

Right to a Speedy Trial

By: Brett Purtzer, Feb 2008

The Supreme Court's revision of CrR 3.3 basically gutted the concept of a speedy trial with the myriad exceptions and cure provisions. But Division I recently held that a frequent reason for a continuance, prosecutor unavailability, did not warrant a continuance and dismissed a DUI prosecution. See State v. Chichester, 141 Wn.App. 446, 170 P.3d 583 (2007).

Chichester, although not a true CrR 3.3 case, held that a prosecutor's seemingly unavailability was not a proper ground to grant a continuance. There, a readiness hearing was held a week before the scheduled trial date. The defense attorney stated he was ready to try the case and the state indicated it was available as well. After the court announced the trial schedule, the state indicated that it had only one prosecutor available to proceed with the upcoming trial. Not impressed, the court instructed the prosecutor to find coverage and warned that a lack of coverage to try the case would not be good cause for a continuance. The state, sensing the challenge, decided to see who had more juice, the state or the court. On the day of trial, the state got squeezed.

The prosecutor, not making any attempt to fix its problem, requested a continuance on the day of trial over a defense objection. The trial court, not feeling particularly charitable, chastised the state for creating the problem at hand. When the defense stated it was ready to proceed, and the state said it wasn't, the trial court granted the defense motion to dismiss. The state appealed both the denial of the continuance and the dismissal.

Division I, showing unusual courage, upheld the trial court. The Court reviewed the trial court's exercise of discretion and found that its ruling was reasonable under the circumstances, considering the prejudice to the defendant if the trial was continued. Particularly troubling for the Court was the state's defiant attitude in not finding a prosecutor available to try the DUI case, particularly since the deputy who was arguing for a continuance was not in trial and was available to try the case.

The lesson to be gathered from this holding is that trial courts do have the ability to grant motions to dismiss and also clarifies that the court, not the state, controls the trial calendar. Accordingly, this case is helpful in showing what the court might consider as a valid reason to deny a state's motion to continue, and that catastrophic prejudice to the defendant is not required before a trial court's ruling will be upheld on appeal.

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