a. Standard of Review

An appellate court reviews a trial court's order on a motion to dismiss for speedy trial purposes for manifest abuse of discretion. Seattle v. Guay/ State v. Ackerman, 150 Wn.2d 288, 76 P.3d 231 (2003), citing

⁴ CrRLJ 3.3 was broadly amended September 1, 2003. The current CrRLJ 3.3(e)(6) is identical to the former CrRLJ 3.3(g)(5).

⁵ Defendant's constitutional right to a speedy trial was not raised.

State v Everybodytalksabout, 145 Wn.2d 456, 478, 39 P.3d 294 (2002).

A court abuses its discretion where the court applies the wrong legal principle, or where the decision was manifestly unreasonable, or where it was based on untenable grounds or reasons. City of Bellevue v Vigil, 66 Wn. App. 891, 895 (1992). A court acts on untenable grounds if (1) its factual findings are unsupported by the record, (2) it used an incorrect standard, (3) the facts do not meet the requirements of the correct standard, or (4) if its decision is outside the range of acceptable choices, given the facts and the legal standard. State v Runquist, 79 Wn. App 786, 793, 905 P.2d 922 (1995).

Here, the trial court, after Guay was decided, used an incorrect standard to determine whether a speedy trial violation occurred. Its decision reflects a misunderstanding of and was contrary to the holding of Guay. The Superior Court properly reversed that decision.

b. Speedy Trial Was Tolloed During the Period of Time Defendant Was In Custody of Another Jurisdiction in Another County.

CrRLJ 3.3(g) Excluded Periods. The following periods shall be excluded in computing the time for . . . trial: (5) *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.

(Emphasis added. Italics original.)

A defendant's multiple misdemeanor charges pending simultaneously in several different municipal and district court jurisdictions create substantial difficulties for those courts. One of the most difficult responsibilities for those courts is protecting speedy trial rights of those persons with multiple concurrent charges pending in a variety of misdemeanor courts. CrRLJ 3.3(g)(5), now CrRLJ 3.3(e)(6), addresses the issue. The exclusion of time provision of CrRLJ 3.3(g)(5) has been clearly interpreted by the Washington Supreme Court in accordance with the State's position in this matter before the trial court and the superior court.

If this court were to accept Chhom's arguments and the reasoning of the trial court, it would ultimately reward the most prolific and mobile misdemeanants in the State. If Mr. Chhom didn't have such a chronic history of offenses, the various courts would not have such a task trying to

keep track of him.⁶ As the Guay court noted, the problems (created by mobile, chronic misdemeanor offenders) involve questions that need to be resolved through a legislative process. Guay, 150 Wn.2d at 301. The allocation of costs in developing a mechanism for transport and release alone is a significant legislative question. The court quieried, “. . . which county must incur the expense of transporting the defendant? Is the defendant transported back to the original holding county after his hearing and which county bears that expense? How is transport funded generally? What procedure must be followed? Where must the transfer process be initiated: in the receiving county or holding county? May the receiving county compel release before the term is served in the holding county?” Id.⁷

In the specific situation before this court, it is not only counties that have to determine allocation of costs, the municipalities across the State of Washington have to be involved as well because their budgets and resources are also at issue. In addition, it would have to be determined what responsibilities should be shouldered by prosecutors, court clerks or police agencies. In short, there is a long list of concerns a legislative

⁶ For the court’s convenience, Chhom’s misdemeanor record is summarized in App. B.

⁷ Attached as Appendix C for the court’s convenience is a compilation of several statutes that specify detailed procedures regulating transport and release of felons in this state.

process would need to address before this court, or any court, creates duties of the district and municipal courts beyond the court's authority to do so. The powers of the courts of lower jurisdiction are limited to those created by the legislature. CrRLJ 3.3(g)(5) is consistent with the current powers of the lower courts created by the legislature.

The court in Seattle v. Guay, 150 Wn.2d 288, 76 P.3d 231 (2003), (hereafter, "Guay") reasoned that the State is not required to exercise due diligence or good faith to transport an incarcerated misdemeanant from one county to another because there is no mechanism to do so. One court of limited jurisdiction, in order to transport, cannot compel a person's release from another county jail when he has been incarcerated by the authority of another jurisdiction. The plain language of CrRLJ(g)(5) excluded the time during which defendants Guay and Ackerman were in custody out of King County, where charges pending in the Seattle Municipal Court (Guay) and King County District Court (Ackerman) were the subject of motions to dismiss.

In Guay, both defendant Guay's and Ackerman's periods of time in custody out of county were excluded under CrRLJ 3.3(g)(5). The court succinctly held:

We hold that there is no mechanism
available to courts of limited jurisdiction to

facilitate and compel the transport of misdemeanor defendants between county jails of this state. **We distinguish between being amenable to criminal process and being amenable to transport to court.**

While courts of limited jurisdiction have the inherent authority to issue a transfer order to obtain a misdemeanor defendant's presence in court, this authority does not establish a mechanism that compels the holding county to **release** the defendant. We hold that CrRLJ 3.3(g)(5) does not contain a due diligence or good faith requirement because the rule's plain language does not reflect such obligations. As such, the time during which each Petitioner was incarcerated in another county is excluded from their speedy trial calculations . . .

Guay 150 Wn.2d at 291-292. (Emphasis added).

Chhom's claim is identical to the claims made by Guay and Ackerman, although he attempts to distinguish Guay by claiming that the fact that he was committed by a municipal court physically located in King County means the exclusion under CrRLJ 3.3(g)(5) does not apply. He is wrong. He fails to demonstrate how a State / district court obtains jurisdiction over any city case, whether it is in the same county or not.

Chhom had multiple charges pending in different jurisdictions, including King County. He was not available for court in KCDC court proceedings because during the relevant period of time at issue here, Chhom was incarcerated in Yakima County Jail pursuant to an order of

commitment from the City of Bellevue. The State's prosecutor could only ask the district court to find a failure to appear and issue a bench warrant to ensure that upon release, the defendant would be brought before the district court as soon as practicable.

As Guay clarifies, the authority of superior courts is different than that of district and municipal courts because the lower courts do not have a statutory mechanism that the superior courts do to require uniform inter-institutional release and/or transport, of prisoners. Unlike requirements the State must follow, for example, under uniform procedures for superior courts to transport a felony defendant from an out-of-state prison into the state for superior court trial, no such procedures exist at the level of the courts of limited jurisdiction in this State. There are no analogous requirements of the State to bring misdemeanants to trial in pending courts when they are incarcerated by other jurisdictions in other counties within the state. Thus there is no requirement of the exercise of good faith and due diligence to satisfy the execution of a [currently non-existent] mechanism. There simply is no uniform mechanism available to facilitate and compel the transfer of misdemeanor defendants between the various county jails. Therefore, the time defendants spend in another county jail is excluded from their speedy trial calculation in the pending jurisdiction,

under the plain language of CrRLJ 3.3(g)(5). Thus, a defendant's right to a speedy trial is not violated when that out of county time is thereby tolled, or excluded, for speedy trial calculations.

Superior courts are authorized under the constitution and by statute to exercise their authority statewide. On the other hand, district courts have only as much power and authority as the legislature specifically creates for them by statute, and no statute permits a district court to exercise its power beyond its own county borders unless it is to affect a case ultimately within its own jurisdiction. RCW 3.66.100. There is no equal protection violation because speedy trial issues differ between superior courts and lower courts. Substantial differences between the two levels of courts have been held not to violate equal protection, for example, in the felony versus non-felony sentencing schemes of Washington. In re Mayner, 107 Wn.2d 512, 516, 730 P.2d 1321 (1986).

RCW 3.66.100 provides:

Territorial jurisdiction -- Process --
Limitation. (1) Every district judge having
authority to hear a particular case may issue
criminal process in and to any place in the
state.

This statute authorizes the King County court's warrant to be effective statewide, insofar as arresting defendant on its own case. In

addition, as the Guay court recognized, certain inherent powers are vested in the courts of limited jurisdiction by RCW 2.28. However, Guay held that neither RCW 3.66.100 nor RCW 2.28 vests power in any court of limited jurisdiction to override the jurisdictional custody of a person committed by another court. That is, it does not authorize the KCDC court to remove defendant to King County while he is in custody in Yakima County by orders of non-KCDC courts.

RCW 3.66.100, *supra*, was examined in State v. Davidson, 26 Wn.App. 623, 613 P.2d 564 (1980). There, a King County (Seattle) District Court judge issued a search warrant to search premises in Snohomish County. The evidence found in the search led to charges being filed in Snohomish County. The King County court had no authority to hear the resulting case because no element of the crime was committed within King County. Thus, the evidence that was seized pursuant to the search warrant was suppressed. The Court of Appeals affirmed the suppression ruling:

(1) The boundaries of the county ordinarily define a district court's territorial jurisdiction in criminal matters. RCW 3.66.060. For the issuance of criminal process; the legislature has expanded this jurisdiction to the entire state if the district court has the authority to hear the case. RCW 3.66.100. It is undisputed that the

crimes alleged in this case occurred entirely outside King County and could not be prosecuted there. RCW 3.66.060. Without the authority to hear the matter, the Seattle District Court had no jurisdiction under RCW 3.66.100 to issue a warrant to search premises in Snohomish County.

. . . (2) The jurisdiction of courts of limited jurisdiction must clearly appear in a statute. See McCall v. Carr, 125 Wash. 629, 216 P.2d 871 (1923). Statewide territorial jurisdiction does not clearly appear in RCW 69.50.509. It is silent on that question. It merely authorizes courts to command 'any law enforcement officer of the state' to search, and it does not address the question of the territorial limits on the court's authority to order a search.

Finally, the court rejected an argument that because the former JCrR 3.3 (now CrRLJ 2.3 and 4.9) authorized issuance of "criminal process to any person anywhere in the state" and JCrR 2.10 authorized the issuance of search warrants, that a search warrant as a form of process should be valid statewide.

We, however, reject this contention because it attempts to enlarge the statutorily created territorial jurisdiction of the justice courts in violation of the state constitution. Under Const. Art. 4, §§ 1, 10 (amendment 65) and 12, the legislature has the sole authority to determine the powers, duties and jurisdiction of justices of the peace and such other inferior courts as the legislature may establish. [cites omitted.] Const. Art. 4, §1

provides: The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.; Const. Art. 4, § 10 (amendment 65) provides in part: "the legislature shall . . . prescribe by law the powers, duties and jurisdiction of justices of the peace" Const. Art. 4, § 12 provides: "The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this Constitution."

Thus, while issuance of a search warrant may be a procedural matter subject to regulation by court rules, the territorial limits of an inferior court's authority to issue a warrant is jurisdictional and subject to the constitutional requirement that it be defined by statute. ". . . the absence of legislation here creating territorial jurisdiction is an absolute bar to its exercise . . ." Davidson at 628.

Any reliance on State v. Anderson, 121 Wn.2d 852, 855 P.2d 671 (1993), to argue that the State was required to transport defendant from Yakima County in order to protect his speedy trial rights in King County is misplaced, though the underlying principle is sound.⁸

⁸ Anderson involved felony charges in Superior court, but to the extent possible, provisions of the time for trial rules applicable to courts of limited jurisdiction (CrRLJ 3.3) are construed consistently with substantially similar provisions of the time for trial rule applicable to Superior Courts (CrR 3.3) and juvenile courts (JuCR 7.8). State v. Grilley, 67 Wn.App. 795, 840 P.2d 903 (1992).

In Anderson, supra, defendant was charged in Snohomish County with burglary. Prior to coming to trial on that charge, defendant was arrested and placed in federal custody on another matter. While in federal custody, he demanded a speedy trial with Snohomish County, but received no response. The prosecutor had not filed an interstate detainer against defendant, so defendant was unable to make a statutory demand for speedy trial under that statute. (RCW 9.100, Interstate Agreement on Detainers, "IAD"). The superior court denied his motion to dismiss on speedy trial grounds when he was brought to trial many months later. The Court of Appeals reversed, holding that the CrR 3.3(g)(6) exclusion of time spent by defendant in federal jail or prison did not apply, that the time in federal custody had to be included in counting the days under his speedy trial right ". . . because of the State's failure to act in good faith and with due diligence in seeking return of Respondent Anderson to Washington state jurisdiction to stand trial on the burglary charge." Anderson at 853. The Supreme Court affirmed the Court of Appeals.

The Supreme Court held that the due diligence requirement of the State in bringing an accused to trial within the time limits of the speedy trial rule ". . . requires the State to make a diligent and good faith effort to secure the presence of an accused from another jurisdiction **if a**

mechanism is available to do so. The IAD, RCW 9.100, is such a mechanism." Anderson, supra, at 858. (Emphasis added). The dissent pointed out the clear and unambiguous language of the rule in excluding time spent in another state or federal custody under CrR 3.3(g)(6), but the majority held that if the mechanism existed by which Anderson could exercise his speedy trial rights, the mechanism must be initiated. The State was thus required to initiate IAD proceedings. Such action would have demonstrated the requisite due diligence, and would have resulted in defendant Anderson's ability to make a transport request to protect his speedy trial rights in the State court.

Here, however, as in Guay, Chhom cannot identify any statutory intrastate mechanisms in Washington State analogous to interstate extradition and detainer powers noted by the Supreme Court in Anderson. Therefore, he cannot demonstrate amenability to transport, a precedent to the State's obligation to exercise good faith and due diligence. State v. Roman, 94 Wn.App. 211, 972 P.2d 511, rev.den., 138 Wn.2d 1014 (1999).

It is irrelevant that the city of Bellevue is within the geographical boundaries of King County if its convicted misdemeanants are jailed in Yakima County. Chhom asserts "*The State argues that speedy trial is tolled whenever the accused is incarcerated outside the county, regardless*

of the reason. The State advocates for enforcement of the rule based on the vagaries of the municipalities' recently adopted jailing practices. . . . “ Appellant’s brief at 10.

Chhom is wrong. The State’s position should be clear. If a King County District Court misdemeanor is housed in Yakima County Jail by order of any division of the King County District Court, then the State has the ability to take action in its courts in King County to facilitate transport of such a defendant. The State can facilitate transportation within its jurisdiction, though the defendant is physically located out of county.

However, if a person facing charges in King County District Court is incarcerated, for example, in Renton city jail, on a Renton Municipal Court matter, then the State cannot rely on CrRLJ 3.3(e)(6) to toll speedy trial. It does not, by its terms, apply. Thus, extra efforts must be expended in that circumstance to guard against violating speedy trial rights of such a person.⁹ That does not mean there is a “mechanism” but only that there is no rule that applies to exclude such time and there is no established mechanism to ensure transport. It requires extraordinary diligence and effort, on a case by case basis, not ordinary due diligence

⁹For example, staff in the prosecutor’s office may call or write to the city attorney’s office in Renton to determine if they have an objection to transport; the city attorney may be asked to present a motion and order to the city judge asking for permission for temporary release; the sheriff or jail may be asked to facilitate the transport of defendant

and good faith. In addition, close proximity clearly eases the expense and difficulties encountered by authorities dealing with that circumstance.

In sum, the trial court failed to understand the holding of Guay. The Supreme Court in Guay understood the significant distinctions between superior court and district court (or municipal) court powers. While there may be informal methods to bring a prisoner from another county to stand trial in a requesting/demanding county, (but not of record here), there is nothing uniform or statutory to ensure or require it. There are no requirements or set procedures in place. As the Guay court noted, the requesting county could not compel release of a misdemeanor held by the order of another jurisdiction who has primary authority over that commitment, even if a uniform method of transport is devised.

“We hold there is no mechanism available to courts of limited jurisdiction to facilitate and compel the transport of misdemeanor defendants between county jails of this state. While we hold that Petitioners were each amenable to criminal process while incarcerated, we distinguish that from being amenable to transport to court. The plain language of RCW 2.28.150 confers upon courts of limited jurisdiction the inherent authority to issue an order for the transport of misdemeanor defendants serving time outside county lines. However, this authority alone is insufficient to constitute a

to King County District Court.

mechanism that compels the holding county to release a misdemeanor defendant in accordance with the transport order. We decline to read elements of good faith and due diligence into CrRLJ 3.3(g)(5), as was done with CrR 3.3(g)(6) in Anderson and hold that Anderson is not persuasive in this case because there is no mechanism that compels the transport of misdemeanor defendants between counties in this state. Anderson is further distinguishable due to the incongruent wording between the rule in that case and the rule here. . . .¹⁰

Id at 304.

Thus, the only principle of Anderson relevant here is that where a mechanism is in place to assure release and uniform transport, then the State must exercise good faith and due diligence to effectuate that release and transport. A “mechanism” as defined by the Anderson court, however, is not one that is an arbitrary and uncertain methodology by which a misdemeanor *may* be brought to district or municipal court from another county. There clearly was no “mechanism” in place by which the King County District Court could require defendant be released from the

¹⁰**CrR 3.3(g) Excluded periods. (6)** The time during which a defendant is detained in jail or prison *outside the state of Washington* 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; (Emphasis added.). **CrRLJ 3.3(g) Excluded Periods. . . . (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 no imposed by a court of the State of Washington;

custody of Yakima County Jail in order to be transported to the King County Jail, contrary to the commitment by the City of Bellevue. The *mere possibility* of successful transport does not equate with a “mechanism” as defined by the Washington Supreme Court. Chhom thus fails to demonstrate he is *amenable* to transport.

The district court’s reasoning that Guay is distinguishable is wrong. While it is true that the city of Bellevue is located in King County, that municipality still is the governing authority with regard to the incarceration of its misdemeanants, under its jurisdiction. King County District Court is another separate authority and jurisdiction and cannot unilaterally remove those defendants from jail who have been committed there by order of other courts. The trial court’s reasoning that Chhom’s case is different from Guay reflects a misunderstanding of Guay’s holding and of CrRLJ 3.3(g)(5). The physical location of a municipality in a particular county does not give the city jurisdiction over the county’s criminal cases nor does it give the county jurisdiction of the municipality’s cases.

In sum, district court and municipal court powers and authority are different from those of the superior courts. In this instance, district courts

do not have a mechanism analogous to superior courts' IAD proceedings that authorize taking a defendant committed to the Yakima County Jail, by another jurisdiction, out of the Yakima County jail to transport him to King County. As the Guay court held, the duty of good faith and due diligence do not inhere in CrRLJ 3.3(g)(5) for speedy trial purposes.

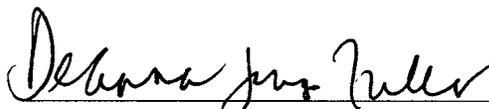
D. CONCLUSION

Based on the foregoing, the State respectfully requests that this court affirm the decision of the superior court in reversing the trial court's dismissal.

Dated this 16th day of June, 2005.

Respectfully submitted,

Norm Maleng
King County Prosecuting Attorney



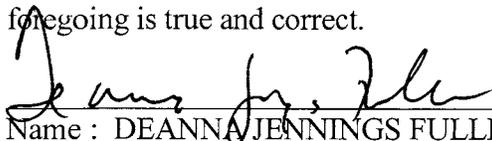
DEANNA JENNINGS FULLER, WSBA #7914
Senior Deputy Prosecuting Attorney
Attorney for Respondent

Certificate of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christine Anne Jackson, attorney for Petitioner, at offices of the Public Defender, 810 3rd Avenue, Floor 8, Seattle, WA 98104-1655.

The document mailed was a Designation of Clerk's Papers and Statement In Lieu of Statement of Arrangements to the Court of Appeals in the matter of State v. Sarun Chhom, Court of Appeals No. 55335-6-I in Division One of the Court of Appeals, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.


Name : DEANNA JENNINGS FULLER
Done in Seattle, Washington

6-16-05
Date June 16, 2005

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FILED
COURT OF APPEALS
JUN 16 2005