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No. 927979

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

RESPONDENT,

v.

MATTHEW SIMON GAROUTTE,

PETITIONER.

**STATE'S ANSWER TO
PETITION FOR DISCRETIONARY REVIEW**

PROSECUTING ATTORNEY

**By: Kevin J. McCrae, WSBA #43087
Deputy Prosecuting Attorney
Attorneys for Respondent**

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 **ORIGINAL**

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RAP 13.4 (b)4, 5

1. IDENTITY OF RESPONDENT

The State of Washington, Plaintiff below and Respondent in this action, requests the relief designated in part 2.

2. STATEMENT OF RELIEF SOUGHT

The State of Washington asks that the petition for review be denied.

3. ISSUES PRESENTED FOR REVIEW

A. Is there an adequate record for review?

B. Is there reviewable error as it relates to Mr. Garoutte's time for trial under CrR 3.3?

C. Did the information contain sufficient information to adequately inform Mr. Garoutte of the charges he was facing?

4. STATEMENT OF THE CASE

Mr. Garoutte petitions for review on issues raised in his statement of additional grounds. The Court of Appeals never called for a response to those statements, thus the State never responded to them below. Mr. Garoutte attaches several documents as an appendix to his petition. As the Court of Appeals noted, this is improper in a direct review, and Mr. Garoutte does not petition for review of this ruling. Mr. Garoutte appears to raise speedy trial issues that were raised by his trial counsel. This is appropriate because under CrR 3.3(d)(4) only issues objected to within 10

days are preserved. Those briefs are in the clerk's papers, although without supporting documentation. Thus for the purposes of this motion the State will use the facts as can be fairly inferred from those motions, although the State cannot adequately respond with an incomplete record. In addition statements of counsel are not evidence, thus the State is responding to mere unsubstantiated claims. In order to ensure the Court fully understands this issue the State will respond, but the State maintains its objection based on an inadequate record.

The amended information charging the bail jumping was filed on January 28, 2014. In an amended trial scheduling order the court set the case for trial readiness of March 17, trial on March 19th, with an expiration of the time for trial on March 24th. CP 81. There was no objection by either party to this setting. On March 17th the State moved to release the defendant because a witness was unavailable. This resulted in an extension from a 60 day calendar to a 90 day calendar under CrR 3.3(b)(4). CP 82. In its objections the defense filed cases that supported the State's position that the 30 day extension was allowable. CP 71-80. Mr. Garoutte was apparently subject to bail on a different cause number. CP 85. Mr. Garoutte was apparently let out of jail and then failed to appear after that, returning to court on April 7th. His case was reset on a 60 day calendar on April 14th, with April 14th as the new CrR 3.3

commencement date. Mr. Garoutte went to trial and the jury was instructed on May 23rd.

5. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Speedy trial issue

1. There is an insufficient record.

The court of appeals held, and Mr. Garoutte did not petition for review, that the appellate court cannot consider the appendices attached to Mr. Garoutte's statement of additional grounds. *State v. Garoutte*, 2016 Wn. App. LEXIS 115 at ¶33 (unpublished)(2016) citing RAP 10.3(a)(8). The same would apply to the appendices attached to his petition for review. Because all of the documents Mr. Garoutte relies upon are inadmissible, this issue should not be reviewed. Mr. Garoutte can file a PRP if he wants the issue reviewed.

2. Mr. Garoutte's objections are not well founded, even taking the facts as recited in his motions to the trial court.

There was one error in the calculations for speedy trial under rule 3.3. When Mr. Garoutte returned from his failure to appear at the end of March/beginning of April, his new commencement date should have been the first day he was brought before the court, presumably April 7th, not April 14th. CrR 3.3(c)(2)(ii). However, this error is not reversible for two reasons. First, there was no objection within the 10 day period. CrR

3.3(d)(4). Second, this error was harmless, as Mr. Garoutte was brought to trial within 60 days of April 7th, and thus his time for trial was not violated, even with an April 7th commencement date.

Mr. Garoutte appears to contend that the seven days, from April 7th to April 14th, should somehow be appended onto the time for trial period that existed prior to his release and failure to appear. He cites no authority for this idea, and as far as the State is aware none exists. Instead that seven days should have counted against the new time for trial period that occurred after his return from his failure to appear. As discussed above, the fact they were not was error, but it was not reversible error.

Mr. Garoutte argues that the court erred in releasing him prior to the expiration of his speedy trial date in order to extend the time for trial. He fails to distinguish *State v. Kelly*, 60 Wn. App. 921, 808 P.2d 1150 (1991). Mr. Garoutte fails to identify any decision of the Court of Appeals or Supreme Court that conflicts with his case. He also fails to identify a substantial question of law or an issue of substantial public interest that should be reviewed by the Supreme Court. RAP 13.4(b)

B. The Information was adequate.

Mr. Garoutte fails to rebut the Court of Appeals reasoning regarding the information in this case. Indeed, it is clear that Mr. Garoutte was well aware of what crime he failed to appear on, as he stipulated to

that fact at trial and proposed jury instructions regarding it. CP 24-25, 102-103. By fair construction the information contained all essential elements of the crime. Mr. Garoutte again fails to meet any of the criteria under RAP 13.4(b).

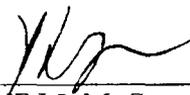
6. CONCLUSION

Mr. Garoutte fails to meet any of the criteria in RAP 13.4(b). The record is insufficient to review his time for trial issue, and fails anyway. He does not rebut the Court of Appeals reasoning as to the information, and fails to show a conflict with any case. His petition for review should be denied.

DATED this 24th day of May, 2016.

Respectfully submitted,

GARTH DANO
Grant County Prosecuting Attorney



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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

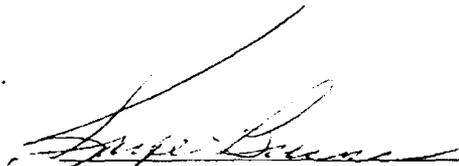
STATE OF WASHINGTON,)	
)	
Respondent,)	No. No. 927979
)	
vs.)	
)	
MATTHEW SIMON GAROUTTE.)	DECLARATION OF SERVICE
)	
Petitioner.)	

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Petitioner containing a copy of the State's Answer to Petition for discretionary Review in the above-entitled matter.

Matthew Simon Garoutte - #840189
Coyote Ridge Corrections Center
PO Box 769
Connell WA 99326

Dated: May 25, 2016.



Kaye Burns

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From: OFFICE RECEPTIONIST, CLERK
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Subject: State of Washington v. Matthew Simon Garoutte - Case No. 927979

Attached for filing in the above matter is the State's Answer to Petition for Discretionary Review. A copy has been mailed to Mr. Garoutte. Thank you.

Kaye Burns

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Please note my new phone extension and e-mail address.

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