

Vacations Constitutionally Denied

By: Wayne C. Fricke; 2008

Recently, in State v. Iniguez, No. 25218-3-III (April 8, 2008), Division III of the Court of Appeals held that a six month delay beyond one's speedy trial rights was presumptively prejudicial under the Washington and United States constitutions, wherein one of the defendants was charged with first degree robbery with a firearm allegation.

The Court decided the case on the constitutionally guaranteed right to a speedy trial under both federal and the State constitutions. See U.S. Const. amend VI, WA Const. art. 1 § 22. Based on the constitution, one's right to a speedy trial is violated after an expiration "of a reasonable time". State v Monson, 84 WnApp. 703, 711, 929 P.2d 1186 (1997).

A different set of factors involves constitutional delays as opposed to a violation of speedy trial rules set by the court rules. Factors the court considers is the length of the delay, the reason for the delay, whether the defendant asserted the right, the prejudice to the defendant, and other circumstances that may be relevant under the situation. State v Fladebo, 113 Wn.2d 388, 393, 779 P.2d 707 (1989). As noted in Iniguez, the longer the delay continues the more the prejudice intensifies. In Iniguez, the Defendant was arrested on May 25, 2005 and was in custody for 260 days. From the day he was arrested he consistently demanded a speedy trial or severance from his codefendants. He was not in any way responsible for any of the requested continuances, which involved requests by the codefendant and his attorney because of the attorney's unavailability due to vacation or trial schedule and, then, subsequently based on the State's request for additional time to interview the codefendant's witnesses and to allow another witness to return from vacation.

While the Court noted that the unavailability of a key witness may be a valid reason to delay a trial, it also noted the government must not be responsible for the witness's unavailability and has an obligation to diligently attempt to locate the witness. The Court stated further that the speedy trial rights are not dependant upon the convenience of the trial date to a potential witness. See Strunk v. United States, 412 U.S. 434 (1973). Because the State never informed the witness of the trial date and the trial Court just set the trial date at the earliest date that the witness said he would return from vacation, which was more than a month after the scheduled trial date, Division III found that this delay was not reasonable.

In reversing, the Court also noted that it is not essential to find that the defendant has been prejudiced and prejudice is to be assessed in light of the interests of the speedy trial rule it is designed to protect. These interests include the prevention of oppressive pretrial incarceration, minimizing the anxiety and concern of the accused, and limiting the possibility that

the defense will be impaired. The Court noted that the first two interests were legitimate claims by Mr. Iniguez and outweighed the third claim, which was unsupported. Given that scenario, the Court found that an eight month delay is presumptively prejudicial.

This decision is already having impact in Pierce County. In a couple of recent cases, the Court has denied continuances based on the attorney's vacations. Thus, it is incumbent on attorneys to manage their vacation schedule or find that the constitution will prevent a time away from work.

End

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