

NO. 90068-0

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON

Petitioner

v.

RYAN JAMES PEELER,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER

SKAGIT COUNTY PROSECUTING ATTORNEY
RICHARD A. WEYRICH, PROSECUTOR

By: ERIK PEDERSEN, WSBA#20015
Senior Deputy Prosecuting Attorney
Office Identification #91059

Courthouse Annex
605 South Third St.
Mount Vernon, WA 98273
(360) 336-9460

ORIGINAL

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Ronald R. Carpenter
Clerk

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I. SUMMARY OF SUPPLEMENTAL BRIEF OF PETITIONER

Despite being a pretrial detainee in another county, Ryan Peeler sought to apply the timely disposition provision of the intrastate detainer statute. When Peeler had drafted the demand he was in prison on Snohomish County charges. But Peeler was a pretrial detainee in King County when the Department of Corrections completed his demand and when Skagit County received the demand. Since Peeler was not serving term of imprisonment in King County, he was not required to be transported under the intrastate detainer statute. Thus, the Court of Appeals decision is in error and must be reversed. Peeler's case must be remanded to the Court of Appeals for consideration of the other issues Peeler raised below.

II. ISSUES PRESENTED FOR REVIEW

1. When a defendant is a pretrial detainee in another county and not just serving a term of imprisonment at the time of his demand for disposition on an untried indictment under RCW 9.98.010 is the demand effective?
2. Since RCW 9.98.010 does not specify whether a defendant can be considered as serving a "term of imprisonment" when the defendant is actually a pretrial detainee in another facility, does

the statute permit dismissal?

3. Is compliance with the provisions of RCW 9.98.010 required in order to obtain dismissal?
4. When a defendant is no longer in the custody of the Department of Corrections, is a defendant's notice and the certificate of inmate status indicating the defendant was in the Department of Corrections defective?

III. STATEMENT OF THE CASE

On January 28, 2011, Ryan Peeler was charged with Assault in the Second Degree in Skagit County. CP 1. At the time, Peeler was in the Snohomish County Jail on pretrial charges. CP 5, CP 284. Peeler had multiple cases pending in Snohomish, King and Skagit Counties. CP 5.

On September 12, 2011, Peeler was sentenced in Snohomish County and thereafter sent to prison. CP 84.

On September 28, 2011, King County obtained a transport order to take Peeler to King County to deal with his pretrial case. CP 84.

On October 7, 2011, Peeler dated a Notice of Place of Imprisonment and Request for Untried Indictment in the Skagit County case as a prisoner

in the Washington State Corrections Center in Shelton. CP 84, 283. ¹ The notice signed by Peeler that day indicated “A Certificate of Inmate Status completed by the Washington State Corrections Center Records staff is attached.” Peeler signed the document October 7, 2011. CP 283.

On October 18, 2011, Peeler was transported from the Department of Corrections to King County to deal with his pretrial case. CP 84 (Finding 4).

On October 24, 2011, the Department of Corrections completed the Certificate of Inmate Status from the Department of Corrections, even though Peeler was no longer in the Department of Corrections. CP 284. See Appendix A.

On October 26, 2011, Peeler’s notice of untried indictment under RCW 9.98.010 was filed in Skagit County Superior Court. CP 283-4. The notice indicated Peeler was being held in prison on a Snohomish County case and would be eligible for parole on July 18, 2012. But as noted previously, Peeler was no longer in prison. He had been transported to King County to deal with his other pretrial case. CP 84 (Finding 4), 85 (Finding 8).

¹ Although the date accompanying Peeler’s signature is October 7, 2011, there was no testimony presented at the hearing on August 22, 2012, that Peeler actually signed the notice that date. There was no evidence presented about when the Department of Corrections received the notice or how it was processed.

On October 27, 2011, the State prepared an order for transport from the Department of Corrections for a hearing in Superior Court for November 17, 2011, to address his notice sent to Skagit County. CP 85 (Finding 7), 285. But, Peeler was not in the prison to be transported. CP 85 (Finding 8).

On December 23, 2011, Peeler pled guilty to charges in the King County cases. CP 85 (Finding 9). Peeler was returned to prison.

On January 30, 2012, Peeler filed a new Notice of Place of Imprisonment and Request for Final Disposition of Untried Indictment, Information or Complaint (RCW 9.98.010 in Skagit County. CP 286-7. That notice indicated that he was being held on both a Snohomish County case and three King County cases and would be eligible for parole on March 6, 2013. CP 287.

On February 2, 2012, the State prepared an order for transport for a hearing in Skagit County for February 16, 2012. CP 288, 289.

On February 16, 2012, Peeler was arraigned in Skagit County and a trial date was set. CP 290. Based upon arraignment, time for trial was calculated as April 16, 2012. CP 290. Thereafter, the case and trial date was continued at Peeler's request. CP 86 (Finding 16).

On August 17, 2012, Peeler filed a motion to dismiss pursuant to RCW 9.98.010 and RCW 9.98.020, alleging he was not brought to trial

within 120 days of his request for disposition of the untried indictment. CP 13-22.

On August 22, 2012, the trial court heard a motion to dismiss based upon a violation of RCW 9.98.010. 8/22/12 RP 23².

The trial court concluded that for RCW 9.98.010 to apply a defendant must be imprisoned and available for transport and that Peeler was not available for transport in October of 2011. 8/22/12 RP 32-3, CP 86 (Conclusion 1). The trial court found Peeler available for transport in January of 2012, and that he was arraigned timely on February 16, 2012, and his first trial date set within 120 days. CP 86.

On August 29, 2012, the jury convicted Peeler of Assault in the Second Degree with an aggravating factor for a significant injury for striking the manager of a motel causing unconsciousness and significant facial fractures. CP 111, 112. Peeler was sentenced to an exceptional sentence of 100 months and his sentence was ordered to run concurrent to his convictions in other counties. CP 270-2, 9/28/12 RP 37, 50-2, 59.

On February 24, 2014, the Court of Appeals reversed Peeler's conviction. The Court of Appeals held the demand for untried indictment was effective from the date of receipt by the prosecutor of October 26, 2011,

despite Peeler no longer being located from where he made the demand, and that the statutory period expired 120 days thereafter on February 23, 2012. *State v. Peeler*, COA no. 68368-9-I 9 (slip op. at pages 1, 3).

IV. ARGUMENT

1. A demand for untried indictment under RCW 9.98.010 is only effective from the place where the defendant is serving a “term of imprisonment.”

Peeler was not simply serving a “term of imprisonment” while he was being held in custody as a pretrial detainee in another county.

The pertinent portion of the statute read as follows:

RCW 9.98.010 Disposition of untried indictment, information, complaint--Procedure--Escape, effect

(1) Whenever a person has **entered upon a term of imprisonment in a penal or correctional institution** of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, **he or she shall be brought to trial within one hundred twenty days after he or she shall have caused to be delivered to the prosecuting attorney and the superior court of the county in which the indictment, information, or complaint is pending written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the indictment, information, or complaint:** PROVIDED, That for good cause shown in open court, the prisoner or his or her counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. **The request**

² The State will refer to the verbatim report of proceedings by using the date followed by “RP” and the page number.

of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the prisoner to the superintendent having custody of him or her, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by certified mail, return receipt requested.

RCW 9.98.010 (emphasis added, sections (3) and (4) omitted).

The statute provides three requirements of the demand based upon the physical location of the defendant. First, “written notice of the place of his or her imprisonment” is required to be given in the notice sent to the prosecutor and filed with the Court. RCW 9.98.010(1). Second, the written notice must be given “to the superintendent having custody of him or her.” And third, the “written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the prisoner to the superintendent having custody of him or her.” RCW 9.98.010(2).

In *State v. Slattum*, 173 Wn. App. 640, 295 P.3d 788 (2013) the court evaluated the phrase “term of imprisonment” under RCW 10.73.170 and compared it to that phrase in other statutes, including RCW 9.98.010(1).

When doing so, the Court specifically stated that in RCW 9.98.010(1) the statute meant “confinement in a particular location.” *State v. Slattum*, 173 Wn. App. at 655, 295 P.3d 788 (2013).

A defendant’s formal request is a prerequisite to the commencement of the running of the 120-day time period. *State v. Rising*, 15 Wn. App. 693, 695, 552 P.2d 1056 (1976) (120-day period does not begin to run until demand despite defendant’s claims he was not aware of the charges and could not make demand earlier), citing *State v. Rolax*, 7 Wn. App. 937, 940, 503 P.2d 1093 (1972) (the 120-day period does not run, where no written demand is made), *State v. Johnson*, 79 Wn.2d 173, 176, 483 P.2d 1261 (1971) (where there had been a demand filed, the 120-day period runs but continuance at defense request is excluded).

Compliance with the requirements of RCW 9.98.010 is required in order to claim the benefit of the 120-day time period resulting in dismissal under RCW 9.98.020. *State v. Young*, 16 Wn. App. 838, 840, 561 P.2d 204 (1977) (mention of the statute by counsel for the defendant in a colloquy with the court falls short of the requirement of the statute), citing *State v. Rising*, 15 Wn. App. 693, 552 P.2d 1056 (1976).

Peeler was in the custody of the Department of Corrections when he dated his initial notice on October 7, 2011. But by October 18, 2011,

he had been transported from the Department of Corrections. So by the time the Department of Corrections completed his Certificate of Inmate Status on October 24, 2011, under the first requirement, Peeler was no longer in the location where he provided the “written notice of the place of his or her imprisonment.” Under the second and third requirements, Peeler was no longer available to have a proper request from “the superintendent having custody of him or her” since he was no longer in that prison.

Peeler was no longer in the position to pursue his demand with the Department of Corrections since he was no longer there serving a term of imprisonment.

2. The defendant was no longer in the custody of the Superintendent of the Department of Corrections but in pretrial custody of another county making the notice ineffective.

Peeler’s contention at the Court of Appeals was that “he was temporarily held in a county jail while serving his DOC sentence.” Appellant’s Opening Brief at page 21. Thus, Peeler conceded he was in fact in another county on pretrial status on another case and not only in the custody of the superintendent of the Department of Corrections when his demand was completed and received by Skagit County.

The 120-day period set by the statute has been held to apply from the time the prosecuting attorney received notice of the request.

Accordingly, we hold that actual receipt by the prosecuting attorney and superior court of the county in which the indictment, information, or complaint is pending commences the 120-day period.

State v. Morris, 126 Wn.2d 306, 313, 892 P.2d 734 (1995).

Thus, at the point the State received the demand, Peeler was no longer under “a term of imprisonment in a penal or correctional institution.” He was on pretrial status in King County on their charges. CP 85. His notice was also incorrect since his “notice of the place of his or her imprisonment” indicated he was in the Department of Corrections, but instead he was in King County. Peeler did not submit a request for untried indictment while in King County. Had he attempted to do so, he would have been ineligible since he was not under a “term of imprisonment” in King County.

Applying the plain language of RCW 9.98.010, Peeler’s notice received October 27, 2011, was incorrect and as such was ineffective. He was neither serving a term of confinement nor in the facility from which he made the demand.

3. The Department of Corrections notice was defective since the defendant was no longer in the custody of the

superintendent at the time the Certificate of Inmate Status was completed.

The Court of Appeals also erroneously concluded that Peeler's demand was accurate.

Peeler's first disposition request stated, "I am a prisoner at the Washington Corrections Center, P.O. Box 900, Shelton, WA." This statement was accurate when made.

State v. Peeler, COA no. 68368-9-I (slip op. at pages 7-8). This statement is in fact erroneous given the full language of Peeler's demand. See CP 283-4.

Appendix A. That demand reads as follows:

I am a prisoner confined at the Washington State Corrections Center, P.O. Box 900, Shelton, WA. I hereby request a final disposition of the following untried indictment(s) information or complaint pursuant to RCW 9.98.010.

Cause Nunmber	Offense
111000906	ASSAULT 2

A Certificate of Inmate Status completed by the Washington Corrections Center Record Staff is attached.

DATE: 10-7-11 Signature: /s/ Ryan Peeler

CP 283. Although dated October 7, 2011, there was no Certificate of Inmate Status attached since that certificate was not completed until October 24, 2011. The demand has to include the required certificate of inmate status from the Department of Corrections and was thus incomplete when Peeler made the demand and would not have been effective until that demand was

attached. RCW 9.98.010³.

The trial court determined that Peeler was transported to King County on October 18, 2011. CP 84. That was not contested. Thus, the Department of Corrections could not have properly issued Peeler's Certificate of Inmate Status on October 24, 2011, because Peeler was no longer in the Department of Corrections but was in King County. Thus, the Certificate of Inmate Status was in error.

After October 18, 2011, Peeler was not serving a term of imprisonment and RCW 9.98.010 was unavailable to him until his return to the Department of Corrections. He was returned to Skagit County promptly after he made his demand after his return.

4. Requiring the demand to be effective from the location where a defendant is imprisoned is consistent with the purpose of the statute and other authority supporting sequential handling of cases.

RCW 9.98.010 does not specifically address multiple charges in multiple counties. This case presents the ability for this court to apply the language of the statute to provide that a defendant, who makes his demands

³ The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board relating to the prisoner.

in an appropriate manner, can have his cases timely addressed.

The purpose of the statute is to enable a defendant to request to have pending matters addressed. *State v. Morris*, 126 Wn.2d at 307, 892 P.2d 734 (1995). Defendants may choose not to be returned where their remaining confinement time is short and they wish to address the cases in other counties while out of custody. But because defendants may have cases in more than one county, it would be illogical to require the State to bring all cases within the 120-day period or have the defendant transported between counties. A defendant facing trials in five or six counties would be able to use terms of the statute to have cases dismissed simply because the defendant could not be transported to a county in time. And a defendant as the one making the demand, has control over which county the demand is first sent.

The interpretation by Peeler requires that a defendant who is facing pretrial charges in multiple counties be shuttled between counties for hearings to address good cause for an extension of time under RCW 9.98.010.

A specific provision of the analogous interstate detainer act prohibits that type of shuttling.

If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to

the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

RCW 9.100.010(IV)(e). The purpose of Article IV(e) is two-fold: to ensure the defendant is given a speedy trial, and to minimize interruption of the defendant's ongoing rehabilitation or prison treatment program. *Alabama v. Bozeman*, 533 U.S. 146, 155, 121 S. Ct. 2079, 150 L. Ed. 2d 188 (2001). The duration or number of times the prisoner is removed from the sending state is irrelevant; any violation of the anti-shuttling provision must result in dismissal. *Bozeman*, 533 U.S. at 154-155. In so holding, the Supreme Court reasoned that the Agreement's language was intended to be absolute, and that to hold otherwise would mean any violation could be considered "technical," "de minimis," or "harmless" error, rendering the provision useless. *Id.*

Although there is no analog to the anti-shuttling provision of the interstate detainer act in the intrastate detainer statute, the same logic applies.⁴ A defendant could be sent from county to county to deal with continuance after continuance. A more orderly progression is the sequential handling of a defendant in each county.

⁴ This Court in *State v. Morris*, 126 Wn.2d 306, 307, 313-4, 892 P.2d 734 (1995), followed the United States Supreme Court's receipt-by-the-prosecutor for calculating the time from which the 120-day period runs given the similarities between the Interstate Agreement on Detainers and the Washington intrastate detainer statute.

The time for trial rules provide for just such a sequential handling of a defendant with charges in multiple counties. A defendant's time for trial in one county would not begin to run.

CrR 3.3(a)(3)(v) provides "[d]etained in jail' means held in custody of a correctional facility pursuant to the pending charge." CrR 3.3(a)(30)(iii) provides "[a]pppearance' means the defendant's physical presence in the adult division of the superior court where the pending charges were filed. Finally, CrR 3.3 (e)(2) provides that the time during which a defendant is being held awaiting pretrial, trial and sentencing on unrelated charges is an excluded period. Taken in conjunction, a defendant who is being held in one county pretrial would not have time for trial running in the other county because the defendant would not have appeared in the other county, be detained in that other county, and it would also be an excluded period.

As an example, Peeler's time for trial in Skagit County did not run while he was held pretrial on charges in King and Snohomish County. The sequential handling of the charges based upon Peeler's physical location when he made the demands as occurred here provided for a timely handling of multiple charges among multiple counties.

V. CONCLUSION

For the reasons set forth above, this Court must reverse the decision of the Court of Appeals and remand the case to the Court of Appeals to address Peeler's other unresolved claims.

DATED this 19th day of November, 2014.

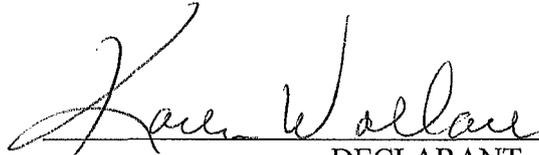
Respectfully submitted,

By: 
ERIK PEDERSEN, WSBA#20015
Senior Deputy Prosecuting Attorney
Attorney for Petitioner, State of Washington
Office Identification #91059

DECLARATION OF DELIVERY

I, Karen Wallace, declare as follows:

I sent for delivery by; United States Postal Service; [] ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Nancy Collins, addressed as Washington Appellate Project, 1511 3rd Ave STE 701, Seattle, WA 98101-3635. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 19th day of November, 2014.


DECLARANT

APPENDIX A

Washington Corrections Center
P. O. Box 900
Shelton, WA 98584

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA

2011 OCT 26 AM 7:17

TO: SKAGIT County Superior Court and Prosecuting Attorney
State of Washington

FROM: NAME: PEELER, RYAN
DOC#: 751418

SUBJECT: Notice of Place of Imprisonment and Request for Final Disposition of
Untried Indictment, Information or Complaint (RCW 9.98.010)

I am a prisoner confined at the Washington Corrections Center, P. O. Box 900, Shelton,
WA. I hereby request a final disposition of the following untried indictment(s)
information or complaint pursuant to RCW 9.98.010:

2
Cause Number Offense
111000906 ASSAULT 2

A Certificate of Inmate Status completed by the Washington Corrections Center
Records staff is attached.

DATE: 10-7-11 Signature: Ryan Peeler



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA

2011 OCT 26 AM 7:17

CERTIFICATE OF INMATE STATUS

RE: PEELER, Ryan J. 751418
 INMATE DOC NUMBER

WCC-RC Shelton
 INSTITUTION LOCATION

The (custodial authority) hereby certifies:

1. The term of commitment under which the prisoner above-named is being held: 10-1-01811-0-Snohomish 24 months
2. The time already served: 246 days
3. Time remaining to be served: 267 days
4. The amount of good time earned: 81 days
5. The date of parole eligibility of the prisoner: 7/18/2012
6. The decisions of the Indeterminate Sentence Review Board relating to the prisoner: N/A
7. Maximum expiration date under present sentence: 2/19/2013

CORRECTIONAL RECORDS MANAGER II SIGNATURE <i>[Signature]</i>	DATE 10/24/11
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CUSTODIAL AUTHORITY

NAME Scott J. Russell	INSTITUTION WCC-RC
STREET ADDRESS P.O. BOX 900	CITY Shelton
TELEPHONE NUMBER (360) 426-4433	STATE WA
	ZIP 98584