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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON, Respondent, v. BRITTANY RAYANN J. ADAMS, Appellant.	)	No. 41140-1-III PUBLISHED OPINION

STAAB, C.J. — Brittany Adams appeals her convictions for forgery and first degree theft, arguing that the unavailability of a public defender to represent her does not constitute good cause for continuing her trial date and excluding this time from the 90-day time-for-trial period. We agree.

We hold that on the record before us the systemic shortage of public defense attorneys, caused by recurring caseload limits, was not an unforeseen or unavoidable circumstance justifying a good cause continuance of Adams's trial. While individual unavailability of counsel in specific, unforeseen circumstances can justify a good cause continuance, a public defender office that systematically hits its caseload limits presents a foreseeable, institutional problem analogous to docket congestion or laboratory backlogs. Here, the record fails to demonstrate a true emergency. Because Adams's 90-day time-

for-trial period expired before an attorney could appear on her behalf and object to her trial date, the trial court abused its discretion in denying her motion to dismiss for violation of the time-for-trial rule.

We reverse and remand with instructions to dismiss with prejudice.

FACTS

Adams was charged in March 2023 with forgery and first degree theft. She was arraigned on May 9. The Franklin County Office of Public Defense (OPD) was provisionally appointed to represent Adams. She remained out of custody and her 90-day time-for-trial period expired on August 7. The court set a trial date of July 26.

On May 12, OPD filed a notice of unavailability, reporting all attorneys were at their caseload limits.

Adams appeared at an omnibus hearing on June 27 without an attorney. An administrator from OPD advised the court that Adams remained unrepresented and despite diligent efforts by OPD, no counsel was available due to caseload limits:

> [Court]: . . . What would you—where are we at on this matter?
>
> [OPD administrator]: Um, so we have been thoroughly looking for attorneys to supply to, um, pending matters. However, at the time we do not have a[n] attorney available.
>
> [Court]: Okay. And you've given forth all your diligent efforts?
>
> [OPD administrator]: Correct.
>
> [Court]: Okay. And all your attorneys have met their requirements right—as of right now?
>
> [OPD administrator]: Correct.

[Court]: Um, for ethical reasons they can't be assigned.

[OPD administrator]: Correct.

Clerk's Papers (CP) at 131-32. The court continued the omnibus and moved the trial to August 2 but did not discuss whether there was good cause for the continuance.

At an August 1 hearing (day 84), Adams appeared without an attorney. An administrator from OPD advised the court that the office was hiring two new contract attorneys within the next week and suggested a two-week continuance. The court asked for clarification and the State agreed that it was asking to continue the trial date. The court granted the motion and moved trial from August 2 to September 6, finding good cause:

> I'm gonna set the—the trial date on this at this point in time to September 6. . . . Uh, as well I'd make the record that, uh, the court is finding good cause to do this based on the fact that, uh, the county is experiencing, uh, an emergency crisis that has something—something different than not in the normal course of, uh, not being able to secure, uh, qualified counsel to represent indigent individuals. This is an individual that's been out of custody. And, uh, on all appearances this is the soonest the court can define that the OPD has done everything in its power to—to—to—to try to secure qualified counsel for this individual. Uh, however, this is being done for good cause by the court and therefore is certainly subject to review of whether or not that is, uh, somehow a violation of speed trial rights.

CP at 138.

Defense counsel from OPD filed a notice of appearance on August 9 and appeared with Adams at an August 15 hearing (day 98). At the hearing, the State asked to reset the pretrial and omnibus hearing to September 5 and reset trial to September 22. When the court inquired about the time-for-trial period, neither attorney was certain of the

commencement date. The prosecutor asked for the continuance nonetheless, indicating that "this is not the [S]tate's issue. This is the court's issue." CP at 144. The court disagreed with the prosecutor but continued the trial date to September 20 with the proviso that defense counsel could file a motion if he believed the new dates were outside the time-for-trial period.

Shortly thereafter, a hearing was set on defense counsel's motion to dismiss for violation of the time-for-trial rule. One day before the hearing, the court granted the prosecutor's ex parte motion to dismiss the charges against Adams without prejudice.

Approximately six months later, the State recharged Adams with the same crimes under a new cause number. Adams's defense counsel for the second case filed a motion to dismiss for violation of the time-for-trial period.

The trial court denied the motion. The court concluded that the trial continuance from July 26 to August 2 was for good cause.[1] Similarly, the court concluded that the trial continuance from August 2 to September 6 was also for good cause. In both cases, continuances were needed due to unforeseen or unavoidable circumstances under CrR 3.3(e)(8). Excluding the time periods for these good cause continuances along with

[1] In its conclusions of law on defense counsel's motion to dismiss, the court acknowledged that it had not mentioned "good cause" at the omnibus hearing on June 27, which continued the trial from July 26 to August 2, but nevertheless concluded that a good cause analysis was performed on June 27 and retroactively applied a good cause basis to that continuance. Since we conclude that good cause did not exist, we need not decide whether a trial court can retroactively apply good cause after the time-for-trial period has expired.

subsequent continuances after counsel appeared on Adams's behalf, the court concluded there was one day remaining in her time-for-trial period when the first case was dismissed.

A stipulated facts bench trial was held January 30, 2025. Adams was convicted and sentenced to two years of confinement, plus restitution of $548,305.49. Adams timely appeals.

ANALYSIS

Adams contends that the trial court erred by finding good cause for continuances based on a systemic shortage of public defense attorneys. The State argues that the unforeseen and unavoidable circumstances caused by an exodus of attorneys from the practice of criminal law was good cause. We agree with Adams.

"We review an alleged violation of the time for trial rule de novo. The decision to grant or deny a continuance rests [with]in the trial court's sound discretion and we will not disturb it on appeal unless there is a clear showing it is manifestly unreasonable." *State v. Denton*, 23 Wn. App. 2d 437, 449, 516 P.3d 422 (2022) (citation omitted). "A [trial] court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard." *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). The misapplication of the law is an abuse of discretion. *Denton*, 23 Wn. App. 2d at 450.

The trial court is responsible for ensuring that a criminal defendant is tried in accordance with the time-for-trial rule. CrR 3.3(a)(1). A defendant who is not held in custody shall be brought to trial within 90 days after the date of her arraignment. CrR 3.3(b)(2)(i), (c)(1). "A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice." CrR 3.3(h); *Denton*, 23 Wn. App. 2d at 449.

The rule provides that certain periods are excluded from the time-for-trial computation. Relevant to this case, a period of time resulting from "[u]navoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or the parties . . . shall be excluded in computing the time for trial." CrR 3.3(e)(8). This provision has been construed narrowly. In *State v. Mack*,[2] the Supreme Court interpreted a prior version of the rule with similar language and held that docket congestion does not constitute good cause to justify setting a trial date beyond the mandated period. Citing observations of the task force that promulgated the rule, the court noted that allowing congestion to excuse long delays would eliminate the incentive to remedy the problem. *Id*. at 793.

More recently, this court reaffirmed and extended these principles in *Denton*, finding that routine and expected backlogs at the state crime lab did not justify continuing the defendant's trial beyond the time-for-trial period. 23 Wn. App. 2d at 457-58. The

[2] 89 Wn.2d 788, 576 P.2d 44 (1978).

court drew a distinction between truly extraordinary and unforeseeable circumstances, such as the crush of work generated by the Green River murder investigation, and a chronic, predictable institutional problem that the State failed to remedy. *Denton*, 23 Wn. App. 2d at 454, 456. While not completely barring congestion as justification for delays beyond the time-for-trial period, the court noted that such an exception "has been based on a detailed showing of the nature of the congestion or backlog, the steps the prosecution has taken to get around the congestion or backlog, and a reasonable time frame within which the case can be brought to trial." *Id.* at 450.

In cases where the court has found unavoidable or unforeseen circumstances, the crisis has been "specific, unpredictable, and not self-created." *City of Bellevue v. Vigil*, 66 Wn. App. 891, 893, 833 P.2d 445 (1992). Examples include "unexpected illnesses of defendants, attorneys, and judges, as well as natural disasters and other events requiring evacuation or closing of the courthouse" whereas "[r]outine instances of court congestion would not be covered by this provision." *Denton*, 23 Wn. App. 2d at 456 n.8.

Washington courts have also recognized that the unavailability of a specific, individual attorney can, in appropriate circumstances, constitute "an unforeseen and unavoidable circumstance beyond the court's control." *State v. Brown*, 40 Wn. App. 91, 94-95, 697 P.2d 583 (1985) (prosecutor's unavailability due to trial in another case); *State v. Jones*, 117 Wn. App. 721, 730, 72 P.3d 1110 (2003) ("[u]navailability of counsel where counsel is in trial on another matter"). Likewise, medical emergencies of judicial

and court personnel, attorney illness, and the withdrawal of defense counsel for ethical reasons qualified as unforeseen or unavoidable circumstances under the rule. *See State v. Andrews*, 66 Wn. App. 804, 812-13, 832 P.2d 1373 (1992) (the judge's dental emergency); *State v. Shilling*, 77 Wn. App. 166, 171, 889 P.2d 948 (1995) ("medical emergency" within the jail facility); *State v. Smith*, 104 Wn. App. 244, 249, 15 P.3d 711 (2001) (defense counsel's illness); *State v. Berrysmith*, 87 Wn. App. 268, 280, 944 P.2d 397 (1997) (an attorney's ethical requirement to withdraw). Notably, these cases all involve specific, individual attorneys who became unavailable for discrete, identifiable reasons that were not foreseeable or self-created.

Although Washington courts have not yet addressed whether a shortage of public defense attorneys qualifies as an unavoidable and unforeseen circumstance under CrR 3.3(e)(8), this situation more closely resembles routine court congestion and limits on courtroom or judicial availability than it does emergencies such as medical issues affecting judicial and court personnel and attorney unavailability due to a conflicting trial. *Compare Smith*, 104 Wn. App. at 252; *Denton*, 23 Wn. App. 2d at 450 *with Andrews*, 66 Wn. App. at 813; *Smith*, 104 Wn. App. at 249; *Jones*, 117 Wn. App. at 730.

On appeal, the State contends COVID-19[3] caused the shortage of public defense attorneys and the shortage could not be resolved by funding or legislation alone because there simply were not enough people willing to practice criminal law, regardless of the

[3] Coronavirus Disease 2019.

salary offered.[4] However, this argument was not raised below, the record was not developed, and the court did not make a finding on this argument.

Regardless of the cause, even in the exceptional case where systemic-type problems will support a good cause continuance, "the trial court should require a thorough explanation of the problem and the State's efforts to get around it," including consideration of "the likelihood that the requested delay will lead to further delays." *Denton*, 23 Wn. App. 2d at 453.

Here, the record is devoid of any details about the nature and extent of the public defender shortage in Franklin County at the time.[5] Instead, the explanations provided were conclusory. The court simply asked whether OPD was diligently seeking additional qualified counsel and doing everything in their power to secure additional counsel and confirmed that the current attorneys had met their limits according to ethical considerations. Likewise, the court noted that "the county is experiencing . . . an emergency crisis . . . something different than not in the normal course of . . . not being

[4] We acknowledge that there is a pervasive and statewide shortage of attorneys willing to practice in public defense. The cause of this problem is not clear. Our Supreme Court has indicated the problem arises from "'heavy caseloads and other factors.'" *In re Det. of M.E.*, 6 Wn.3d 234, 253, 586 P.3d 580 (2026) (quoting *Washington Supreme Court Issues Interim Order on Public Defense Standards*, WASH. CTS. (June 9, 2025)), https://www.courts.wa.gov/newsinfo/?fa=newsinfo.pressdetail&newsid=52746.

[5] The State implicitly acknowledges the lack of details in the record but incorrectly suggests that the deficiency should work in its favor: "Nothing in the record before this court suggests a lack of funding, contracting, or monitoring of Franklin OPD led to there not being an attorney available for Ms. Adams." Resp't's Br. at 8.

able to secure . . . qualified counsel" but provided none of the details necessary to determine whether the asserted emergency was unforeseen or unavoidable. CP at 138. The record does not include any details of the situation, such as when the shortage was first noticed, how long it had existed, whether the shortage was due to a sudden decrease in available attorneys, the extent and scope of the shortage, and what specific steps were being taken to alleviate the problem. Contrary to the State's assertion on appeal, there is nothing in the record about the pay being offered to public defense attorneys or efforts to recruit private practitioners.

We conclude that the record here does not support the trial court's conclusion that the shortage of public defense attorneys was unforeseen or unavoidable. Consequently, the trial court abused its discretion by misapplying the law and concluding that the trial continuances in June and August were for good cause. Because no other provision excluded the intervening period, Adams's 90-day time-for-trial period expired before counsel was appointed to represent her. "[O]nce the 60 or 90 day time for trial expires without a stated lawful basis for further continuances, the rule requires dismissal and the trial court loses authority to try the case." *State v. Saunders*, 153 Wn. App. 209, 220, 220 P.3d 1238 (2009); *see also* CrR 3.3(h). Thus, the trial court abused its discretion by dismissing Adams's first case without prejudice and denying Adams's motion to dismiss the second case.

We reverse Adams's convictions and remand with instructions to dismiss the charges with prejudice in compliance with CrR 3.3(h).

Staab, C.J.

WE CONCUR:

Hill, J.

Cooney, J.