IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, ex rel. WILLIAM G. MONTGOMERY, Maricopa County Attorney, Petitioner, v. THE HONORABLE MYRA HARRIS, Commissioner of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, Respondent Commissioner, JOSEPH WILLIAM CHARLES, Real Party in Interest.	No. 1 CA-SA 12-0201 DEPARTMENT A Maricopa County Superior Court No. LC2009-051884-001 DT Estrella Mountain (Buckeye Precinct) Justice Court No. TR2009-051884 **DECISION ORDER**

The State seeks special action review of the superior court's order reversing Joseph William Charles's ("Defendant") DUI convictions in the Estrella Mountain Justice Court. We accept jurisdiction and grant relief.

Defendant was charged with three DUI offenses on November 23, 2009. He was released from custody and ordered to appear at an arraignment in the justice court on December 30, 2009.

On December 23, 2009, defense counsel ("Counsel") faxed and mailed to the justice court a "NOTICE OF APPEARANCE AND PLEA OF

NOT GUILTY/NOT RESPONSIBLE AT ARRAIGNMENT[.]" The notice asked the court to set a pretrial hearing or trial "and advise the undersigned accordingly." That same day, the justice court issued an order setting a pretrial conference for January 21, 2010; the court noted on the order that it was "mailed to atty[.]"

Neither Defendant nor Counsel appeared at the pretrial conference; the court issued a warrant for Defendant's arrest. Defendant was arrested on the warrant on December 9, 2010. Counsel thereafter moved to dismiss the charges, arguing he and his client received no notice of the pretrial conference or the warrant, and seeking dismissal on speedy trial grounds. The justice court denied the motion, as well as a subsequent motion for reconsideration.

After a trial to the court, Defendant was convicted of the three charged offenses. He appealed to the superior court, contending the justice court failed to provide proper notifications and the State did not exercise due diligence by attempting to advise him of the warrant. The State responded that the justice court "took all necessary steps" to advise Defendant of the proceedings and that the time he spent on warrant status was excludable under Rule 8.4, Arizona Rules of Criminal Procedure ("Rule").

The superior court ruled that the justice court abused its

discretion in denying the motion to dismiss because "the evidence indicates Defendant did not receive notice of either the 2010 pretrial conference or the arrest warrant although defense counsel's contact information was readily available," and the "State failed to show due diligence" by attempting to contact Defendant. The State's motion for rehearing was denied.

Because the State lacks an adequate remedy by way of appeal, *Guthrie v. Jones*, 202 Ariz. 273, 274, ¶ 4, 43 P.3d 601, 602 (App. 2002), and its petition presents pure questions of law, we accept special action jurisdiction.

An arraignment need not be held in justice court if:

> (1) The defendant's attorney has appeared and entered a plea of not guilty.
>
> (2) The court permits a defendant to enter a plea of not guilty by mail and receive a court date by mail. In those circumstances, delivery of the notice is presumed if deposited in the U.S. mail, addressed to the defendant at the defendant's last known address and the notice is not returned.

Rule 14.1(c).

Counsel faxed and mailed the not guilty plea. The justice court was therefore authorized to advise counsel of future hearings by mail, and "delivery of the notice is presumed" if it is properly addressed and mailed.

Although Counsel avowed he did not receive the order setting the pretrial conference, he did not dispute that the

justice court mailed it to him. The order states it was "mailed to atty[,]" and Counsel conceded below that mailing notice to him was "the proper procedure." He further agreed that the notation "mailed to atty" meant the notice was mailed to counsel of record.

In the justice court, Counsel focused on the failure to notify him of the warrant, stating:

> I'm not arguing that the warrant when it was issued was improper on the 21st. All I'm saying . . . is merely that the Court had some ongoing duty to the litigants to say okay, we issued a warrant, do what you want to do, you're an attorney, you should know what to do.

Counsel conceded, though, that no "specific rule" required the court to provide such notification. And Defendant has cited no authority for the proposition that the court or the State was obliged to follow up to ensure he was aware of the warrant.

The superior court stated that the "sole question" before it was whether the "State (and court) exceeded mandatory time limits for prosecution." The actual issue, though, was whether the justice court abused its discretion by denying the motion to dismiss.

Not all speedy trial violations mandate dismissal. The "right to a speedy trial is not fundamental, but 'a procedural right, not a shield by which the accused may avoid trial and possible punishment by taking advantage of loopholes in the law

or arithmetic errors.'" *State v. Spreitz*, 190 Ariz. 129, 139, 945 P.2d 1260, 1270 (1997). A trial court's ruling on a speedy trial issue should be upheld unless the defendant establishes the court abused its discretion *and* prejudice resulted. *Id.* at 136, 945 P.2d at 1267.

Whether a court has abused its discretion in refusing to dismiss on speedy trial grounds "depends on the facts of each case." *Id.* "A court abuses its discretion when it commits an error of law in reaching a discretionary conclusion, it reaches a conclusion without considering the evidence, it commits some other substantial error of law, or the record fails to provide substantial evidence to support the trial court's finding." *Romer-Pollis v. Ada*, 223 Ariz. 300, 302-03, ¶ 12, 222 P.3d 916, 918-19 (App. 2009) (internal quotation marks omitted). "A difference in judicial opinion is not synonymous with 'abuse of discretion.'" *Quigley v. City Court*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982).

We find no error of law by the justice court. Nor can we say its rationale for denying the motion to dismiss is clearly untenable or a denial of justice. *See State v. Gomez*, 211 Ariz. 111, 114, ¶ 12, 118 P.3d 626, 629 (App. 2005). In denying the motion, the court wrote: "Went To Warrant And Unk. Why Def. And Atty Dropped The Ball And Didn't Recontact Court."

Counsel erroneously suggested below that defense attorneys have no duty to notify the court of "expiring time limits." In fact, Rule 8.1(d) *requires* defense counsel to "advise the court of the impending expiration of time limits in the defendant's case." Failure to comply "may result in sanctions and should be considered by the court in determining whether to dismiss an action with prejudice pursuant to Rule 8.6." "[O]nce a defendant has let a Rule 8 speedy trial time limit pass without objection, he cannot later claim a violation that requires reversal." *Spreitz*, 190 Ariz. at 138, 945 P.2d at 1269.

Finally, Defendant has not established the requisite prejudice. In *Spreitz*, the court held that although "five years in custody may have increased defendant's anxiety quotient," the delay "did not prejudice his ability to defend against the state's claims." *Id.* at 140, 945 P.2d at 1271. In the case at bar, Defendant has not claimed, let alone demonstrated, that any delay in the proceedings prejudiced his ability to defend. *See also* Ariz. Const. art. 6, § 27 ("No cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done.").

The record does not support the conclusion that the justice court abused its discretion in denying the motion to dismiss. We therefore vacate the August 7, 2012 order of the superior

court and reinstate the convictions and sentences imposed by the justice court.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
ANN A. SCOTT TIMMER, Presiding Judge

/s/
JOHN C. GEMMILL, Judge