

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

**STATE OF WASHINGTON,**

**No. 27628-7-III**

**Respondent,**

**Division Three**

**v.**

**MILES BARTON NICHOLS,**

**UNPUBLISHED OPINION**

**Appellant.**

Sweeney, J. — The defendant here appeals a superior court order that denied his motion to dismiss the charge against him for violation of his right to a speedy trial. The defendant was detained in jail; so the State was required to bring him to trial within 60 days of his arraignment, except for excluded periods of time. Continuances that benefit him are excluded. CrR 3.3(e)(3), (f)(2). At least two of the continuances here were for the defendant's benefit. And, when they are considered, his right to a speedy trial was not violated. We, therefore, affirm his conviction.

**FACTS**

The State charged Miles Nichols with second degree theft for renting equipment

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from West Richland Rental with no intention of returning it. The trial court arraigned Mr. Nichols on this charge on June 4, 2008. It ordered that he be detained in jail and set his bail at \$5,000. CrR 3.3(b)(1)(i) requires that he be tried within 60 days of his arraignment. And the court set trial for June 30.

The court granted agreed continuances on June 18, July 9, and July 28. On July 28, it reset the date for trial to July 30 so the parties could pick a jury. On July 30, Mr. Nichols agreed to continue his trial date to August 25.

On August 13, the court learned that Mr. Nichols's original attorney took a new job in a different county and would no longer be representing Mr. Nichols. So the trial court, on its own motion, continued the trial to September 2 to appoint new defense counsel. Mr. Nichols objected to the continuance. Newly appointed counsel then asked for additional time to prepare. And, on August 20, the court reset the trial date for September 8.

On August 27, defense counsel again moved to continue the trial for additional time to prepare the case. Mr. Nichols moved, but not in writing and without noting his motion for hearing, to dismiss the charge for violation of his right to a speedy trial. The trial court noted Mr. Nichols's objection and continued the trial to September 29.

On September 17, the State requested a continuance because a witness was

unavailable for a suppression hearing. The court granted the request and set trial for October 13 over Mr. Nichols's objection, again not in writing nor with a request for a hearing. The court later continued the trial to October 20, because the prosecutor was unavailable. And, on October 8, defense counsel requested and Mr. Nichols agreed to a one-week continuance which the trial court granted.

The trial court ultimately held a stipulated facts trial on October 27 and found Mr. Nichols guilty of second degree theft.

#### DISCUSSION

Mr. Nichols contends that his right to a speedy trial was violated. He argues that his time for trial expired on October 24 (60 days from his waiver's commencement date of August 25). His challenge raises a question of law that we will review de novo. *State v. Kenyon*, 167 Wn.2d 130, 135, 216 P.3d 1024 (2009).

Mr. Nichols was held in jail so he had the right to be tried, all things being equal, within 60 days of his arraignment date. CrR 3.3(b)(1)(i). But that 60-day period will be reset if the defendant files a signed, written waiver of his speedy trial right. CrR 3.3(c)(2)(i); *State v. Carney*, 129 Wn. App. 742, 748, 119 P.3d 922 (2005). And a new 60-day period begins on the date specified in the waiver. CrR 3.3(c)(2)(i); *Carney*, 129 Wn. App. at 748.

Mr. Nichols was detained in jail. His original 60-day speedy trial period was reset based on his written and signed waiver filed on July 30. The new 60-day speedy trial period began on August 25, the date specified in his waiver. Clerk's Papers at 41. Based on an August 25 commencement date, the 60-day limit would expire on October 24.

The trial court, however, also granted several continuances. Sometime before August 13, Mr. Nichols's original lawyer got a new job in a different town. So, on August 13, the court appointed new counsel and continued the trial date eight days on its own motion so Mr. Nichols's new counsel could have time to prepare for a suppression hearing and trial. That continuance extended the trial date to September 2. Mr. Nichols objected to the continuance. But a motion "on behalf of any party waives that party's objection to the requested delay." CrR 3.3(f)(2). The trial court's motion was certainly made on Mr. Nichols's behalf because, at that point, he was unrepresented. And its decision to continue the trial was proper. *Id.* (continuance proper when no prejudice and required in administration of justice); *State v. Campbell*, 103 Wn.2d 1, 15, 691 P.2d 929 (1984) (continuance may be granted over defendant's objection to ensure effective assistance of counsel); *State v. Roth*, 75 Wn. App. 808, 824, 881 P.2d 268 (1994) (trial court has broad discretion to continue trial to preserve defendant's right to counsel).

Continuances are excluded periods when computing the time for a speedy trial.

CrR 3.3(e)(3). Mr. Nichols’s time for speedy trial did not expire until November 1 when the trial court’s eight-day continuance on August 13 is taken into account. And it expired much later than November 1 if we take into account the five subsequent continuances, two of which Mr. Nichols objected to, albeit not in the form of a motion noted for hearing. CrR 3.3(d)(3) (“A party who objects to the date set upon the ground that it is not within [speedy trial] limits . . . must . . . move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party . . . . A party who fails, for any reason, to make such a motion shall lose the right to object that a trial . . . is not within [speedy trial] limits.”). Mr. Nichols’s October 27 trial date, then, was timely; his right to a speedy trial was not violated.

We affirm Mr. Nichols’s conviction.

A majority of the panel has determined that 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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Sweeney, J.

WE CONCUR:

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Brown, A.C.J.

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Korsmo, J.