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COLLINS & COLLINS, P.C.
ATTORNEYS AT LAW

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Speedy Trial Rights Stumble Up from the Mat: Oral Rulings Will Not Extend the Rule in New Mexico

A bench warrant will typically toll the running of the 6 month speedy trial rule under the 6th Amendment. The time during which a defendant has absconded from the court will not run against the prosecution. In addition, there may be other extensions of time either for the benefit of the defense, or for good cause, for the State that will extend the 6 month rule.

The New Mexico Court of Appeals in *State v. Martinez* has addressed these two issues from an interesting perspective. In *Martinez*, a bench warrant was orally issued by the court due to the defendant's failure to appear at a hearing. However, a signed warrant was never filed with the court. Likewise, due to the failure of the defendant to appear at the hearing, the State had requested an extension of the 6 month speedy trial rule. Again, the Court issued an oral ruling extending the speedy trial rule without filing a signed order.

Neither of these oral orders was entered with the Court until after the 6 month rule had elapsed. The defendant with counsel then came to court armed with a Motion to Dismiss under the speedy trial rule. The District Court granted the motion and dismissed the case. Interestingly, the district court had made the mistake in its failure to file the written orders and accepted the consequences of the error.

The prosecutor filed an appeal arguing that the oral orders should be fully enforced, and that the dismissal was fundamentally in error. The New Mexico Court of Appeals disagreed stating that to show fundamental error, the state must "demonstrate the existence of circumstances that 'shock the conscience' or implicate the fundamental unfairness within the system that would undermine judicial integrity if left unchecked."

The Court of Appeals refused the State's arguments indicating no such error was present. In doing so, the Court pointed out that the State had 49 days during which it could have cured the problem with the oral orders prior to the expiration of the six month rule. The Court cited prior cases for the proposition that it is up to the State to get a case to trial. It is not the defendant's duty to bring himself to trial.

This case at first seems somewhat difficult to reconcile with *State v. Garza* where the New Mexico Supreme Court set forth speedy trial guidelines; 12 months for simple cases, 15 months for cases with intermediate complexity, and 18

Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

<http://www.albuquerquecriminallawyerblog.com/>

months for complex cases. However, in that case, the State had moved for and been granted extensions of time. In *Martinez*, though the State had been granted extensions of time, the oral orders were deemed ineffective for these purposes.

It seems that despite the beating speedy trial rights took in *Garza*, the 6th Amendment will not stay down for the count. Seems the constitution has a strong chin.

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