



FELONY COURT DIVISION

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Honorable Judge Kevin Roy
Yakima County District Court

Harold Delia
Yakima County Court Consultant

RE: District Court Judge Ralph Thompson

Dear Judge Roy and Mr. Delia:

Since my appointment as Yakima County Prosecuting Attorney in January of this year, I have received numerous complaints regarding Judge Thompson in District Court from the deputy prosecutors who work in that division. In February of this year, I assigned Therese Murphy as the supervisor of the District Court Division. Based on concerns brought to DPA Murphy's attention by attorney's who appear before Judge Thompson, she has monitored his performance as it pertains to our office's ability to effectively prosecute cases in his courtroom. The following are examples of Judge Thompson's performance which I believe establish a basis for my decision to file a blanket affidavit against Judge Thompson.

January 15, 2009

DPA Leanne Foster appeared in front of Judge Thompson for a contested infraction hearing in the case of *State v. Luis Eduardo Mendoza*. The standard at such a hearing is preponderance of the evidence. Mendoza was cited by WSP Trooper Berends for improper lane travel that resulted in a minor collision with another vehicle. Allison Estes, the owner of the damaged vehicle and the investigating officer, Trooper Berends provided testimony.

At the conclusion of the hearing Judge Thompson found that the infraction had not been committed. This was so despite what the State perceived to be, clear evidence to the contrary. Not only had the Trooper provided testimony based on years of experience about how the collision occurred, photographs were admitted into evidence which supported the Troopers testimony and the owner of vehicle testified about the collision.

In discussing this case with the Trooper after the fact, he was dumbfounded over Judge Thompson's ruling. It was his impression based on the comments of Judge Thompson, that the decision was a product of wanting to give Mendoza a break and that it was not based on the evidence presented at the hearing. While Judge Thompson attempted to explain his reasoning, both DPA Foster and Trooper Berends, did not understand his explanation. It was readily apparent to them that Judge Thompson was intent on giving Mendoza the benefit of the doubt where it would appear there was no doubt.

February 24, 2009

DPA Richard Gilliland was present on the confirmation docket in front of Judge Thompson and requested that a case be left on unconfirmed because a witness was unavailable for trial the following Wednesday. The defendant in the case had previously waived speedy trial and continued the case. On the following Wednesday, the case was dismissed by the trial Judge (not Judge Thompson) because it had previously been confirmed and the State was not ready to proceed.

A review of the transcript of the February 24, 2009 hearing in front of Judge Thompson reflects that the State's attorney represented that the State would not be in a position to proceed to trial given the unavailability of a necessary witness. Judge Thompson denied the State's request to leave the matter on unconfirmed. Judge Thompson stated that his reason for denying the request was previous representations that the parties were advised that no additional continuances would be granted and that he simply did not have enough information about the witness who was unavailable.

Pursuant to local court rule and CrRLJ 3.3(f)(2), prior to the confirmation hearing the State filed a notice not confirming the trial and indicating that the State would seek a continuance because of the unavailability of two witnesses. Pursuant to CrRLJ 3.3(f)(2), the Court may continue a trial date "when such continuance is in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense." There is no such articulation by defense counsel on the record.

Additionally, the record reveals a misapplication of the time for trial rule. Judge Thompson stated that speedy trial expired on March 30, 2009 however, a review of CrRLJ 3.3(b)(5) clearly states that the time for trial will not expire earlier than 30 days after an excluded period. A continuance of a trial date like that which occurred earlier in this case, amounts to an excluded period thereby setting the time for trial expiration at April 3, 2009. It is worth noting that the previous continuances that were granted were requested by the defense and would have been reflected in the court file.

The events of February 24, 2009 demonstrate Judge Thompson's lack of understanding of the applicable court rules and further demonstrate the application of those court rules in an unreasonable fashion.

March 5, 2009

The State appeared before Judge Thompson in the case of *State v. Frank Misuraca* which involved a pending DUI case where the defendant was participating in a deferred prosecution (DP). A petition had been filed alleging that he had violated the "good behavior" requirement of the DP. Specifically, since entering the DP for DUI he was convicted twice of Driving While License Suspended in the Third Degree (DWLS 3) and Operating a Motor Vehicle without an Ignition Interlock Device (No IID) and at the time had a two pending charges for DWLS 3 and one pending charge for No IID. On March 5, 2009, a hearing was held where the defendant admitted the allegations (convictions) and the State moved to revoke the deferred prosecution. Judge Thompson however maintained the defendant on the DP.

It is worth noting that, there is no authority under the DP statutory framework or case law that would authorize the imposition of a penalty in the form of jail time for a person who is participating in a DP. A DP is characterized as an alternative to punishment for those who are in need of treatment. In terms of a revocation, the Court maintains discretion when deciding whether a DP should be revoked except when the person is convicted of a similar offense pursuant to RCW 10.05.100.

Similarly, the Court maintains discretion to impose additional reasonable conditions of the DP that are designed to ensure continued sobriety and reduce the likelihood of re-offense. RCW 10.05.140. RCW 10.05.140 preempts the Courts discretion and requires the imposition of the condition that the defendant not operate a motor vehicle without a valid license and in the case of alcohol related offenses, the installation of an ignition interlock device. In this instance, the defendant not only failed to comply with the statutorily mandated conditions of his deferred, he did so multiple times.

While an argument could be made for maintaining the DP in this situation, an equally and perhaps more compelling argument justified its revocation. One would expect, when placed on a DP after having been diagnosed with an alcohol related addiction, that there may be challenges along the way. Those challenges generally manifest themselves in the form of relapses that are the product of the addiction. Contrast that to a person who has chosen to get behind the wheel of a car knowing that they don't have a license and that their vehicle is not equipped with the ignition interlock device not once but twice that resulted in additional criminal convictions.

Judge Thompson's decision on March 5, 2009 was an unreasonable exercise of his discretion to the detriment of the State and the citizens in this community.

June 19, 2009

DPA Laura Ritchie had a DWLS/R 2 stipulated trial with Greg Scott. The defendant, Nathan Witzl, was going to enter a plea of guilty, but Mr. Scott wanted to preserve an issue for appeal. *Massachusetts v. Melendez-Diaz* had not been decided yet, but it was before the Supreme Court. He wanted to preserve an issue so that he could get it overturned on appeal if the Supreme Court decided *Massachusetts v. Melendez-Diaz* in his favor. Ultimately, the Supreme Court did rule on the issues presented in *Massachusetts v. Melendez-Diaz* to the detriment of the State.

During the stipulated trial, the State offered two certified copies of the defendant's driving record (CCDR), the request for the CCDR prepared by our office and the officer's report. These documents were admitted over the defendant's objection. All documents established on the date of violation that the defendant was indeed suspended in the second degree.

Judge Thompson did not rule from the bench, rather he took the matter under advisement for six weeks. On July 22, 2009, DPA Ritchie received a decision from Judge Thompson stating the Defendant was not guilty. He based his decision on *Massachusetts v. Melendez-Diaz*, stating that the CCDR is testimonial and "[i]ts admission into evidence would violate defendant's Sixth Amendment right to confront witnesses." He then stated "it is not admitted," essentially un-admitting the already admitted evidence.

This decision demonstrates a lack of understanding of the process and in particular the evidence rules. There is no procedure for un-admitting evidence that has already been admitted, much less *sua sponte* taking such an action without affording the State or the aggrieved party an opportunity to respond.

Stipulated Orders of Continuances

For sometime the State had difficulty enforcing Stipulated Orders of Continuances (SOC's). Generally, a defendant who was afforded this great opportunity would wait until the last minute to comply with the terms of the agreement that he/she entered into with the State. This resulted in the State moving to revoke the SOC and continue with a stipulated trial. The defendant invariably would request additional time to complete the SOC. This request often required an extension of the agreement beyond that which the State had originally agreed to. More often than not, these issues arose in front of Judge Thompson and more frequently than not, Judge Thompson would give the defendant additional time to complete the SOC thereby requiring the State to extend the length of the SOC.

In this context, the Judge's role is limited to evaluating the reasonableness of the prosecutor's decision to move to revoke the SOC. If the defendant has not fulfilled a requirement of the SOC in the time allotted, the trial court should not extend the time if the prosecutor has asked to revoke the agreement and the Court has deemed such a decision "not unreasonable." See generally, *State v. Marino*, 100 Wn.2d 719, 674 P.2d 171 (1984); *State v. Kessler*, 75 Wn. App. 634, 879 P.2d 333 (1994).

DPA Ritchie appeared before Judge Thompson on several occasions where she moved to revoke SOC's that were ultimately denied. DPA Ritchie prepared a legal memorandum and presented it to Judge Thompson in an effort to provide some guidance on the issue. That did not work. The issue continued until she requested that the cases be reset so the State could file a formal motion to revoke the SOC and file the same memorandum in support.

This problem demonstrates a misunderstanding and misapplication of the law to the detriment of the State and the system in general. Viewing the issue practically, Judge Thompson's decision to continue these cases in effort to ensure compliance with the agreement only added more court

hearings and time commitment to an already overloaded system. Furthermore, in those cases where the defendant was afforded the additional time to comply when in most instances they had at a minimum six months to a year to fulfill their obligation, exactly what message does that send?

October 21, 2009

On October 21, 2009, DPA Murphy was informed of a situation involving DPA Ritchie who prosecuted a physical control case in front of Judge Thompson. DPA. Ritchie described her experience as follows:

When Judge Thompson announced the charge, the juror's had questions about it. Judge Thompson asked me to clarify the charge and basically discuss how the law defines it. Trying not to create any sort of error, I tried to be as brief and conservative in my definition as possible. The jury was quite enraged by this charge and many said they would not be able to enforce such a charge. There was a lack of control in the courtroom during voir dire, and I believe that they held a lot against me throughout the trial from what happened during voir dire. In addition, there was a man on my jury panel who said he was falsely accused of a DUI not too long ago. He stated he holds things against law enforcement. Also, he stated he probably would not be able to follow a stupid law that he does not agree with. I moved (several times) to strike for cause. The panelist, when asked whether he can be fair, stated: "probably not... but I guess I'll try." Again, I moved to strike for cause and it was denied.

The events of October 21, 2009 are particularly troubling to me. This is a very clear demonstration of Judge Thompson's inability to control his courtroom and of particular significance, a lack of understanding of the jury selection process in general and the qualifications for prospective jurors.

October 23, 2009

DPA Tyler Hotchkiss appeared in front of Judge Thompson on a motion to suppress. DPA Hotchkiss did not prevail on that motion. Based on the facts that he presented, it would appear that he should have prevailed on the motion. The concern is that the ruling was not based on an adequate understanding of the law. I understand that we will not win every motion that is presented to a Judge and I also appreciate that we do have recourse by way of an appeal to Superior Court. Regardless, I am more concerned about general view of Judge Thompson by the DPA's who appear in front of him. Their impression of his rulings is that they are random and are not grounded in the law.

While DPA Ritchie's experience in front of Judge Thompson on October 21, 2009 chronologically was not the last disappointing experience a member of this office had, it was essentially the last straw.

