

Original

SUPREME COURT NO. 90735-8

C.O.A. NO. 30222-9-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
RESPONDENT,

VS.

JOSE L. MONCADA,
APPELLANT,

Received
Washington State Supreme Court

OCT 27 2014
E
Ronald R. Carpenter
Clerk

APPELLANT'S REPLY TO ANSWER

Jose L. Moncada
Appellant Pro Se
Coyote Ridge Corr.Ctr.
P.O.BOX 769 H-Unit
Connell, WA 99326

TABLE OF CONTENTS

I. RESTATEMENT OF RELEVANT FACTS1
 II. DISPUTED AND UNDISPUTED FACTS3

III. ARGUMENT IN REPLY5

 1. The Petition is timely filed5

 2. The Petition meets the criteria of RAP 13.4 (b)7

 a. The case presents a significant question of law under the Constitution of the State of Washington and the Constitution of the United State. 7

 b. The Petition involves an issue of substantial public interest that should be determined by this Court. 9

 c. Mr. Moncada's right of speedy trial under the Sixth Amendment to the United States Constitution and Wash. Const. Art. I, § 22, and the State's Criminal Rules under CrR 3.3, was violated. 10

 d. Mr. Moncada received the ineffective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution and Wash. Const. Art. I, § 22, when appellate counsel failed to raise viable and meritorious issues on appeal.10

IV. CONCLUSION. 11

TABLE OF AUTHORITIES

Federal Cases:

Barker v. Wingo, 407 U.S. 514,
92 S.Ct. 2182, 33 L.Ed.2d 101 (1972).8

Klopper v. North Carolina, 386 U.S. 213,
87 S.Ct. 988, 18 L.Ed.2d 1 (1967).8

State Cases:

State v. Fortune, 128 Wn.2d 464,
909 P.2d 930 (1996).7

State v. Gunwell, 106 Wn.2d 54,
720 P.2d 808 (1986).7

State v. Iniquez, 167 Wn.2d 273 (2009).7

Constitutional Provision:

U.S. Const. Sixth Amendment. 7, 8, 10

Wash. Const. Art I, § 22.7, 8, 10

Rules:

CrR 3.3. 3, 4, 8, 9, 10

GR 3.1. 1, 2, 3, 6

RAP 13.4.3, 7, 9

RAP 13.5. 5, 6

RAP 18.6.6

RAP 18.8.5

On August 29th, 2014, Mr. Moncada filed a petition for review in this Court invoking the mailbox rule under Rules of General Application (GR) 3.1 (a)-(c). See Appendix D.* On October 3rd, 2014, the State submitted it's Answer to Mr. Moncada's petition for review, and on October 23, 2014, Mr. Moncada files this Reply in response thereto.

I. RESTATEMENT OF RELEVANT FACTS

Mr. Moncada has argued, inter alia, that his speedy trial rights as guaranteed under both the State and Federal Constitutions, and Washington Criminal Rule 3.3, was violated. See Statement of Additional Grounds (SAG), petition for review, and other supplemental motion filed in the Court of Appeals in this case. The facts of this case, as related to the speedy trial violation, are set forth more fully in the SAG and petition for review, which are incorporated herein by reference as though fully set forth.

Appendix D is a continuation of the Appendices (A-C) attached to Appellant's petition for review. Appendix D is a copy of Appellant's Declaration of Service By Mail on the petition for review to this Court, the Court of Appeals, and Counsel.

On October 3rd, 2014, the State submitted a response to the petition for review and attached as Appendix A, an Order of continuance by the trial court. First, this Order contains "edits" without an author (the dates appear to be tampered with, but no author showing who made the edits or changed the dates). Second, the Order of continuance limits the agreement to only the "Prosecutor and the defendant", not the defendant's attorney. See State's Appendix A. Specifically, the Order of continuance states in capital letters that "THIS AGREEMENT MUST BE PERSONALLY SIGNED BY THE DEFENDANT." See State's Appendix A. The Order of continuance agreement to continue, was not signed by defendant-Mr. Moncada. See State's Appendix A.

The State attached, as Appendix B, a trial States Order. However, This Order was not signed, nor agreed upon by Mr. Moncada or his Attorney. See State's Appendix B.

The States attached, as Appendix C, the Appellate Court case events for this case which shows that the petition for review was filed on 09/03/2014. However, Mr. Moncada filed his petition for review under the mailbox rule outline in GR 3.1 (a)-(c). See Appendix D and E, attached herein.*

*Appendix E is the Prison Legal Mail showing the date of August 29, 2014, as the date Mr. Moncada mailed his petition for review to this Court, invoking GR 3.1 (a) (c).

II. DISPUTED AND UNDISPUTED FACTS

1. Respondent disputes the timeliness of the petition for review, See Answer to Petition for Review at pages 5-6, but does not dispute that GR 3.1 (a)-(c) allows a Prisoner, like Mr. Moncada, application of the mailbox rule.

2. Respondent contends that the petition does not meet the criteria of Rules of Appellate Procedure (RAP) 13.4 (b). However, Respondent does not dispute improper application of the speedy trial period under CrR 3.3. See "BRIEF OF RESPONDENT" at page 9, dated February 22nd, 2013, in State V. Moncada, C.O.A. No. 302229, "Both he, (Mr. Moncada) and Judge McCarthy were incorrect" in their interpretation of the so-called 30-day buffer period under CrR 3.3.

The question as to whether CrR 3.3 (b)(5) add 30 additional days upon expiration of each trial continuance requested by either party in a criminal case, presents a significant question of constitutional interest because improper application or misinterpretation of the Rule would violate a defendant's constitutional right to a speedy trial under both the State and Federal constitutions, and the State's speedy trial Rule under CrR 3.3, every time a request for a continuance is made. This case presents an issue of substantial public interest that should be decided by this Court because the Prosecutor in this case mistakenly believed that only his interpretation of the Rule was correct while both Mr. Moncada and Judge McCarthy were

incorrect in their interpretation and application of the Rule. See "BRIEF OF RESPONDENT" at page 9, dated February 22, 2013, in State V. Moncada, C.O.A. No. 302229. To avoid future violations of a defendant's speedy trial rights, this Court should properly determine the question to settle the law and resolve confusion among the lower Courts and Counsels.

3. Respondent contends that Mr. Moncada's speedy trial rights were not violated but once this Court determines the question presented, it will conclude, like reasonable jurists, that Mr. Moncada's right to a speedy trial under both the State and Federal constitutions, as well as his speedy trial right under the State's speedy trial rule CrR 3.3 were violated.

4. Respondent contends that Appellate counsel was not ineffective, but appellate counsel failed to raise any issues that challenged Mr. Moncada's convictions and sentence. Appellate Counsel only raised issues pertaining to conditions of Community Custody and LFO's. See Brief of Appellant filed in the Court of Appeals in this case.

5. Respondent contends that the Prosecutor in this case did not circumvent the speedy trial rule by going to a different Judge than the assigned Judge, to get the continuance the assigned Judge would have denied. Respondent claims that "the Prosecutor had consulted with defense counsel and they agreed with the order being presented to Judge Reukauf", Answer at page 14, but Respondent failed to submit an affidavit from defense

counsel as to that agreement, and the order Respondent submits as Appendix B, does not contain a signature of defense counsel to show any agreement. See Respondent's Appendix B. As a matter of fact, the order appear to have been conducted in an Ex Parte hearing without defense counsel or defendant Moncada. See Respondent's Appendix B.

III. ARGUMENT IN REPLY

1. The Petition is timely filed.

Mr. Moncada asks this Court to please take notice of the Respondent's deliberate efforts to deceive this Court. Respondent argues that Mr. Moncada's petition for review is untimely because "[t]he Rules of Appellate Procedure strictly mandate that a petition for review must be received by the Court within 30 days of the decision appealed." Respondent's Answer to Petition for Review at 5-6.

First, Respondent cites to and relies upon RAP 18.8 (b) which provides restrictions on extensions of time. This rule does not apply to the petition and Respondent failed to state how the rule applies to the petition for review. See Respondent's Answer at page 5.

Second, Respondent cites to and relies upon RAP 13.5 (a) to argue that a petition for review must be filed in the Supreme Court and a copy served in the Court of Appeals within 30 days after the date of the decision.

Respondent's Answer at page 5, However, RAP 13.5 (a) provides discretionary review of an interlocutory decision of the Court of Appeals. This rule does not apply to the petition for review filed in the present case as this is not an "interlocutory" appeal.

Third, Respondent cites to and relies upon RAP 18.6 (c) to argue that petitions for review are timely filed only if actually received by the appropriate appellate court within the time for filing, which are not timely filed if simply mailed within the time for filing. Respondent's Answer at page 5-6. Respondent emphasized that RAP 18.6 (c) states that unlike some other pleadings such as appellate briefs, a petition for review "is timely filed only if it is received by the appellate court within the time for filing". Respondent's Answer at page 6. Respondent wisely ignores the first and second sentences in RAP 18.6 (c), which starts by stating "Except as provided in GR 3.1". Mr. Moncada is incarcerated and filed his petition for review pursuant to GR 3.1, and the Respondent is well aware of this fact. See Appendices D and E.

For the foregoing reasons, this court should find, as would reasonable jurists, that the Respondent, an experienced Attorney, and senior deputy prosecuting attorney, is deliberately deceiving this Court by misstating the law and facts to this Court. Such improper conduct should not be tolerated because it goes against the administration of justice.

2. The Petition meets the criteria of RAP 13.4 (b).

Respondent argues that the petition does not meet the criteria of RAP 13.4 (b) because the Court of Appeals' decision does not involve a significant question of constitutional law or involve an issue of significant public interest. Respondent's Answer at page 7.

- a. This case presents a significant question of law under the constitution of the State of Washington and the Constitution of the United States.

See RAP 13.4 (b) (3). Article I, Sec. 22 of the Washington State Constitution provides that "[i]n criminal prosecutions the accused shall have the right ... to have a speedy public trial", but, until State v. Iniguez, 167 Wn.2d 273 (2009), this Court had not yet determined what a "Speedy public trial" requires under Article I, Sec. 22 of our State Constitution.

In doing so for the first time, this Court found it useful to review the speedy trial protection guaranteed by the Sixth Amendment of the United States Constitution as a back drop to the analysis of our own Constitution.

See State v. Fortune, 128 Wn.2d 464, 474-75, 909 P.2d 930 (1996) (noting that while federal cases are not binding for purposes of interpreting our State Constitution, they can be "important guides" in our analysis (quoting State v. Gunwall, 106 Wn.2d 54, 61, 720 P.2d 808 (1986))). Because Sixth Amendment reads in relevant part, "In all Criminal prosecutions, the accused shall enjoy the right to a speedy and public trial".

U.S. Const. Amend VI. The right to a speedy trial "is fundamental as any of the rights secured by the Sixth Amendment." Barker v. Wingo, 407 U.S. 514, 515 N.2, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) (quoting Klopfer v. North Carolina, 386 U.S. 213,223, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967)). If a defendant's constitutional right to a speedy trial is violated, the remedy is dismissal of the charges with prejudice. *Id.* at 522.

As shown above, Mr. Moncada had a constitutional right to a speedy trial under the Sixth Amendment and Wash. Const. art I, Sec. 22. This right is reaffirmed by CrR 3.3, which sets out the speedy trial time period (60 days in custody / 90 days out of custody). However, CrR 3.3 (b) (5), according to respondent, adds 30 days to the expiration of the defendant's speedy trial request. Respondent contends the defense counsel and Judge McCarthy were "incorrect" in interpreting CrR 3.3 (b) (5)'s 30-day period. If Respondent-Prosecutor is correct, then this Court should decide whether Judge McCarthy acted in a manifestly unreasonable manner when he continued trial from Ferbruary 15, 2011, to February 22, 2011, without extending the time for trial by 30-days as required by CrR 3.3 (b) (5) if any period is excluded pursuant to CrR 3.3 (c). See SAG at 15, incorporated herein by reference. Because the Sixth Amendment and Wash. Const. art I, Sec. 22, guarantees a criminal defendant the right to a speedy trial, the question as to whether CrR 3.3 (b) (5) add 30 additional days upon expiration of each trial continuance request made by either

party in a criminal case, involves a significant question of constitutional law under RAP 13.4 (b) (3).

b. The Petition involves an issue of substantial public interest that should be determined by this Court.

See RAP 13.4 (b) (4). If CrR 3.3 (b) (5) is to be interpreted to add 30 additional days upon expiration of each trial continuance request made by either party in a criminal case, then this would result in 30 more days in addition to the number of days requested by either party (e.g., a 5-day extension would result in an automatic 35-day extension).

Respondent argues, post hoc,* that both defense counsel and Judge McCarthy were wrong in their interpretation of CrR 3.3 (b) (5)'s 30-day rule. Judge McCarthy found that CrR 3.3 (b) (5) did not add 30 additional days to the 5-day extension he ordered from February 15, 2011, to February 22, 2011. Defense Counsel agreed with Judge McCarthy and the Respondent-Prosecutor remained silent. See SAG at 9-21, incorporated herein by reference as though fully set forth.

*Respondent-Prosecutor did not present this argument to the Honorable-McCarthy at the time of the alleged error, but now argues that Judge McCarthy was "incorrect" in his interpretation.

Because respondent-Prosecutor and Judge McCarthy has different interpretations of CrR 3.3 (b) (5)'s 30-day rule, the issue is of substantial public interest that should be determined by this Court, At best, jurists of reason would agree that the language contained in CrR 3.3 (b) (5) stating that "the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period" is ambiguous. This Court should grant review to resolve the conflict in the lower courts.

- c. Mr. Moncada's right of speedy trial under the Sixth Amendment to the United States Constitution and Wash. Const. art. I, Sec. 22, and the State's Criminal Rules under CrR 3.3, was violated.

These facts and argument are set forth more fully in Mr. Moncada's SAG at 3-20, and incorporated herein by reference as though fully set forth.

- d. Mr. Moncada received the ineffective assistance of Appellate Counsel in violation of the Sixth Amendment to the United States Constitution and Wash. Const. art. I, Sec. 22, when appellate counsel failed to raise viable and meritorious issues on appeal.

These facts and argument are set forth more fully in Mr. Moncada's SAG at 2-21, and are incorporated herein by reference as though fully set forth.

IV. CONCLUSION

For the foregoing reasons, this Court should accept review of the issues presented for resolution.

DATED This 23th day of October, 2014.

Jose L. Moncada

Jose L. Moncada, #349000
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Connell, WA 99326

STATE V. MONCADA,
SUPREME COURT NO. 90735-8
C.O.A. NO. 30222-9-III

APPENDIX-D

DECLARATION OF SERVICE BY MAILING
UNDER GR 3.1
DATED AUGUST 29, 2014.

APPENDIX -D

THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent

vs.

JOSE L. MONCADA

Appellant

No. _____

COA No. 302229

DECLARATION OF SERVICE

BY MAIL

(GR 3.1 (a) (c))

I, Jose L. Moncada, declare that, on ~~July~~^{Aug} 29th, 2014. I deposited
the foregoing:

1. This Declaration of Service by Mail;
2. Petition For Review;
3. Appendices A-C

And a copy thereof, in the internal mail system of Coyote
Ridge Corrections Center, and made arrangements for postage
addressed to:

original to:

Washington State Supreme Court
Clerk of Court
P.O. Box 40929
Olympia, WA 98504-0929

Copy to:

Court of Appeals
Division III
500 N Cedar st
Spokane, WA. 99201-1905

(GR 3.1) DECLARATION OF SERVICE BY MAIL - 1

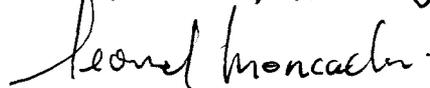
Copy to:

James Patrick Hagarty
Tamara Ann Hanlon
Yakima County Prosecuting Attorney's Off
128 N 2nd St. Rm 329
Yakima, WA 98901-2621

I declare under penalty of perjury under the laws of the
State of Washington that the foregoing is true and correct,

DATED this 29th day of ~~July~~^{Aug}, 2014, at Connell

in Franklin County Washington.



Jose L. Moncada
Appellant Pro-se
Coyote Ridge Correction Center
P.O. Box 769 H-

STATE V. MONCADA
SUPREME COURT NO. 90735-8
C.O.A. NO. 30222-9-III

APPENDIX-E

Prison Legal Mail Log sheet showing the date
of August 29, 2014, as the date Mr. Moncada
mailed his Petition for Review to this Court.

APPENDIX-E

OUTGOING LEGAL MAIL LOG

DATE:	Wash. State Supreme Court	PRINT:	Finkbeiner
8 129 120H	Clerk of Court	SIGN:	Jose L. Moncada
TIME:	PO Box 40929	SIGN:	349 000
1420	Olympia, Wa. 98504-0929	CC2 Finkbeiner	

DECLARATION OF MAILING

GR 3.1

I, Jose L. Moncada on the below date, placed in the U.S. Mail, postage prepaid, _____ envelope(s) addressed to the below listed individual(s):

<u>Original to:</u>	<u>Copy to:</u>
<u>Washington Supreme Court</u>	<u>Tamara Ann Hanlon</u>
<u>Clerk of Court</u>	<u>Yakima County Pros. Office</u>
<u>P.O. Box 40929</u>	<u>128 N. 2nd St. Rm. 329</u>
<u>Olympia, WA 98504-0929</u>	<u>Yakima, WA 98901-2621</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. This Declaration of Service By Mail;
2. Appellant's Reply to Answer;
3. Appendix D;
4. Appendix E.
5. _____
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 23th day of October, 2014, at Connell WA. 99326

Signature Jose L. Moncada
Jose L. Moncada, 349000
Appellant Pro Se
Coyote Ridge Corr-Ctr.
P.O. Box 769 - H-Unit
Connell, WA 99326

Original