IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27286-9-III**
	)	
Appellant,	)	
	)	
v.	)	**Division Three**
	)	
ROBERT TODD WALKER,	)	
	)	
Respondent.	)	**UNPUBLISHED OPINION**

Korsmo, J. — After a jury convicted him of manufacturing methamphetamine, the trial court granted Robert Walker's *pro se* motion to dismiss the charge because of an alleged CrR 3.3 violation. Because there was no violation of the time for trial rule, we reverse the dismissal order and remand the case for sentencing.

FACTS

Mr. Walker was arraigned on June 18, 2004 on a Benton County charge of manufacturing a controlled substance. He later failed to appear for court and a warrant was issued for his arrest. He was arrested and next appeared before the court on August

8, 2005. He remained in custody. At a scheduling hearing on August 11, the court set a trial date of September 26, 2005.

At a September 15 pretrial hearing, the trial date was reset to October 3, 2005. The following week, the court continued the trial until October 10 upon the agreement of both counsel. Defense counsel told the court: "My client's locked up, but I have his OK to do this without that and waive his being brought down." Report of Proceedings (Sept. 22, 2005) at 5. Despite that assurance, it later developed that Mr. Walker apparently did not want the trial continued. A September 29 pretrial hearing was continued until October 5 in order to hear a motion from Mr. Walker. The motion was again continued and ultimately was heard October 13. Mr. Walker argued that his incarceration in adjoining Franklin County on other charges should have been counted against his time for trial in the current Benton County matter. The trial court denied the motion to dismiss. The court also reset the trial date to October 24. It previously had struck the October 10 trial setting in order to permit the motion to be heard.

The following day Mr. Walker sent the court a letter again arguing that the time spent in the Franklin County jail should be applied to his case. The court on October 20 denied the motion to dismiss based on that renewed argument. It also denied an oral motion to dismiss on the basis that he had already served 77 days[1] without a trial. The

[1] This appears to be based on an earlier incarceration date rather than on the date

trial court ruled Mr. Walker had waived that objection by not moving for a new trial date when the court on September 22 had scheduled a date beyond the initial 60-day period.

The court did release Mr. Walker from jail and Mr. Walker then waived speedy trial through December 5, 2005, while preserving his previous objections. After additional continuances, Mr. Walker again failed to appear in 2006. He was arrested the following year and tried on July 30, 2007. At the same time he filed a challenge to the timeliness of his trial. He raised several theories, including the alleged violation by the October 2005 continuances. The jury convicted Mr. Walker of manufacturing methamphetamine.

Sentencing was scheduled for December and later continued on several occasions in order to entertain renewed *pro se* motions to dismiss the charge due to the timeliness of the trial. Counsel told the court on June 3, 2008, that he had not had his client's permission to waive the 60-day time for trial period and that he had inadvertently agreed to a trial date beyond that time period. Contrary to the 2005 ruling, the 2008 trial judge found that Mr. Walker had timely made an objection because he acted as soon as he was reasonably aware of the date outside of the time period. The court ordered the charge dismissed.

The State timely appealed to this court.

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of the appearance on the record. August 8 through October 20 is 73 days.

ANALYSIS

The only challenge to the timeliness of this trial involves the October 2005 time period.[2] The parties agree that the 60th day from the August 8, 2005, reappearance would have been October 7, 2005. The parties disagree on whether there was a proper extension of the time for trial beyond that date.

This court reviews court rules *de novo* just like it does statutes. *State v. George*, 160 Wn.2d 727, 735, 158 P.3d 1169 (2007). Court rules that are clear on their face do not need interpretation. *City of Bellevue v. Hellenthal*, 144 Wn.2d 425, 431, 28 P.3d 744 (2001).

The "Time for Trial" provisions of CrR 3.3 were substantially rewritten effective September 1, 2003. Among the purposes of the massive rewrite were to prevent dismissal of charges for technical violations of the rule and permit trial courts leeway to reschedule cases within busy dockets. *See Time for Trial Final Report*.[3]

The State argues, *inter alia*, that there was no objection within 10 days of the September 22, 2005 decision to continue the trial to October 10. We agree. CrR

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[2] Mr. Walker's frequent failures to appear and subsequent arrests, as well as his one express waiver, worked to reset the elapsed time to zero and explain why the delays prior and subsequent to the disputed 2005 period are not in question. CrR 3.3(c)(2).

[3] The explanations for the changes are found in the recommendations section of the Time for Trial Task Force's Final Report. It is found at: http://www.courts.wa.gov/programs_orgs/pos_tft/index.cfm?fa=pos_tft.reportDisplay&fileName=overview (last visited Nov. 16, 2009).

3.3(d)(3) provides:

Objection to Trial Setting. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule *must*, within 10 days after the notice is mailed or otherwise given, *move that the court set a trial* within those time limits. *Such motion shall be promptly noted for hearing by the moving party* in accordance with local procedures. *A party who fails*, *for any reason*, *to make such a motion shall lose the right to object* that a trial commenced on such a date is not within the time limits prescribed by this rule.

(Emphasis added.)

While the language has changed some over the years, the basic requirement that a party *move* the court for a correct trial date if it believes the scheduled one is in violation of CrR 3.3 has been in place since 1978. *See Rules of Court*, 90 Wn.2d at 1151-1152 (1978). It is undisputed that Mr. Walker never sought to have a correct trial date. By the express terms of the rule, any objection he had to the continuance has been waived.

In response, Mr. Walker claims that he had no personal knowledge of the change in date from October 3 to October 10 until he actually appeared in court on October 15. There are several problems with this argument. First, the rule does not have an exception for lack of knowledge. The failure "for any reason" to move for a new date is a waiver. Second, notice to counsel is notice to the client. *Haller v. Wallis*, 89 Wn.2d 539, 547, 573 P.2d 1302 (1978). Third, once October 3 came and went without a trial, Mr. Walker was certainly on notice that his trial date had changed. He then had a duty, if he was

concerned about a trial before October 7, to ask for one under the rule before the time limit expired. *State v. Austin*, 59 Wn. App. 186, 200, 796 P.2d 746 (1990). For all of these reasons, the claim that the October trial continuances violated the time for trial deadlines was waived.

Mr. Walker alternatively argues that if he has waived his objection, the trial was still untimely by the terms of CrR 3.3(d)(4), which states in part that when a defendant loses the right to object to a trial date,

> that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

He argues this provision required him to be tried by October 10.

CrR 3.3(b)(5) provides that whenever a time period is excluded by section (e), "the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period." Subsection (e), in turn, describes nine events that result in excluded periods of time. Continuances granted by the court are an excluded period. CrR 3.3(e)(3); CrR 3.3(f).

The effect of the continuance to October 10, and subsequently to October 24, was to exclude those periods of time from the 60-day limits and bring into play the buffer period of subsection (b)(5). This provision, designed to assist the management of busy

calendars, prevents courts from having to move previously scheduled cases in order to hear a case that was just continued to the date. Effectively, the first continuance to October 10 required a trial by November 9. Well prior to that time, Mr. Walker waived his rights and continued the case into December.

The time for trial rule was not violated because the case was not tried by October 10.

In light of our ruling on the waiver issue, we do not address the State's alternative arguments that (1) the defense request for the October 10 trial date was invited error, (2) the request also constituted a waiver pursuant to CrR 3.3(f)(2) ("The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay."),[4] and (3) that the trial court erred in considering a *pro se* motion from a represented defendant.[5] We also express no opinion on the timeliness of a 2008 reconsideration of a 2005 ruling.

Reversed and remanded for sentencing.

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[4] Counsel can waive the time for trial provisions without the permission of the client and can even do so over the objections of the client. *State v. Bobenhouse*, 143 Wn. App. 315, 329, 177 P.3d 209 (2008), *aff'd*, 166 Wn.2d 881, 214 P.3d 907 (2009); *State v. Campbell*, 103 Wn.2d 1, 14, 691 P.2d 929 (1984) (over objection).

[5] The State argues that the trial court could not have considered the *pro se* arguments because there is no right to hybrid representation. *E.g.*, *State v. Hightower*, 36 Wn. App. 536, 540-543, 676 P.2d 1016, *review denied*, 101 Wn.2d 1013 (1984). The cited authority shows why a trial court need not consider a *pro se* argument, but it does not appear to prohibit a trial court from doing so.

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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Korsmo, J.

WE CONCUR:

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Kulik, A.C.J.

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Sweeney, J.