IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27427-6-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
ARTHUR A. NELSON,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Brown, J. ─ Arthur A. Nelson appeals his resentencing on remand for 19 Benton County property crimes, contending the six-year delay in resentencing violated his constitutional right to a speedy sentencing. Mr. Nelson does not show the delay was purposeful or oppressive and does not explain what effective relief is available to him. Thus, we conclude the case is moot. Accordingly, we dismiss his appeal.

FACTS

In Mr. Nelson's prior appeal of 21 Benton County convictions, we reversed two burglary convictions and remanded for resentencing. *State v. Nelson*, 108 Wn. App. 918, 33 P.3d 419 (2001), *reviewed denied*, 145 Wn.2d 1026 (2002). Our mandate

issued on February 26, 2002. Mr. Nelson served 60 months, his original full concurrent sentence, minus good time, and was released. In April 2008, after his release, the prosecutor noted the resentencing for hearing. The resentencing hearing was held in the Benton County Superior Court on July 15, 2008. The sentencing court corrected the offender score to reflect the reversed convictions and re-imposed the 60-month concurrent sentence, with credit for time served. Mr. Nelson appealed.

ANALYSIS

Mr. Nelson contends the six-year sentencing delay violated his constitutional speedy sentencing right. The Sixth Amendment guarantees the right to a speedy trial. U.S. Const. amend. VI. Sentencing is part of the trial for purposes of the Sixth Amendment speedy trial guarantee. *State v. Johnson*, 100 Wn.2d 607, 674 P.2d 145 (1983), *overruled on other grounds by State v. Bergeron*, 105 Wn.2d 1, 711 P.2d 1000 (1985). Speedy trial principles apply to resentencing after a successful appeal. *See State v. Modest*, 106 Wn. App. 660, 24 P.3d 1116 (2001). No specific rule governs the timeliness of a resentencing hearing. But if a sentencing delay is "purposeful or oppressive," it violates the right. *Pollard v. United States*, 352 U.S. 354, 361, 77 S. Ct. 481, 1 L. Ed. 2d 393 (1957). To decide if the delay was purposeful or oppressive, the court should balance the length of the delay, the reason for the delay, the defendant's assertion of his right to a speedy sentence, and the extent of prejudice to the defendant. *State v. Rupe*, 108 Wn.2d 734, 742, 743 P.2d 210 (1987).

Mr. Nelson merely argues a delay of over six years is "presumptively prejudicial." While a delay of sufficient length may be "presumptively prejudicial," it alone cannot carry a claim of speedy sentencing violation. *See Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). Prejudice must be established even if a resentencing delay is excessive. *Modest*, 106 Wn. App. at 665. No prejudice is shown here.

Mr. Nelson relies on *State v. Ellis*, where a defendant was sentenced after being released on his own recognizance for two years. *State v. Ellis,* 76 Wn. App. 391, 395, 884 P.2d 1360 (1994). Our case is distinguishable because Mr. Nelson has already served his sentence. Mr. Nelson does not show he sought an earlier resentencing. Mr. Nelson provides no evidence of actual prejudice. Mr. Nelson points to no sentencing error. Mr. Nelson effectively served his sentence before this resentencing, and he does not suggest any remedy. Thus, we can provide no effective relief. Therefore, we conclude this matter is moot. *See State v. Ross*, 152 Wn.2d 220, 228, 95 P.3d 1225 (case is moot when review court can provide no effective relief), *aff'd,* 152 Wn.2d 220, 95 P.3d 1225 (2004). Moreover, no further authority in this area is necessary; no further guidance is required for the sentencing court; and Mr. Nelson is not faced with another sentencing. *Id*.

Appeal dismissed as moot.

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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Brown, J.

WE CONCUR:

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Kulik, A.C.J.

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Sweeney, J.