IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28574-0-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
BRANDON JAMES SARGENT,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Kulik, C.J. — Brandon James Sargent appeals his convictions for second degree escape and third degree escape. The sole issue is whether a speedy trial violation occurred when the trial did not take place within 120 days following the prosecuting attorney's receipt of the detainer resolution request. Because Mr. Sargent did not send his request to the superior court as required by statute, we affirm the trial court's denial of his motion to dismiss and affirm his convictions.

FACTS

On November 18, 2008, Mr. Sargent was charged in Benton County with second degree escape and third degree escape as a result of his failures to report to work crew.

The court also entered an order for an arrest warrant and $5,000 bail. The facts were stipulated for bench trial purposes.

On April 19, 2007, Mr. Sargent failed to report to work crew imposed as part of his sentence for felony second degree possession of stolen property. Mr. Sargent failed to comply with a community corrections officer's order to turn himself in to the Benton County Jail.

On September 12, 2008, Mr. Sargent was completing Benton County Jail work crew sentences for multiple gross misdemeanor and misdemeanor cases. Mr. Sargent had been warned repeatedly about unexcused absences, but he again failed to show up for work crew. He was ordered to turn himself in to the Benton County Jail on September 12, but failed to comply. Mr. Sargent was later charged in King County with new felonies that occurred on October 18-19, 2008.

RCW 9.98.010. The issue in this appeal centers on the application of RCW 9.98.010, which provides in pertinent part:

> (1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried . . . information . . . against the prisoner, *he shall be brought to trial within one hundred twenty days after he shall have caused to be delivered to the prosecuting attorney and the superior court of the county in which the . . . information . . . is pending written notice of the place of his imprisonment and his request for a final disposition to be made of the . . . information* . . . PROVIDED, That for good cause shown in open court, the

> prisoner or his counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. *The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner*, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board relating to the prisoner.
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> (2) The written notice and request for final disposition referred to in subsection (1) hereof *shall be given or sent by the prisoner to the superintendent having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by certified mail, return receipt requested.*

(Emphasis added.) If the defendant is not brought to trial on charges within the time frame mandated by RCW 9.98.010, no court has jurisdiction and the court must dismiss the untried charges with prejudice. RCW 9.98.020.

Detainer Resolution Request. On April 24, 2009, the Benton County Prosecutor's Office received from Mr. Sargent a document with his signature entitled "Detainer Resolution Request" in which he sought "to resolve the detainer placement against him" for the second degree escape charge and $5,000 bail. Clerk's Papers (CP) at 10. The document further stated:

> The defendant wishes to resolve this detainer by canceling it in view of his incarceration at Coyote Ridge Corrections Center in Connell, Washington. A certificate of inmate status completed by the Coyote Ridge Corrections Center Records Manager II is attached.

CP at 10. In fact, no certificate of inmate status was attached. Mr. Sargent also did not send the detainer resolution request to the Benton County Superior Court Clerk—he only mailed it to the prosecutor's office.

Mr. Sargent was transported from Coyote Ridge to Benton County on August 29, 2009—127 days after the prosecutor received his detainer resolution request on April 24. Mr. Sargent made a preliminary appearance on August 31. He was arraigned on September 3.

On October 15, Mr. Sargent moved to dismiss the charges based upon a claimed 120-day speedy trial violation under RCW 9.98.010. Mr. Sargent argued that Department of Corrections (DOC) officials at Coyote Ridge gave him detainer resolution request and inmate status forms, which he claimed to have personally filled out and mailed to the Benton County Prosecutor's Office. Mr. Sargent asserted that the DOC neglected its duty or sabotaged his efforts by not sending the inmate status certificate to the prosecutor. Mr. Sargent further argued that his failure to also file the documents with the Benton County Superior Court Clerk, as required by statute, was not fatal to his speedy trial claim because defense counsel had been advised by the clerk's office that standard procedure is to merely forward the documents to the prosecutor. Finally, Mr. Sargent argued the prison superintendant neglected a nondelegable statutory duty to complete and mail the

certificate of inmate status to the prosecutor.

The State contended that Mr. Sargent failed to comply with RCW 9.98.010 by not delivering his request to the superior court clerk, not requesting a final disposition of the information, and not including a certificate of inmate status from the prison superintendant. The State also argued that Mr. Sargent failed to provide evidence of the certificate of inmate status he claimed to have mailed to the prosecutor. The court denied the motion to dismiss.

The stipulated facts trial was held on October 26, 2009. Mr. Sargent again asserted the speedy trial issue by arguing substantial compliance with RCW 9.98.010, even though the documents had not been sent to the county clerk.

The court convicted Mr. Sargent as charged. Mr. Sargent appeals.

RAP 9.11 Motion. Mr. Sargent filed his opening brief on April 6, 2010. The State filed its brief on June 7. On July 15, Mr. Sargent filed a RAP 9.11 motion to take additional evidence on review in the form of two offender kites[1] that he had submitted to the Coyote Ridge Corrections Center in April 2009. The State opposed Mr. Sargent's motion.

Mr. Sargent obtained the offender kites in a public records request he submitted on

[1] Kites are DOC forms given to inmates to communicate with prison staff, attorneys, and others. *State v. Puapuaga*, 164 Wn.2d 515, 518 n.2, 192 P.3d 360 (2008).

June 10, 2010. Mr. Sargent's first kite was submitted to "CRCC Records" on April 9, 2009. His request stated, "I need these detainer resolutions prosessed [sic] and sent out." The response stated, "Records does not send these out it is your responsibility to do this." Def.'s Ex. A.

Mr. Sargent's second kite, dated April 10, was submitted to the records center. His request stated, "I need a certificate of inmate status to attach to some detainer resolution forms. The forms say it must be done by you." The response stated, "Do not address staff by first names." Def.'s Ex. A.

On September 10, a commissioner of this court granted Mr. Sargent's motion and remanded the matter to the superior court for determination whether the documents are authentic and, if so, for the court to admit them. The offender kites have been designated and transmitted to this court for consideration on appeal.

ANALYSIS

In *State v. Morris*, 126 Wn.2d 306, 310, 892 P.2d 734 (1995), the court explained that RCW 9.98.010(1) and (2) set up a two-stage process. First, the prisoner makes a request for speedy and final disposition of untried charges, and this request "'shall be given or sent by the prisoner to the superintendent having custody of him.'" *Morris*, 126 Wn.2d at 310 (quoting RCW 9.98.010(2)). Second, the superintendent forwards the

request, together with the certificate of inmate status, to the appropriate prosecuting attorney and superior court. *Morris*, 126 Wn.2d at 310; *see also In re Pers. Restraint of Myers*, 20 Wn. App. 200, 205, 579 P.2d 1006 (1978) (compliance with the statute is mandatory in order to claim benefit of the 120-day time period). Actual receipt by the prosecuting attorney and superior court of the county in which the information is pending commences the 120-day period imposed by RCW 9.98.010(1). *Morris*, 126 Wn.2d at 313.

Here, Mr. Sargent failed to comply with the statute in multiple ways. First, his detainer resolution request does not request final disposition of the information as contemplated by RCW 9.98.010(1). Instead, his retainer request refers only to the cause number, escape charge, and bail amount, and then requests that the detainer be canceled in view of his incarceration at Coyote Ridge. Second, his request was not accompanied by the superintendent's certificate, which is mandatory under RCW 9.98.010(1). Third, Mr. Sargent maintains that he mailed a certificate to the prosecutor, but the prosecutor did not receive it and there is no evidence in the record that the certificate exists. Fourth, Mr. Sargent admits that he did not send his detainer resolution request to the superior court clerk. This defeats his substantial compliance argument when the statute plainly requires that a detainer request be sent to "the prosecuting attorney *and* the superior court of the

county in which the . . . information . . . is pending." RCW 9.98.010(1) (emphasis added).

Mr. Sargent blames the DOC and, in particular, the prison superintendent for the deficiencies in his detainer resolution request. But he provides no documentation that he followed the threshold requirement of RCW 9.98.010(2) requiring him to give or send his written notice and request for final disposition to the superintendent having custody of him. This act would have triggered the superintendent's obligation to promptly forward the detainer resolution request with the certificate to both the prosecuting attorney and superior court.

Defense counsel admitted that Mr. Sargent said that he had read the statute. But the kites admitted into evidence under RAP 9.11 provide no indication that Mr. Sargent even attempted to give or send his detainer resolution request to the superintendent. The records department's response to Mr. Sargent's kite request for a certificate of inmate status, while not artfully written, is consistent with the statutory requirement that Mr. Sargent process his request through the superintendent. The record here fails to establish that Mr. Sargent initiated the process required to make a detainer resolution request.

Mr. Sargent relies on *United States v. Reed*, 910 F.2d 621 (9th Cir. 1990). In *Reed*, the Ninth Circuit dismissed a federal indictment after determining that the prisoner

"clearly attempted" to request final disposition of the indictment, notwithstanding the fact that he incorrectly filled out the necessary forms. *Id.* at 625-26. The prisoner's error was attributable to erroneous instructions of a custodial official. *Id.* at 623. Unlike *Reed*, here, Mr. Sargent did not request final disposition of his case in the document he sent solely to the prosecutor without following proper channels through the superintendent. He makes no showing that any actions of prison officials warrant a remedy under RCW 9.98.010.

We affirm the trial court's denial of Mr. Sargent's motion to dismiss and affirm his convictions.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, C.J.

WE CONCUR:

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Korsmo, J. Siddoway, J.