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Case #: 1044097

**NO. 39830-7-III
IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III**

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

ZANE EUGENE LUMPKIN,

Defendant/Appellant.

PETITION FOR DISCRETIONARY REVIEW

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1. IDENTITY OF PETITIONER

ZANE EUGENE LUMPKIN requests the relief designated in Part 2 of this Petition.

2. STATEMENT OF RELIEF SOUGHT

Mr. Lumpkin seeks review of a published Opinion of Division III of the Court of Appeals dated July 1, 2025. (Appendix “A” 1-10)

3. ISSUES PRESENTED FOR REVIEW

A. Has Division III of the Court of Appeals correctly interpreted the provisions of CrR 3.3, CrRLJ 3.3 and CrR 4.3.1 as they pertain to “related offenses” and time-for-trial?

4. STATEMENT OF THE CASE

Law enforcement was summoned to a two-vehicle accident which occurred in the intersection of Pines Road and Mission Ave in Spokane Valley, Washington on November 4, 2022. A Ford Ranger PU failed to stop for a red light and T-boned a Toyota RAV-4 driven by Mary Ann Swanson. Ms. Swanson suffered a fractured sternum. (Cochran RP 119, ll.

2-14; ll. 16-24; RP 130, ll. 15-17; RP 131, l. 17 to RP 132, l. 17; RP 135, ll. 14-20; RP 136, ll. 19-21; RP 209, ll. 9-18)

Lance Helgesen is the registered owner of the Ford Ranger. He was not driving the PU on November 4, 2022 nor was he a passenger. The driver of the Ford Ranger left the scene of the accident prior to officers arriving. (Cochran RP 109, ll. 1-9; RP 120, ll. 2-6; RP 121, ll. 1-6)

After Mr. Lumpkin was located by a K-9 tracking search he admitted that he had been using controlled substances and that he had been driving the Ford Ranger. (Cochran RP 196, ll. 3-10; RP 224, ll. 17-23; RP 224, l. 25 to RP 225, l. 1)

The State filed an Information on November 8, 2022 under Spokane Cause No. 22 1 02841 32 charging Mr. Lumpkin with possession of a stolen motor vehicle (PSMV), to wit: **FORD RANGER.** (CP 36)

Mr. Lumpkin was arraigned on the PSMV charge on November 15, 2022. A jury trial was scheduled for January 9, 2023. (CP 39)

Citations were filed in Spokane County District Court on November 10, 2022. They charged Mr. Lumpkin with driving a motor vehicle while under the influence of intoxicating liquor and/or drugs; driving while license suspended third degree; possession of burglary tools; obstructing a law enforcement officer; and hit-and-run attended vehicle. (CP 79; CP 80; CP 81; CP 82; CP 83; CP 84)

Mr. Lumpkin was arraigned in District Court on November 22, 2022. He later signed several waivers even though no trial date was set on his cases. (Cochran RP 30, ll. 11-14; CP 86; CP 88; CP 89; CP 90)

The District Court cases were dismissed without prejudice on February 17, 2023. (CP 91)

Mr. Lumpkin had different public defenders in District Court and Superior Court. The Court of Appeals decision does not take that fact into account. (Opinion pp. 2-3) (Appendix “B”; CP 88; CP 89; CP 90; Appendix “C” CP 39)

On December 28, 2022 Mr. Lumpkin’s Superior Court defense counsel moved for a continuance of the PSMV case

after receiving additional discovery. His jury trial was continued from January 9 to March 6, 2023. (CP 748)

Mr. Lumpkin was found guilty of PSMV (the Ford Ranger) following a jury trial that commenced on March 6, 2023. It is the same vehicle that is involved in this case.

The State subsequently filed an Information in Superior Court on March 21, 2023 which renewed the District Court charges. (One count of vehicular assault; one count of driving while under the influence of alcohol and/or drugs; and one count of failure to remain at the scene of an accident). (CP 1)

Mr. Lumpkin was arraigned on April 4, 2023. A jury trial was scheduled for May 30, 2023. (CP 16; Gipson RP 10, l. 1-3)

The State filed a motion to continue the trial date due to witness unavailability. The motion was filed on May 10. A new scheduling order was entered on May 18, 2023. The jury trial was continued to June 12, 2023. (CP 17; CP 29; CP 119)

Defense counsel filed a motion to dismiss this Information based upon a violation of time-for-trial. The State

filed a response on June 1, 2023. A hearing on the motion was held June 8, 2023. The State's argument was that the offenses were unrelated. The trial court agreed the offenses were unrelated. (CP 31; CP 32; CP 54; CP 186; Cochran RP 7, l. 17 to RP 28, l. 18; RP 29, l. 7 to RP 33, l. 9)

A jury determined that Mr. Lumpkin was guilty of all counts in an Amended Information. (CP 225; CP 226; CP 227; CP 290)

5. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The applicability of court rules may be raised for the first on appeal. *See: State v. Card*, 48 Wn. App. 781, 784, 741 P.2d 65 (1987).

The interpretation of a court rule is a question of law that is reviewed de novo. *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 809, 947 P.2d 721 (1997). We interpret court rules by reference to principles of statutory construction because we approach the rules as if they had been drafted by the Legislature. *State v. Greenwood*, 120 Wn.2d 585, 592, 845 P.2d 971 (1993).

When a statute is clear on its face, it is not subject to judicial

interpretation. *Marquis v. City of Spokane*, 130 Wn.2d 97, 107, 922 P.2d 43 (1996). However, judicial interpretation is permitted when a statute is ambiguous. *State v. Hennings*, 129 Wn.2d 512, 522, 919 P.2d 580 (1996). The court should interpret a statute so as to give effect to the legislative intent. *W.R.P. Lake Union Ltd. P'ship v. Exterior Servs., Inc.*, 85 Wn. App. 744, 749, 934 P.2d 722 (1997).

State v. Gilman, 105 Wn. App. 366, 368, 19 P.3d 1116 (2001).

The Court of Appeals declined to rule on whether the offenses were related. Yet, the Court of Appeals, (as to its determination that no time-for-trial violation occurred), treats the offenses as if they were related.

The Court of Appeals opinion states that what occurred in District Court has no bearing on the time-for-trial calculation. It ignores the fact that, whether related or not, time-for-trial expired prior to the District Court charges being dismissed on February 17, 2023.

A. RELATED OFFENSES

The Court of Appeals avoided the critical issue in Mr. Lumpkin's case. Were the District Court charges "related offenses" to possession of a stolen motor vehicle?

CrR 3.3 (a)(3)(ii) defines a “related offense/charge” as follows: “ ‘Related charge’ means a charge based on the same conduct as the pending charge that is ultimately filed in the superior court.”

In the course of its analysis the Court of Appeals decision sidesteps, on three occasions, the issue of “related offenses.”

Even assuming that Lumpkin is correct, and the stolen vehicle and felony driving charges are related (we make no such finding), his argument fails. (Opinion p.5)

The State argues that Lumpkin was being held on unrelated charges and was therefore on a 90-day speedy time period. We do not resolve this issue on appeal because it does not change our conclusion. (Opinion p.6, fn.1)

Even if the stolen vehicle charge and the felony driving charges were related the time period between the commencement of his trial or the stolen vehicle charge and his arraignment on the subsequently filed felony driving charges is an excluded period. (Opinion p.7)

Mr. Lumpkin challenged a number of the trial court's Findings of Fact and Conclusions of Law that were entered after the trial court denied his motion to dismiss. (CP 186)

The Court of Appeals decision does not directly address any of those challenges, rather, the decision states:

The trial court did not abuse its discretion in denying Lumpkin's motion to dismiss. While our analysis is different from the superior court's analysis, our review is de novo and we can affirm on any basis supported by the record.... Here, Lumpkin fails to demonstrate that his rule-based time for trial was violated. (Opinion p.9)

The Court of Appeals relies upon *State v. Pratt*, 11 Wn. App.2d 440, 463, 454 P.3d 875 (2009) to support its avoidance of addressing this critical issue.

Other than the *Pratt* case the Court of Appeals decision does not contain another reference to any authority other than the provisions of CrR 3.3.

Mr. Lumpkin contends that the Court of Appeals decision is in conflict with opinions of the Supreme Court and other divisions of the Court of Appeals as provided in RAP 13.4 (b)(1) and (2).

Both the trial court and the Court of Appeals disavowed the Supreme Court's "same conduct" analysis which is applicable to related offenses under CrR 3.3 and CrR 4.3.1.

The trial court, when it considered the phrase "same conduct" as used in CrR 3.3 (a)(3)(ii), adopted the "same criminal conduct" definition as contained in RCW 9.94A.589 (1). "Same criminal conduct" is only applicable in relation to sentencing proceedings and is used to determine an appropriate offender score.

"Same conduct" as used in CrR 4.3.1, (the mandatory joinder rule) is not equivalent to "same criminal conduct." Rather "same conduct" has been defined by numerous cases in both the Supreme Court and the Court of Appeals.

Offenses are related if they are within the jurisdiction and venue of the same court and are based on the same conduct. "Same conduct" is conduct involving a single criminal incident or episode.

State v. Watson, 146 Wn.2d 947, 957, 43 P.3d 1 (2002). *See also: State v. Lee*, 132 Wn.2d 498, 503, 939 P.2d 1223 (1997) (setting forth examples of what may be included in the phrase

“same conduct” for purposes of deciding when offenses are “related offenses”); *State v. Harris*, 130 Wn.2d 35, 40, 921 P.2d 1052 (1996) (reaffirming the ABA Standard adopted by *State v. Peterson* as controlling law in numerous subsequent cases and announcing that the standard has been incorporated into CrR 3.3); *State v. Peterson*, 90 Wn. App.2d 423, 431, 585 P.2d 6 (1978) (adopting the ABA Standards as they pertain to time-for-trial “based on the same conduct or arising from the same criminal incident”); *State v. Bradley*, 38 Wn. App. 597, 599, 687 P.2d 856 (1984) (differentiating “related offenses” for purposes of speedy trial as opposed to mandatory joinder and recognizing that for purposes of speedy trial they can arise from either “same conduct” or the same criminal episode).

The offenses in Mr. Lumpkin’s case all occurred within a very limited time period. They were all based upon his driving of the stolen vehicle. They all occurred in a series. *See also: State v. Kindsvogel*, 149 Wn.2d 477, 482-83, 69 P.3d 870 (2003); *State v. Canfield*, 13 Wn. App.2d 410, 416, 463 P.3d 755 (2020) (determining that “same conduct”/related

offense concepts refer to actions based upon “the same physical act or actions” and relying on the “close logical and temporal proximity of the events.”).

But for the fact that Mr. Lumpkin was driving the stolen PU; and but for the fact that he was under the influence of a controlled substance; and but for the fact that he ran a red light; and but for the fact that he was involved in a collision with another vehicle that resulted in substantial bodily injury to another person; and but for the fact that he left the scene of the accident without complying with statutory requirements the criminal offenses would not be related.

Mr. Lumpkin maintains that the charges filed in Spokane County District Court and the Superior Court are all “related offenses”, and that the Court of Appeals declining to analyze his time-for-trial argument based upon that fact is clearly contrary to existing authority as declared by the Supreme Court and the Court of Appeals.

The State has the initial burden of making certain that offenses are properly joined. The State files an Information

containing the charges it seeks. The defense has no role insofar as what charges are filed.

State v. Gamble, 168 Wn.2d 161, 168-69, 225 P.3d 973

(2010) states:

The mandatory joinder rule is intended as a limit on the prosecutor, and its purposes are to protect defendants from (a) successive prosecutions that can act as a hedge against the risk of an unsympathetic jury at the first trial, (b) a “hold” on the defendant after the defendant has been sentenced, or (c) harassment of the defendant through multiple trials. [Multiple citations omitted.] The rule “does not differentiate based upon the prosecutor’s intent. Whether the prosecutor intends to harass or is simply negligent [the rule] applies to require a dismissal of the second prosecution.” *Dallas* [*State v. Dallas*, 126 Wn.2d 324, 892 P.2d 1082 (1995)] at 332.

B. TIME-FOR-TRIAL

Whatever occurred in the PSMV case between 11/15/2022 and 3/6/2023 has no bearing whatsoever on the District Court offenses. When those offenses were refiled in Superior Court on March 21, 2023 time-for-trial had already

expired. No buffer period was available. CrR 3.3 (b)(5); CrRLJ 3.3 (b)(5). No excluded period applied. CrR 3.3 (e); CrRLJ 3.3 (e). The Court of Appeals conclusion to the contrary is in error.

TIMELINE
(November 4, 2022 Incident)

SUPERIOR COURT	DISTRICT COURT
November 8, 2022 PSMV Information filed	November 10, 2022 citations filed
November 15, 2022 arraignment (time-for-trial commences)	November 22, 2022 arraignment (no trial date set)
December 28, 2022 motion to continue	December 1, 2022 pre-trial hearing (no trial date set)
January 9, 2023 jury trial continued to March 6, 2023 (excluded period)	December 12, 2022 pre-trial hearing (no trial date set)
March 6, 2023 jury trial for PSMV (55 days elapsed)	January 22, 2023 pre-trial hearing (no trial date set)
	February 17, 2023 charges dismissed (87 days elapsed)
March 21, 2023 District Court charges refiled in Superior Court	
April 4, 2023 Arraignment	
May 30, 2023 Jury Trial	

(Appendix D-2022 and 2023 calendars)

RAP 13.4 (b)(4) states: “If the petition involves an issue of substantial public interest that should be determined by the Supreme Court,” then the petition should be accepted.

Mr. Lumpkin is of the opinion that time-for-trial issues have a significant impact on not only on those charged with a criminal offense, but the entire criminal justice system. This necessarily affects the public in multiple ways; *e.g.*, due process (fairness), justice (Const. art. I, § 10; *State v. Thompson*, 38 Wn.(2d) 774, 780-82, 232 P.(2d) 87 (1951)), trust, and safety.

The Court of Appeals decision relies upon CrR 3.3 (a)(5) and CrR 3.3 (e)(5) in its analysis of Mr. Lumpkin’s argument.

CrR 3.3 (a)(3)(i) states: “ ‘Pending charge’ means the charge for which the allowable time for trial is being computed.”

CrR 3.3 (a)(5) states: “*Related Charges*. The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.”

The pending charge in Mr. Lumpkin’s case was the PSMV. His trial on that charge complied with the provisions of CrR 3.3 when it began on March 6, 2023. 55 days had elapsed as of the day the trial commenced (the period from arraignment on November 15, 2022 to January 9, 2023 the original trial date). A continuance request by defense counsel moved the trial date to March 6, 2023.

...[W]here a trial date has been continued, the time between the continuance and the new trial date is an excluded period under CrR 3.3 (b)(5). Under CrR 3.3 (b)(5), the new time-for-trial excludes this time, and “the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.”

State v. Mora-Lopez, 22 Wn. App.2d 922, 931, 514 P.3d 714 (2022), *review denied* 200 Wn.2d 1020.

CrR 3.3 (e)(5) involves an excluded period of time. The rule states:

Disposition of Related Charge. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant’s arraignment in superior court on a related charge.

Mr. Lumpkin's trial on possession of a stolen motor vehicle commenced on March 6, 2023. He was arraigned on the related charges on April 4, 2023 (a period of 29 days). If applicable, there was only one day left in any buffer period. His trial date was scheduled for May 30, 2023. Defense counsel did not make an objection to the trial date at the time of arraignment.

Mr. Lumpkin contends that the problem with the Court of Appeals analysis is that the related charges originally filed in District Court were dismissed on February 17, 2023. No trial date was ever set in the District Court cases.

Spokane County District Court failed to comply with CrRLJ 3.3 (d)(1). It did not set a trial date at either Mr. Lumpkin's arraignment or any pre-trial hearing. The language concerning when a district court must set the trial date is unambiguous. It must do so either at the arraignment or at "the pre-trial hearing."

Because no trial date had ever been set in District Court, any continuances and/or waivers signed by Mr. Lumpkin are ineffective/void. His arraignment in District Court

occurred on November 22, 2022. 87 days expired prior to their dismissal on February 17, 2023. When the State refiled those charges in Superior Court on March 21, 2023 an additional 32 days had expired.

Thus, if the District Court proceedings count in the time-for-trial calculation, those charges could not be refiled as the 60 day time period under CrR 3.3 (b)(1)(i) had already expired. The dismissal should have been with prejudice. *See*: CrRLJ 3.3 (h).

Mr. Lumpkin argues that the refiling contravenes the decision in *State v. Walker*, 199 Wn.2d 796, 804, 513 P.3d 111 (2022) where the Court stated: "... [I]f the court fails to set a trial date at all, and the time-for-trial expires, a defendant may still obtain dismissal under the rules." *See*: *State v. Raschka*, 124 Wn. App. 103, 106, 100 P.3d 339 (2004).

6. CONCLUSION

Q. When was Mr. Lumpkin in possession of the Ford Ranger?

A. November 4, 2022 (possession of a stolen motor vehicle).

Q. When was the driver of that PU under the influence of drugs?

A. November 4, 2022. (DUI)

Q. When was that driver involved in a motor vehicle accident at the intersection of Mission and Pines causing substantial injury to another person?

A. November 4, 2022. (Vehicular assault)

Q. When did that driver leave the accident scene without complying with RCW 46.61.52.020 (3)?

A. November 4, 2022. (Hit and run unattended)

Q. Are the four offenses related offenses?

A. Yes.

The Court of Appeals decision is a misreading of CrR 3.3, CrRLJ 3.3 and CrR 4.3.1. That misreading falls within the provisions of RAP 13.4 (b)(1), (2) and (4).

The State recognized that mandatory joinder was required because the various offenses are “related charges.” This is supported by the State’s dismissal of the District Court charges in anticipation of filing an Amended Information

joining the offenses for trial on March 6, 2023. (CP 93; CP 94; CP 95; CP 97; CP 98; CP 98; CP 99)

If the State had filed the proposed Amended Information it would have avoided the bruhaha that occurred.

The Court of Appeals decision is contrary to *State v. Walker, supra*; *State v. Watson, supra*; *State v. Peterson, supra*; *State v. Lee, supra*; *State v. Harris, supra*; *State v. Raschka, supra*; and *State v. Bradley, supra*. It should be reversed and remanded for dismissal.

CERTIFICATE of COMPLIANCE: *I certify under penalty of perjury that this document contains 3210 words, excluding the parts of the document exempted from the word count by RAP 18.17.*

DATED this 28th day of July, 2025.

Respectfully submitted,

s/ Dennis W. Morgan
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APPENDIX "A"

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,)	
)	No. 39830-7-III
Respondent,)	
)	
v.)	
)	
ZANE EUGENE LUMPKIN,)	PUBLISHED OPINION
)	
Appellant.)	

Staab, J. — Zane Lumpkin was convicted of felony hit and run, driving under the influence (DUI), and vehicular assault (felony driving charges). On appeal he raises two issues: whether his time for trial right under CrR 3.3 was violated because the felony driving charges were “related charges” to a separate charge of possessing a stolen motor vehicle (stolen vehicle), and whether the victim penalty assessment (VPA) must be struck from his judgment and sentence because of recent legislative changes.

We affirm, holding that Lumpkin failed to preserve any time for trial violation. We remand for the limited purpose of striking the VPA fee from his judgment and sentence.

BACKGROUND

On November 4, 2022, Lumpkin was driving a pickup truck when he ran a red light and collided with a Toyota Rav4. He was then seen walking away from the accident. The driver of the Rav4 told officers that she entered the intersection with a green light and was T-boned. She told officers that she did not see who had been driving the pickup, but officers noticed paperwork from the Department of Corrections (DOC) and an Idaho DOC identification card for “Zane E. Lumpkin” inside the pickup. While investigating the collision, officers were advised that the at-fault pickup had been reported stolen.

Shortly thereafter, officers located Lumpkin approximately 2 blocks away from the scene of the accident and took him into custody. After Lumpkin was transported to the hospital, officers determined that he was impaired.

Possession of a Stolen Motor Vehicle Charge

The State filed an information in superior court charging Lumpkin with possession of a stolen motor vehicle. Lumpkin was arraigned on November 15, 2022, and trial was set for January 9, 2023.

On November 10, 2022, charges for hit and run—attended vehicle, making/having burglary tools, obstructing a law enforcement officer, DUI, and driving while license suspended in the third degree were filed in Spokane County District Court. Defense

counsel did not move to join the pending misdemeanor and felony charges and did not raise an objection that mandatory joinder applied to the separate charges.

On December 28, 2022, defense counsel moved for a continuance of the stolen vehicle charge after receiving additional discovery. The court granted the motion, continuing the trial from January 9 to March 6, 2023.

On February 16, 2023, the State moved to amend the felony information to include additional counts for DUI, vehicular assault, and felony hit and run. However, the State did not proceed with amending the information because it had not yet received the toxicology reports from the blood draw taken from Lumpkin on the day of the collision. Nevertheless, on February 17, the misdemeanor charges were dismissed without prejudice. Lumpkin remained in custody on the felony charge.

On March 3, three days before Lumpkin's trial for possessing a stolen motor vehicle, the State received the toxicology report. On March 6, Lumpkin was found guilty of possessing a stolen motor vehicle.

On March 21, the State filed an information in superior court, this time charging Lumpkin with felony hit and run, DUI, and vehicular assault. Bond was set and Lumpkin remained in custody. Lumpkin was arraigned on April 4, and trial was set for May 30. On the State's motion, trial was continued to June 12.

On May 25, 2023, Lumpkin filed a motion to dismiss the case under CrR 3.3(h). Lumpkin asserted that the time for trial period had already elapsed and the charges must

be dismissed. The motion was heard on June 8, 2023, where Lumpkin argued that the current felony driving charges were “related” to the possession of a stolen motor vehicle case. For this reason, he argued that the time for trial calculation began from when he was arraigned on the possession of a stolen motor vehicle case and that more than sixty days had passed since that arraignment.

The court denied Lumpkin’s motion. The matter proceeded to trial on June 13, 2023, where Lumpkin was convicted as charged.

Lumpkin appeals.

ANALYSIS

TIME FOR TRIAL CALCULATION

Lumpkin claims that because the State’s second information included felony driving charges that were related to the earlier resolved stolen vehicle case, all of the charges had the same commencement date for the purpose of calculating his time for trial period. He further contends that the trial court erred in finding that the charges of possession of a stolen vehicle and the felony driving charges were not “related.”

This court reviews “an alleged violation of the time for trial rule de novo.” *State v. Denton*, 23 Wn. App. 2d 437, 449, 516 P.3d 422 (2022). “As with statutes, this court gives effect to the plain language of a court rule, as discerned by reading the rule in its entirety and harmonizing all of its provisions.” *State v. George*, 160 Wn.2d 727, 735, 158 P.3d 1169 (2007). Determining whether a time for trial violation has occurred

“requires an application of court rules to particular facts.” *State v. Swenson*, 150 Wn.2d 181, 186, 75 P.3d 513 (2003). Unchallenged findings of fact on a CrR 3.3 motion to dismiss will be treated as verities on appeal. *State v. Moore*, 178 Wn. App. 489, 498, 314 P.3d 1137 (2013).

The time-for-trial rules are set forth in CrR 3.3. A defendant who is detained on pending charges must be brought to trial within 60 days of the commencement date, which is generally the arraignment date. CrR 3.3(b)(1)(i), (c)(1).

When a defendant faces multiple prosecutions for related charges, “[t]he computation of the allowable time for trial of a pending charge shall apply equally to all related charges.” CrR 3.3(a)(5). CrR 3.3(a)(3)(i) defines a “pending charge” as “the charge for which the allowable time for trial is being computed,” and CrR 3.3(a)(3)(ii) defines a “related charge” as “a charge based on the same conduct as the pending charge that is ultimately filed in the superior court.”

Even assuming that Lumpkin is correct, and the stolen vehicle and felony driving charges are related (we make no such finding), his argument fails. Lumpkin does not claim that his trial on the stolen vehicle charge was untimely under the rule. Even if the computation of time for trial for all the felony charges is the same, then on April 4, 2023, when the court set his trial date on the felony driving charges, Lumpkin’s time for trial had not expired and Lumpkin failed to object to the trial date of May 30, thus waiving any subsequent objections to his trial date.

We take this opportunity to note that while Lumpkin argues that his time for trial rights under CrR 3.3 were violated, he does not provide any time for trial calculations in his briefing. Such calculations are necessary to determine if there has been a time for trial violation. It is not enough to assert that a trial occurred beyond the 60- or 90-day time for trial period. Instead, in order to adequately brief a time for trial issue, the party raising the issue must show the specific calculations along with citations to the rule that support the assertion that the rule was violated. *See* RAP 10.3(a)(6); *West v. Thurston County*, 168 Wn. App. 162, 195-96, 275 P.3d 1200 (2012) (“‘Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.’”) (quoting *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998)). As a general rule, when these calculations are not done by the party raising a time for trial issue, this court will not perform the calculations on that party’s behalf. In this case, however, we will make an exception.

Lumpkin was arraigned on the stolen vehicle charge on November 15, 2022, and trial was set on January 9, 2023, day 55 of Lumpkin’s 60-day speedy trial period.¹ Trial was then continued to March 6. Because the trial continuance was at defense counsel’s request, the time between the first trial date and the continued trial date was excluded and

¹ The State argues that Lumpkin was being held on unrelated charges and was therefore on a 90-day speedy time period. We do not resolve this issue on appeal because it does not change our conclusion.

trial remained set on day 55, leaving five days remaining in the speedy trial period. CrR 3.3(e)(3), (f)(2). In addition, because the continuance was granted under CrR 3.3(e)(3), the 30-day buffer rule applied, meaning when Lumpkin's trial started on March 6, there was at least 30 days left in the speedy trial period. CrR 3.3(b)(5).

Even if the stolen vehicle charge and the felony driving charges were related, the time period between the commencement of his trial on the stolen vehicle charge and his arraignment on the subsequently filed felony driving charges is an excluded period. CrR 3.3(e)(5). Thus, when Lumpkin was arraigned on April 4 on the felony driving charges, there was at least 30 days remaining in his time for trial period. *See* CrR 3.3(b)(5).

At arraignment on the felony driving charges on April 4, the court set a trial date of May 30. At this point, Lumpkin had 10 days to file a written objection if he believed the May 30 trial date was outside the time for trial period or waive any objection to that trial date. CrR 3.3(d)(3). Lumpkin did not object.

Instead, on May 25, Lumpkin filed a motion to dismiss arguing that the time for trial period had already elapsed. Lumpkin argued that the new felony driving charges were related charges to the earlier resolved stolen vehicle charge and thus the commencement date for the newly filed felony driving charges was the arraignment date for the stolen vehicle charge, November 15, 2022. He went on to argue that because 128 days had elapsed since November 15, his 60-day time for trial period had expired.

It is unclear if Lumpkin is making this same argument on appeal. However, even if he is, the argument fails. The argument made by Lumpkin at trial presumed that the time for trial period for all of these charges commenced at the arraignment for the stolen vehicle charge but then assumes that the time for trial on the felony driving charges continued to run regardless of any subsequent exclusions or waivers. That is not how the rule reads.

The rule provides that: “[t]he *computation* of the allowable time for trial of a pending charge shall apply equally to all related charges.” CrR 3.3(a)(5) (emphasis added); *see also State v. Wright*, 131 Wn. App. 474, 487, 127 P.3d 742 (2006). Thus, even if the time for trial period for the felony driving charges commenced on November 15, the court would calculate the time for trial on the felony driving charges the same as for the stolen vehicle charge; periods of exclusion for one charge would be excluded for the related charges.

On appeal, Lumpkin devotes several paragraphs to discussing the rule on discretionary and mandatory joinder. In support of his motion to dismiss at trial and again on appeal, Lumpkin cites several cases that pre-date 2003. Prior to this year, Washington courts addressed the failure to prosecute ripe charges under the time for trial (CrR 3.3) and joinder rules (CrR 4.3). *State v. Kenyon*, 150 Wn. App. 826, 830, 208 P.3d 1291 (2009). These cases are considered largely overruled by subsequent amendments to the rules in 2003. *See id.*; *George*, 160 Wn.2d at 737. Under the newer version of CrR

4.3.1(b)(3), “[a] defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense” and the motion shall be granted unless the prosecuting attorney was unaware of facts or did not have sufficient evidence to move forward on the related offense. We do not need to decide if the joinder rules apply in this case because Lumpkin was adamant that he was not moving to dismiss under the mandatory joinder rule.

Lumpkin also argues on appeal that the district court failed to comply with CrRLJ 3.3(d)(1) by failing to initially set a trial date. But this argument is irrelevant because Lumpkin did not contend that his superior court time for trial was affected by the district court case.

The trial court did not abuse its discretion in denying Lumpkin’s motion to dismiss. While our analysis is different from the superior court’s analysis, our review is de novo and we can affirm on any basis supported by the record. *State v. Pratt*, 11 Wn. App. 2d 450, 463, 454 P.3d 875 (2019). Here, Lumpkin fails to demonstrate that his rule-based time for trial was violated.

VICTIM PENALTY ASSESSMENT

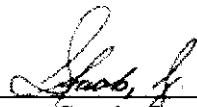
Lumpkin contends that recent changes to the law require this court to strike the VPA from his judgment and sentence because the court found him indigent at sentencing and the State concedes. This court should accept the State’s concession.

No. 39830-7-III
State v. Lumpkin

Under former RCW 7.68.035(1) (2018), a judge was required to impose the \$500 VPA for one or more felony or gross misdemeanor convictions. However, in 2023, legislation amended this statute and included a provision instructing courts not to impose the VPA if the court found the defendant indigent at the time of sentencing. *See* RCW 10.01.160(3). Defendants are entitled to the benefit of this amendment if their case is pending on direct appeal. *See State v. Ramirez*, 191 Wn.2d 732, 735, 426 P.3d 714 (2018).

Here, the court found Lumpkin indigent at sentencing. Because Lumpkin is indigent and his case is pending on direct appeal, the VPA should be struck from his judgment and sentence.

Affirmed but remanded to strike the VPA from Lumpkin's judgment and sentence.




Staab, J.

WE CONCUR:



Lawrence-Berrey, C.J.



Murphy, J.

APPENDIX “B”

SPOKANE COUNTY DISTRICT COURT, STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

CASE NO. 2A0615849
2A0505713

vs.

☒ SCHEDULING ORDER
☐ AMENDED SCHEDULING ORDER
& SPEEDY TRIAL WAIVER

Zane Lumpkin
Defendant.

FIL-7

DEC 1 2022

SPOKANE COUNTY DISTRICT COURT

MOTION

The ☐ Plaintiff ☒ Defendant moves the Court, pursuant to CrRLJ 3.3, to continue the:

☐ Arraignment ☒ Pre-Trial ☐ Trial Ready & Trial ☐ Mitigation Hearing
☐ Motion ☐ Show Cause ☐ Contested Infraction Hearing

The basis for the continuance is: Meet w/ counsel

and the granting of the motion to continue will not prejudice the Defendant.

I am aware that I have the right to a trial within 60 days of the commencement date if I am in jail on this case, or within 90 days of the commencement date if I am not in jail on this case. I voluntarily give up this right and I agree to the dates as ordered below. Zane Lumpkin Defendant

I have explained this waiver to my client. I am satisfied that he/she understands it and is voluntarily giving up his/her right as set forth above. Shawn E. Thompson Attorney

Zane Lumpkin
Defendant

Shawn E. Thompson
Defense Attorney/WSBA #

Shawn E. Thompson
Prosecuting Attorney/WSBA #

ORDER

IT IS ORDERED that the motion for continuance is: ☒ GRANTED ☐ DENIED and the following court dates are set:

☐ Arraignment @ _____ am / pm ☐ Motion @ _____ am / pm
☒ Pre-Trial 12-12-22 @ 10:30 am / pm ☐ Contested @ _____ am / pm
☐ Show Cause @ _____ am / pm ☐ Mitigation @ _____ am / pm
☐ Trial Ready @ _____ am / pm with Trial @ _____ am / pm

New Commencement Date: _____

New Expiration Date: _____

Dec 1, 2022
Date

[Signature]
Judge

**DEFENDANT MUST APPEAR AT ALL HEARINGS OR A WARRANT FOR ARREST MAY BE ISSUED.
DEFENDANT'S FAILURE TO APPEAR AT INFRACTION HEARINGS WILL RESULT IN
ADJUDICATION OF COMMITTED AND ASSIGNMENT TO A COLLECTION AGENCY**

District Courts comply with the Americans with Disabilities Act (ADA). Persons with disabilities that require accommodations should call the Court at (509) 477-2903. TDD Available.

SPOKANE COUNTY DISTRICT COURT, STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

CASE NO. 2A0615849

☒ SCHEDULING ORDER 2A0615849
☒ AMENDED SCHEDULING ORDER
& SPEEDY TRIAL WAIVER

vs.

Jane Lumpkin
Defendant.

FILED

DEC 12 2022

SPOKANE COUNTY DISTRICT COURT

MOTION

The ☐ Plaintiff ☒ Defendant moves the Court, pursuant to CrRLJ 3.3, to continue the:

☐ Arraignment ☒ Pre-Trial ☐ Trial Ready & Trial ☐ Mitigation Hearing
☐ Motion ☐ Show Cause ☐ Contested Infraction Hearing

The basis for the continuance is Research / investigation

and the granting of the motion to continue will not prejudice the Defendant.

I am aware that I have the right to a trial within 60 days of the commencement date if I am in jail on this case, or within 90 days of the commencement date if I am not in jail on this case. I voluntarily give up this right and I agree to the dates as ordered below. Jane Lumpkin Defendant

I have explained this waiver to my client. I am satisfied that he/she understands it and is voluntarily giving up his/her right as set forth above. Kevin M. Cochran Attorney

Jane Lumpkin
Defendant

Kevin M. Cochran
Defense Attorney/WSBA # 34959

Do 58267
Prosecuting Attorney/WSBA #

ORDER

IT IS ORDERED that the motion for continuance is: ☒ GRANTED ☐ DENIED and the following court dates are set:

☐ Arraignment _____ @ _____ am / pm ☐ Motion _____ @ _____ am / pm
☒ Pre-Trial 1.23.23 @ 9 am / pm ☐ Contested _____ @ _____ am / pm
☐ Show Cause _____ @ _____ am / pm ☐ Mitigation _____ @ _____ am / pm
☐ Trial Ready _____ @ _____ am / pm with Trial _____ @ _____ am / pm

New Commencement Date: _____

New Expiration Date: _____

Dec 12, 2022
Date

[Signature]
Judge

**DEFENDANT MUST APPEAR AT ALL HEARINGS OR A WARRANT FOR ARREST MAY BE ISSUED.
DEFENDANT'S FAILURE TO APPEAR AT INFRACTION HEARINGS WILL RESULT IN
ADJUDICATION OF COMMITTED AND ASSIGNMENT TO A COLLECTION AGENCY**

District Courts comply with the Americans with Disabilities Act (ADA). Persons with disabilities that require accommodations should call the Court at (509) 477-2903. TDD Available.

SPOKANE COUNTY DISTRICT COURT, STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

CASE NO. 2A050764 2A0505763
2A0626115

vs.

☒ SCHEDULING ORDER
☒ AMENDED SCHEDULING ORDER
& SPEEDY TRIAL WAIVER

Zane Lumpkin
Defendant.

FILED

JAN 23 2023

MOTION

SPOKANE COUNTY DISTRICT COURT

The ☐ Plaintiff ☒ Defendant moves the Court, pursuant to CrRLJ 3.3, to continue the:

☐ Arraignment ☒ Pre-Trial ☐ Trial Ready & Trial ☐ Mitigation Hearing
☐ Motion ☐ Show Cause ☐ Contested Infraction Hearing

The basis for the continuance is:

Negotiations

and the granting of the motion to continue will not prejudice the Defendant.

I am aware that I have the right to a trial within 60 days of the commencement date if I am in jail on this case, or within 90 days of the commencement date if I am not in jail on this case. I voluntarily give up this right and I agree to the dates as ordered below. Zane Lumpkin, Defendant

I have explained this waiver to my client. I am satisfied that he/she understands it and is voluntarily giving up his/her right as set forth above. Brian M Cochran, Attorney

Zane Lumpkin
Defendant

Brian M Cochran
Defense Attorney/WSBA # 34989

TS 582167
Prosecuting Attorney/WSBA #

ORDER

IT IS ORDERED that the motion for continuance is: ☐ GRANTED ☐ DENIED and the following court dates are set:

☐ Arraignment @ _____ am / pm ☐ Motion @ _____ am / pm
☒ Pre-Trial 2-27-23 @ 9:00 am / pm ☐ Contested @ _____ am / pm
☐ Show Cause @ _____ am / pm ☐ Mitigation @ _____ am / pm
☐ Trial Ready @ _____ am / pm with Trial @ _____ am / pm

New Commencement Date: 2/27/23 New Expiration Date: 5/27/23

Date

JAN 23, 2023

Judge

Debbie Spang

**DEFENDANT MUST APPEAR AT ALL HEARINGS OR A WARRANT FOR ARREST MAY BE ISSUED.
DEFENDANT'S FAILURE TO APPEAR AT INFRACTION HEARINGS WILL RESULT IN
ADJUDICATION OF COMMITTED AND ASSIGNMENT TO A COLLECTION AGENCY**

District Courts comply with the Americans with Disabilities Act (ADA). Persons with disabilities that require accommodations should call the Court at (509) 477-2903. TDD Available.

APPENDIX “C”

CN: 2210294132

SN: 11

PC: 1

FILED

NOV 15 2022

TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

(Copy Receipt)

SUPERIOR COURT OF WASHINGTON, COUNTY OF SPOKANE

(Clerk's Date Stamp)

State of Washington, Plaintiff,
vs

Case No: 22-1-02841-32
P.A. #: 229875850

LUMPKIN, ZANE EUGENE 09/13/1980
Defendant

**SCHEDULING ORDER SETTING
TRIAL AND OTHER HEARINGS** (ORST)
(ORSTD)

**DEFENDANT SHALL APPEAR at SPOKANE COUNTY SUPERIOR COURT, 1116 W. Broadway Ave.,
Spokane, WA 99260 on the dates and times designated below:**

1. The above-entitled action is assigned to Chief Criminal Judge in Courtroom #408 or as otherwise scheduled/assigned.
2. Defendant is in Custody
3. The following court dates are set in this case:
 - a. TRIAL READINESS CALL ON 12/19/2022 AT 9:30AM
 - CRIMINAL TRIAL ON 01/09/2023 AT 9:00AM

**DEFENDANT IS REQUIRED TO APPEAR AT ALL COURT DATES OR A WARRANT FOR ARREST
MAY BE ISSUED.**

4. Arraignment Date: 11/15/2022 New Commencement Date [CrR 3.3(c)]: _____

DATED this 15th day of November, 2022

Approved:


Defendant's Signature
(required for CrR 3.3(f)(1) continuances)


Judge Tony Hazel

Presented By: 
FOL 1 SHARON LEE HEDLUND WSBA 27263
Deputy Prosecuting Attorney


JEFFREY G. COMPTON WSBA 24082
Attorney for Defendant

ORIGINAL

APPENDIX “D”

2022

January							February							March							April								
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S		
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May							June							July							August								
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September							October							November							December								
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25	26	27	28	29	30			23	24	25	26	27	28	29		27	28	29	30				25	26	27	28	29	30	31
								30	31																				

2023 Calendar

January 2023							February 2023							March 2023							April 2023									
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S			
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29	30	31						26	27	28						26	27	28	29	30	31									
May 2023							June 2023							July 2023							August 2023									
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28	29	30	31					25	26	27	28	29	30		23	24	25	26	27	28	29									
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3	4	5	6	7	8	9		8	9	10	11	12	13	14		5	6	7	8	9	10	11	12	13	14	15	16	17	18	
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17	18	19	20	21	22	23		22	23	24	25	26	27	28		19	20	21	22	23	24	25	26	27	28	29	30			
24	25	26	27	28	29	30		29	30	31						26	27	28	29	30										

NO. 39830-7-III
IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	SPOKANE COUNTY
Plaintiff,)	NO. 23 1 10165 32
Respondent,)	
)	
vs.)	CERTIFICATE OF
)	SERVICE
ZANE EUGENE LUMPKIN,)	
)	
Defendant,)	
)	
Appellant.)	

I certify under penalty of perjury under the laws of the State of Washington that on this 28th day of July, 2025, I caused a true and correct copy of the *PETITION FOR DISCRETIONARY REVIEW* to be served on:

COURT OF APPEALS, DIVISION III
Attn: Tristen Worthen, Clerk
500 N Cedar St
Spokane, WA 99201

E-FILE

CERTIFICATE OF SERVICE

SPOKANE COUNTY
PROSECUTOR'S OFFICE
scpaappeals@spokanecounty.org

E-FILE

Zane Eugene Lumpkin # 789133
Airway Heights Correction Center
PO Box 2049
Airway Heights, WA 99001-2049

U.S. MAIL

s/ Dennis W. Morgan
DENNIS W. MORGAN WSBA #5286
Attorney for Defendant/Appellant.
P.O. Box 1019
Republic, WA 99166
(509) 775-0777
nodblspk@outlook.com

July 28, 2025 - 11:05 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 39830-7
Appellate Court Case Title: State of Washington v. Zane Eugene Lumpkin
Superior Court Case Number: 23-1-10165-1

The following documents have been uploaded:

- 398307_Petition_for_Review_20250728110517D3219021_3012.pdf
This File Contains:
Petition for Review
The Original File Name was Lumpkin Petition for Discretionary Review.pdf

A copy of the uploaded files will be sent to:

- gverhoef@spokanecounty.org
- scpaappeals@spokanecounty.org

Comments:

Sender Name: Dennis Morgan - Email: nodblspk@outlook.com
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Phone: 509-775-0777

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