

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 27228-1-III**

**Respondent,**

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**v.**

**JASON S. STANGE,**

**UNPUBLISHED OPINION**

**Appellant.**

Kulik, J. — On June 3, 2008, Jason Stange was convicted of one count of possession of an unlawful firearm and sentenced to one month of confinement to be served concurrently with his federal sentence. Mr. Stange appeals his conviction alleging that he received ineffective assistance of counsel due to trial counsel's failure to timely file a motion to dismiss for violation of Mr. Stange's speedy trial rights.

The burden is on the appellant to set forth facts sufficient for review. The factual record in this case is at best unclear. Allegations and denials in briefs do not provide a basis for appellate review. Because the record contains insufficient facts for this court to review the alleged speedy trial violation, we reject the appeal and affirm the conviction. We also conclude that Mr. Stange's statement of additional grounds for review is

unpersuasive.

## FACTS

On May 29, 2008, Mr. Stange's counsel filed a motion to dismiss for speedy trial violations. The hearing on the motion was scheduled, continued, and then apparently never heard. On the day of trial, the court granted Mr. Stange's request that he represent himself. The court refused to hear Mr. Stange's motion to dismiss as untimely.

Mr. Stange alleged that in the fall of 2006, his counsel on both his state and federal charges contacted the State, informed it of Mr. Stange's placement in a federal correctional institution in Oregon, and inquired about resolution of the state charges. According to Mr. Stange, the State replied that it was aware of this information but was not interested in resolving the matter.

The State alleged that: (1) it had never been contacted by Mr. Stange or his state or federal counsel regarding the matter; (2) it did not have knowledge, or receive notice, of Mr. Stange's placement in a federal correctional institution until December 3, 2007; and (3) it could not, and did not, lodge a detainer for purposes of chapter 9.100 RCW, the Interstate Agreement on Detainers (IAD) regarding the firearm charge until after it received Mr. Stange's request for disposition.

This court notes that, as part of Mr. Stange's IAD request, his certificate of inmate

status from the U.S. Department of Justice and Federal Bureau of Prisons indicated a detainer on file against Mr. Stange regarding the Washington charges. However, Mr. Stange also stated at his sentencing that he found out about the Washington charges against him from the Veteran's Administration, and that he found out about the IAD from an inmate in Oregon.

The record does not clearly reflect when the trial court first notified Mr. Stange of his trial date. The first appearance of the trial date, June 2, 2008, occurs on a trial management joint report filed on May 22, 2008, stating that the parties had conferred on April 7, 2008, and were prepared to proceed to trial.

A jury convicted Mr. Stange of possession of an unlawful firearm in violation of RCW 9.41.190. The court sentenced Mr. Stange to one month of confinement to run concurrent with a 117-month federal sentence he was then serving. This appeal followed.

#### ANALYSIS

No record of the trial court's determination on the speedy trial violation exists. Therefore, this court declines to review Mr. Stange's statutory, rule-based, and constitutional speedy trial issues. And unlike *State v. Contreras*, 92 Wn. App. 307, 312-13, 966 P.2d 915 (1998), the record is not adequately developed nor are there critical facts in the record to permit review.

Article III(c) of the IAD requires prison authorities of the sending state, after a detainer is filed by the receiving state, to inform an inmate of the contents and source of a detainer and the defendant's rights under the IAD. Thus, this court could infer that either (1) the authorities at the federal correctional institution failed to perform their duties under the IAD, or (2) the State actually did not lodge a detainer against Mr. Stange until receiving his disposition request.

Even if sufficient facts were produced to permit review, the record indicates Mr. Stange suffered no oppressive pretrial incarceration, since he was already incarcerated for his federal conviction. Similarly, Mr. Stange fails to allege any anxiety and concern on his part, and the record fails to reflect any. And, neither Mr. Stange nor the record demonstrate any impairment of his defense at trial. *See State v. Iniguez*, No. 81750-2, 2009 WL 3210400 (Wash. Oct. 8, 2009); *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992).

In his statement of additional grounds for review, Mr. Stange also contends: (1) he received ineffective assistance of counsel due to trial counsel's failure to subpoena more witnesses and consider more defenses; (2) the trial court violated his due process rights by giving an incorrect jury instruction; and (3) he received ineffective assistance of appellate counsel due to appellate counsel's refusal to raise these additional issues in her

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brief. Mr. Stange's assertions of error are unpersuasive.

Accordingly, we reject Mr. Stange's appeal and affirm the conviction. To the extent that Mr. Stange's arguments rely on facts outside the record, a personal restraint petition is the appropriate procedure to seek review. *State v. Norman*, 61 Wn. App. 16, 27-28, 808 P.2d 1159 (1991).

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, J.

WE CONCUR:

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Schultheis, C.J.

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Brown, J.