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STATE OF WASHINGTON

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

NO. 78463-9

(cons. w/ 78464-7)

STATE OF WASHINGTON
Respondent,

v.

SARUN CHHOM and DENNIS STEEVER,
Petitioners.

SUPPLEMENTAL BRIEF OF PETITIONERS

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A. ISSUES PRESENTED

1. While his case was pending in King County District Court, arrest warrants were issued for Chhom in the instant case and by Judge Jacke of the King County District Court for the City of Bellevue for an unserved sentence.

Ex. 1, 2. When Chhom was arrested, the King County Jail booked him, held him for *two days*, and then sent him to Yakima County to serve the Bellevue sentence without bringing him to court pursuant to CrRLJ 3.2.1(d)(1). While Steever's prosecution was pending in King County District Court, he was serving sentences imposed by Seattle Municipal Court and King County District Court for the City of Burien and was available for prosecution on the pending charges. Bellevue, Seattle and Burien are among the King County cities that contract with Yakima County to jail some of its prisoners. But for this arrangement, Chhom and Steever would have been jailed in King County. Were they "outside the county" for purposes of the tolling provision in former CrRLJ 3.3(g)(5) or were they constructively held inside the county?

2. Should the Court of Appeals have considered the fact that Chhom was not brought to court when detained in jail and sent to Yakima –in violation of CrRLJ 3.2.1(d)(1)-- where he stated this fact in his opening brief but did not include a citation to the rule until his reply brief?

3. Does the speedy trial rule impose a duty of due diligence to bring an accused to King County District Court when the accused is serving a sentence imposed by a King County municipality in a jail outside the county.

B. STATEMENT OF THE CASE

State v. Chhom. While his case was pending in King County District Court, arrest warrants were issued for Chhom in the instant case and by Judge Jacke of the King County District Court for the City of Bellevue for an unserved sentence. Ex. 1, 2. When he was arrested, the King County Jail booked him, held him for *two days*, and then sent him to Yakima County to serve the Bellevue sentence without appearing in court pursuant to CrRLJ 3.2.1(d)(1). Ex. 1; CP 60-70.

On April 16, 2003, Chhom's attorney filed a letter with the district court. CP 60; Ex. 2. The letter informed the court of Chhom's location and requested a speedy resolution of this case. A copy of the letter was filed with the King County Prosecuting Attorney's Office that same day. Ex. 2. Neither the court nor the prosecutor took any action on Chhom's request. On June 19, 2003, Chhom was transported back to the King County Jail and booked on the warrant issued in this case. CP 70. He was promptly brought to court the next day, as required by CrRLJ 3.2.1(d)(1), and released to appear

the in district court, which he did. Chhom then moved to dismiss for violation of his right to a speedy trial. The motion was granted. CP 68-77. The district court held that the speedy trial period was not tolled when Chhom was incarcerated in Yakima because he was held in King County for purposes of the speedy trial rule. CP 76. The district court found that he was not held “out of county just because of his geographical location.” If that were the case, then the speedy trial rule could be avoided altogether since “any jurisdiction could send their defendants out of county.” CP 76. The district court further noted that Chhom should have been brought to court on the pending district court matter when booked.

I say we made a mistake here. . . . ***Bellevue would not have been able to send him to Yakima because of the local hold by another court.*** CP 76.

The State appealed to the King County Superior Court which reversed, relying on a literal application of the rule. CP 78. The Court of Appeals agreed and reversed the district court. State v. Steever, 131 Wn.App. 334, 127 P.3d 749 (2006). This court accepted review and consolidated Chhom’s appeal with the companion case, *State v. Steever*.

State v. Steever. While Steever’s prosecution was pending in King County District Court, he was serving sentences imposed by Seattle and Burien and was available for prosecution on the pending charges. CP 6; CP

101-118. The Burien sentence was imposed by a judge in King County District Court which provides court services to Burien. CP 226. Seattle contracts with jail facilities inside and outside of King County. CP 228.

On March 19, 2003, the district court continued the case for the State to arrange Steever's transport from Yakima. Failing to make any such effort, the State requested a bench warrant. Steever requested to be transported. The bench warrant was issued eventually served on June 4, 2003, while Steever was on electronic home monitoring, which revoke his EHM. Steever was then returned to custody in Yakima. CP 7, 102, 172, 179-82.

Steever's trial was finally set for July 14, 2003. CP 7-8. He moved to dismiss for violation of the speedy trial rule. The motion was granted. CP 101-118, 171-183. In a decision made before this court's decision in *Guay*, the district court held that speedy trial was not tolled when he was incarcerated in Yakima. CP 172-182. The district court recognized the inequity created now that some municipalities jail their prisoners in other counties. The district court further noted the State's ability to have prisoners transported from Yakima and the prejudice suffered when such transport does not occur. CP 179-82. The court found that Steever was prejudiced when his arrest on the warrant caused EHM to be revoked and he was returned to

custody through no fault of his own. CP 180. In the end, the district court held that the State failed to exercise due diligence which requires only "an effort to make a transport." This "minimal effort" in light of the State's success in securing the presence of other defendants would have satisfied the court. CP 180.1 The King County Superior Court affirmed. CP 229-30.

C. ARGUMENT

1. Introduction. This case turns on a rational construction of the speedy trial rule in which the spirit and intent of the rule prevail over the literal letter of the law. All stakeholders in the criminal justice system benefit from speedy resolution of criminal prosecutions. The time for trial rule protects the accused's right to the prompt adjudication of accusations lodged against them, the government's interest in prosecuting cases before evidence becomes stale and witnesses become difficult to locate or lose interest, the courts' ability move cases through their dockets smoothly with minimal disruption and the public's confidence that justice will not be denied through delay. All those interested in a criminal prosecution are detrimentally affected by uncertainty and delay caused by a literal and

¹On June 20, 2003, 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 a Seattle sentence in Yakima was transported to King County District Court for hearings. CP 216.

illogical application of the rule. See State v. Anderson, 121 Wn.2d 852, 860-863, 855 P.2d 671 (1993) (strong public policy for speedy trial rule articulated by 2 American Bar Ass'n *Standard for Criminal Justice*, Std. 12-3.1 (2d ed. 1986) that those incarcerated ***within and without*** the jurisdiction should have their pending cases resolved promptly).

The district court judges construed the time for trial rule to avoid an arbitrary result and promote the speedy adjudication of matters pending within the same county. The district courts refused to sanction an application of the rule that turned on the geographical location that a King County municipality chose to imprison the accused. City of Seattle v. Guay, 150 Wn.2d 288, 76 P.3d 231 (2003) did not address the question presented here and is not dispositive.

2. Speedy Trial Did Not Toll Because Chhom and Steever Were Constructively Held *Inside The County*

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 language, structure and purpose of the rule.

Former CrRLJ 3.3(g)(5) authorized the tolling of the speedy trial period when the accused was jailed "outside the county." Appendix 2. In this case, the district courts correctly found that Chhom and Steever were in Yakima serving sentences imposed by a political subdivisions of King County, the Cities of Bellevue, Seattle and Burien. CP 179-182. But for the fact that these King County municipalities decided to house some of its prisoners in Yakima County, petitioners would have been jailed in King County. CP 179-82. Thus, for purposes of the speedy trial rule, they were constructively held within the county.

A rational reading of the speedy trial rule supports the district courts' decisions. 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). 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).

When read as a whole, the tolling provision applies only where the accused is outside the control of the charging county or its political

subdivisions. 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.² 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).

This distinction is illustrated by the consolidated cases in City of Seattle v. Guay, 150 Wn.2d 288, 295, 76 P.3d 231 (2003). In the Akerman case, the time for trial was tolled for the King County DUI because 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

⁴The 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.

to bring Akerman to trial in King County. Guay, 150 Wn.2d at 303-04.³

Here, the State knew that Chhom and Steever were serving sentences imposed by King County municipalities, not another county. But when the district courts and prosecutor were notified of their location and status, nothing was done. The prosecutor refused to utilize the available options: to make arrangements for them to appear in court or to dismiss the case without prejudice and refile at a later time. When an accused's presence cannot be obtained, the rule provides these measures to preserve the prosecution's case and protect the defendant's speedy trial right. *See former* CrRLJ 3.3(g)(4) *and current* CrRLJ 3.3(e)(4). The State failed to take steps to preserve the case under the rule *or* to exercise due diligence to bring either of accused before the court. (The latter obligation is discussed further below.) The district courts properly dismissed the case because speedy trial could not properly be tolled by the defendants' incarceration in Yakima.

The district courts' construction of CrRLJ 3.3 is consistent with the

³In contrast, Guay was imprisoned in a Department of Corrections facility located in Pierce County. Statute requires DOC to transport its prisoners to local jails for court proceedings. Guay, 150 Wn.2d at 303, citing RCW 72.68.020(1)(b). Thus, the court ruled against Guay not because he was "detained . . . outside the county." Rather, the court ruled that Guay's right to a speedy was not violated because he did not make his location known and 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.

interplay between the speedy trial rule and the sentencing law. 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). 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 Court of Appeal's decision below 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 for persons attempting to resolve legal matters, all arising in King County, in an expeditious manner.

Also, the speedy rule has long existed alongside the laws which authorize the county's cities to run municipal courts and jails. RCW 35.20, 3.46, 3.58; and RCW 70.48.190. The law anticipates that municipal jails will be located in the county in which the city or town is located. RCW 70.48.190 (may maintain jails "at any place *within* the territorial limits of the *county* in which the city or town is situated."). The State has also long coordinated the transfer of prisoners between local jails. RCW 72.76.010.

Only recently has the legislature permitted municipalities to send its prisoners to jails outside the territorial limits of its own county. RCW 70.48.220 (Laws of Washington 2002, c. 125 § 2). But the legislature sought to prevent such incarceration from infringing upon the prisoner's rights, such as the right to counsel. RCW 70.48.220 (defendant pending trial must have telephone, video-conferencing or in-person contact with defense counsel). The law did not abrogate an accused's right to a speedy trial under CrRLJ 3.3.

A few examples illustrate arbitrary result that flows from a literal reading of the rule. If Chhom and Steever had been detained in the Renton City Jail on a sentence imposed by Renton (or some other municipality that contracts to use that facility), they would have been jailed inside the county and the time for trial would not have tolled. The State conceded this below. Respondent's Brief at 22. More to the point, if Bellevue had decided to incarcerate Chhom in its own city jail, instead of sending him to Yakima, he would have been held within the county and the period would not have tolled.

such anomalous results are not limited to persons serving only municipal sentences. If the rule is literally applied, then the following could occur. The King County Jail might contract with another county --like Benton County-- to jail its prisoners serving sentences imposed by *both* King

County district *or* municipal courts. If Chhom were serving a sentence imposed by a King County district or municipal court in Benton County, he would be “detained in jail . . . outside the county” and the period would toll.

The Court of Appeals refused to address these fact patterns and the arbitrary results are produced by a literal application of the rule these situations. Steever, 131 Wn.App. at 334, note 16; George, 131 Wn.App. at 245, note 11. Instead, the court, suggested that in such circumstances the State may have a duty of *due diligence* where “the defendant is held by the *same jurisdiction* in which the case is pending.” Id.

3. The Court of Appeals Failed To Provide A Rational Construction Of The Rule.

The Court of Appeal’s opinion permits the time for trial to be tolled whenever the accused is incarcerated outside the county, regardless of the reason. Enforcement of the rule will then turn on the vagaries of a municipality’s jailing practices or the county’s jailing arrangements. At worst, this interpretation of the tolling provision suspends operation of the speedy trial rule and, at best, invites arbitrary enforcement.

The court sought to avoid the anomalous results produced by the fact patterns described above by relying solely on its decision in *George* issued just two weeks earlier. State v. George, 131 Wn.App. 239, 126 P.3d 93

(2006). There the court held that Renton Municipal Court properly issued bench warrants –and reset the speedy trial clock– when George was “in custody elsewhere on other municipal court charges (first in the Kent jail, then in the Regional Justice Center).” George, 131 Wn.App. at 243. The court rejected George’s argument that the failure to appear by a prisoner held within the county cannot restart the time for trial where the prosecution made no effort to secure the prisoner’s appearance. In its decision in this case and *George*, the Court of Appeals focused on the practical problems of transportation between jails within the same count, instead of construing the rule in light of its language, structure and purpose. Steever, 131 Wn.App. at 338-39; George, 131 Wn.App. at 244-45. The court also adopted, without any citation to authority, a novel concept of “jurisdiction.” Id. The court seemed to believe that King County municipalities are separate jurisdictions from each other and the county for purposes of criminal prosecution.

But *George* is distinguishable on the law and the facts. There the court had to squarely address the question of due diligence. The issue was whether the municipal court could issue a bench warrant –and restart the time for trial– when George was not brought to a King County municipal court from county and municipal jails within the county. But this case can and

should be resolved by a rational application of the rule to the facts.

Also, the Court of Appeal's assertion that King County and its municipalities are different "jurisdictions" is unsupported by citation to authority. To the contrary, 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 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 v. Roybal, 82 Wn.2d 577, 579-80, 512 P.2d 718 (1973).

Also, this court's decision in *Guay* does not support the Court of Appeal's decisions. *Guay* did not announce a blanket rule that speedy trial was tolled when an accused was detained "outside the county" for any reason. *Guay* did not hold that the county and its municipalities are separate jurisdictional entities for purposes of the speedy trial rule. 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 prisoners outside the territorial limits of King County.

Transporting prisoners from one jail to another has always been a practical concern to the litigants in the criminal justice system. Chhom and Steever asked to be brought to court so that they could resolve the charges against them. For the most part, both the accused and the State generally want to resolve all pending cases while the accused is in-custody. Both parties have an interest in making arrangements for the accused to appear in court. This is also the intent of the time for trial rule. See CrRLJ 3.3(e)(2). Nonetheless, the rule provides for other measures when the accused's appearance cannot be obtained, such as excluding the time between dismissal and refile of a charge. *Former* CrRLJ 3.3(g)(4); *Current* CrRLJ 3.3(e)(4).

The district courts' decisions are based on the inherent unfairness of tolling speedy trial for some misdemeanor prisoners and not others solely based on where a King County municipality chooses to imprison them. There is no rational basis to distinguish the speedy trial rights of an accused person serving a Renton sentence in the Renton jail and someone serving a Bellevue sentence in the Yakima jail. Equal protection will not tolerate such

irrational, disparate treatment of similarly situated persons. Compare State v. Anderson, 132 Wn.2d 203, 209, 937 P.2d 581 (1997) (court found "no practical, realistic or substantive difference" between pretrial detention for want of bail and detention pending an appeal of a conviction or sentence) with State v. Berry, 31 Wn.App. 408, 412, 641 P.2d 1213 (1982) (different speedy trial rule when complaint is first filed in district court is justified because the preliminary hearing requires some preparation time and provides incidental benefits to the accused).

4. The Court Of Appeals Should Not Have Ignored The Fact That Chhom Was Not Brought To Court When Detained In The King County Jail In Violation Of CrRLJ 3.2.1(d)(1).

The Court of Appeals refused to consider the fact that speedy trial would not have been tolled in this case if the State had not failed to bring Chhom to court when he was detained *for two days* in the King County Jail, before being shipped off to Yakima, in violation of CrRLJ 3.2.1(d)(1). Nonetheless, because a citation to the rule was not included until his reply brief, the Court of Appeals refused to consider this fact in deciding Chhom's case. Rather, the court accused him of raising an entirely new issue in his reply brief not supported by any assignment of error or citation to authority. Steever, 131 Wn.App. at 339.

But the fact that Chhom was in the King County's custody for *two days* before being sent to Yakima was cited in Chhom's pleadings and argument in district court, and in his opening brief (the issue statement, statement of facts and argument) in support of his arguments that speedy trial did not toll because he was in the county's control. There was no error to assign. The citation to the court rule in the reply brief simply provide additional authority in support of Chhom's argument. It does not transform this fact into a new, separate issue.

In any event, this single citation to authority did not prejudice the State or inconvenience the court, and the fact that Chhom was not brought into court before being shipped off to Yakima is potentially dispositive. Clearly, if the rule had been followed, Chhom would have appeared in district court on this case and the matter resolved. Thus, the Court Of Appeals should have considered this fact in the disposition of the case. See State v. Yokley, 91 Wn.App. 773, 778, 959 P.2d 694 (1998); State v. Bonisisio, 92 Wn.App. 783, 964 P.2d 1222 (1998). The district courts' application of rule was proper and supported by the law and the facts.

5. The Courts And Prosecutors Failed To Exercise Due Diligence

The fair administration of the speedy trial rule lies with the courts.

It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

CrRLJ 3.3(a)(1); CrR 3.3 (a)(1). Moreover, the incarcerated accused is powerless to bring himself before the court . Our courts have long observed, [a] defendant has no duty to bring himself to trial, rather the defendant’s appearance in court “depends upon the efforts of the prosecutor and law enforcement officials.”

City of Seattle v. Guay, 150 Wn.2d 288, 295, 76 P.3d 231 (2003) (internal citations omitted). The speedy trial rule must be construed in a manner that requires those with power –courts and prosecutors-- to act diligently. The district court judges dismissed these cases because the State and the court failed in their obligations to bring the defendants to trial in the time and manner prescribed in the rule.

The Court of Appeal’s decision in *George* and *Steever* is not supported by *Guay*. In *George*, the court held that Renton Municipal Court did not have authority to compel George’s transport while he was held by another jurisdiction. George, 131 Wn.App. at 245. Accordingly, the court ruled, there was no time for trial violation, because George failed to appear requiring setting of the commencement date, pursuant to CrRLJ 3.3(c)(2)(ii). Id. The court relied on *Guay*, in which this Court declined to read a duty of due diligence and good faith into former CrRLJ 3.3(g)(5) on the grounds that

courts of limited jurisdiction lack the statutory mechanisms to compel the transfer of defendants detained by other counties. *Id.* at 300.

Guay is distinguishable from this case and *George*. Chhom and Steever were sent to a jail outside of King County by King County municipalities prior to resolving pending King County charges, whereas the defendants in *Guay* remained in custody in one county prior to resolving their pending obligations in another county. Unlike the defendants in *Guay*, Chhom and Steever were only detained *in* another county, not *by* another county. George was in fact transported to Renton Municipal Court for five of the seven hearings in that court, whereas the defendants in *Guay* were never transported between jurisdictions for proceedings in different counties and George was held in various facilities only in King County. Finally, as noted above, this court in *Guay* held that Seattle had no obligation to search for Guay among the detention facilities in the State of Washington.

But here the State did not have to search for either of Chhom or Steever. The courts and prosecutor were notified by defense counsel where Chhom and Steever were incarcerated and that they were available to resolve their pending King County district court cases.

If *Guay* prevents the result urged here, petitioners respectfully ask the

court to reconsider that opinion for the reasons stated in Justice Sanders' dissent. Guay, 150 Wn.2d at 305-10. The reasons for reconsideration are the detrimental impact of a broad reading of that holding to persons held within one county, charged with crimes that occurred within a one county and prosecuted by the county or its municipalities. The court did not have the opportunity to consider this situation in *Guay*. The court may chose to distinguish these situations or reconsider *Guay* altogether. State v. Smith, 150 Wn.2d 135, 75 P.3d 394 (2003)(majority does not necessarily reject the dissent's reasoning).

D. CONCLUSION

Under the facts of these cases, it cannot be said that no reasonable jurist would have ruled as the district courts 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). The district courts' decisions should be affirmed for the reasons stated above. Respectfully submitted this 12th day of January, 2007,



Christine A. Jackson, WSBA #17192
Attorney for Petitioners

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