Filed 6/30/10 P. v. Seastrong CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Appellant, v. MALACHI SEASTRONG, Defendant and Respondent.	E048552 (Super.Ct.No. RIF144818) OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. Affirmed.

Rod Pacheco, District Attorney, and Alan D. Tate, Deputy District Attorney, for Plaintiff and Appellant.

Amanda F. Benedict, under appointment by the Court of Appeal, for Defendant and Respondent.

This is an appeal by the District Attorney of Riverside County from the dismissal of a misdemeanor prosecution on speedy trial grounds. (Pen. Code, § 1382.)[1]

The calendar court judge found that there were no courtrooms available to hear the last-day case in a timely manner and that there was not good cause to continue the case. The district attorney contends that the court committed legal error and failed to exercise its discretion to determine whether to continue the case because the calendar court judge followed the court's "inflexible" policy of refusing to use courtrooms devoted to civil, family law, juvenile and probate matters for criminal cases rather than determining whether any particular civil case or special proceeding should be delayed in order to give priority to the criminal case.[2] We hold that the trial court did exercise its discretion, that it did not do so arbitrarily, and that it did not commit legal error.

PROCEDURAL BACKGROUND[3]

Defendant was charged with one count of carrying on his person a concealed "dirk and dagger" in violation of section 12020, subdivision (a)(4), a felony. On motion of the prosecution, the court reduced the charge to a misdemeanor pursuant to section 17, subdivision (b)(4). The case was set for a jury trial.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] The issues the district attorney raises are on review in *People v. Wagner* (2009) 175 Cal.App.4th 1377, review granted September 30, 2009, S175794, and related cases.

[3] The facts related to the underlying offense are omitted as unnecessary to the issues we address.

On March 26, 2009, defendant announced ready for trial. The prosecution asked to trail the trial to March 30, 2009. On April 1 and 2, 2009, the court continued to trail the case on its own motion because no courtroom was available. On April 3, 2009, defendant again stated he was ready to proceed to trial. However, the prosecution requested a continuance to April 6, 2009, which was then the last day for trial.

On April 6, 2009, both parties were prepared to proceed. However, at 4:05 p.m., the calendar judge, Judge Edward D. Webster, informed them that no courtrooms were available. Defendant objected to any further delays.

Judge Webster stated that at the beginning of the day, there had been 31 last-day cases ready for trial, and that all but the final eight had been sent out. He stated that he would incorporate into each of the remaining eight cases the so-called "dismissal script" adopted by the court on October 10, 2008. The script explains the court's policy on using civil and special proceedings courtrooms, including temporary facilities, for criminal trials.[4] Judge Webster then explained that the presiding judge, Judge Cahraman, had

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[4] The "dismissal script" incorporated into the record read as follows:

"It is now 4:00 p.m. and we have criminal case(s) that have answered ready for trial and are on their last day. We have checked civil and criminal courts countywide and we have no available courtrooms to send a criminal jury trial. There are some types of courts where we will not send a criminal jury trial; Family Law Court, Juvenile Court, Guardianship Court, Probate Court.

"The Judges in Family Law have full calendars. The public focuses on their job of handling dissolutions, but one of their most important jobs is to protect young children. The children of divorcing families are frequently in need of protection from some of the emotional things that parents who are in divorce situations are doing to each other. If a Family Law Judge is required to handle a criminal jury trial, there is no one to replace that Judge in Family Law. Taking away the Judge that protects these children would be

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very unfortunate for the children and for society. We will not reallocate a Family Law Judge to do a criminal jury trial.

"The Judges in Juvenile Court have full calendars. They have two very important jobs. One is under 602 Welfare and Institutions Code and the other is under 300 of the Welfare and Institutions Code. Under 602, the Judge handles youths who have committed crimes. The time deadlines are strict. If a Judge is not available to conduct the hearings the youth is released. Some youth commit very serious crimes such as carjackings, robberies, etc. If these youth are released this would be a public safety issue. We would be exposing the public to unnecessary danger. Under 300, a Judge handles children from homes where they are abused or neglected. If the Judge were not available to oversee these children, they would be in great danger. If a Juvenile Court Judge is required to handle a criminal jury trial, there is no one to replace that Judge in Juvenile Court. Taking away the Judge that protects these children and society would be very unfortunate for the children and for society. We will not reallocate a Juvenile Court Judge to do a criminal jury trial.

"The Judicial Officer who handles Guardianships is not available. Guardianships are for children or the severely disabled who have no one to care for them, for example, the parents have passed away and there are no available relatives. We are not going to abandon those least able to care for themselves. If the Guardianship Judicial Officer is required to do a criminal jury trial, there is no one to replace that person. We will not reallocate the Guardianship Judicial Officer to do a criminal jury trial.

"The Judicial Officer who handles Probate is not available. Probate Court handles cases where the assets of those who have passed away or are disabled are protected. We are not going to abandon those unable to tend to their own assets or those who have passed on but have relied on the Courts to handle their assets appropriately. If the Probate Judicial Officer is required to do a criminal jury trial, there is no one to replace that person. We will not reallocate the Probate Judicial Officer to do a criminal jury trial.

"Civil Courtrooms are frequently available for criminal jury trials. We use most civil courtrooms for both civil and criminal matters. We will not interrupt an ongoing civil jury trial except in the rarest and most exigent of circumstances. The civil departments that volunteer for criminal jury trials still handle a full load of civil matters. Thus, their scheduling needs must be taken into account.

"There are four visiting Judges assigned to do civil jury trials in temporary facilities. One of those facilities is the Hawthorne Elementary School. Another such facility is in the desert area. These facilities have insufficient security. It would be unsafe for jurors, for the DA, for the defense counsel and for the witnesses, if criminals and criminal trials were assigned to these facilities. Theoretically, one of these Judges could be moved to a secure courtroom in the Hall of Justice. But, the Chief Justice and the Administrative Office of the Courts assigned these Judges to Riverside County for the specific purpose of doing civil trials. We will not change the assignment parameters

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more recently decided that Riverside County's "huge backlog" of civil cases needed to be addressed and that civil litigants have a constitutional right to access to the courts. He explained that two judges who would otherwise have been available for criminal trials had been assigned to civil matters and were not available. He stated that Judge Tranbarger was available, but confirmed on the record that the district attorney's office would continue its policy of "affidavitting" Judge Tranbarger.

Judge Webster then allowed one of the deputy district attorneys to state the office's position on the proposed dismissals of the eight cases. The deputy district attorney stated, "It is the position of the People that 1050 PC sets forth a preference for

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unless the Chief/AOC or the Court of Appeals orders us to do so. We will not assign a criminal trial to these temporary facilities or take a Judge from these facilities to move elsewhere to do a criminal trial.

"We have one Civil Judge who is available to do criminal trials. If he is not in a civil jury trial, criminal cases are assigned to him. The District Attorney files a 170.6 CCP against him every time that a criminal case is assigned to him. This is not unexpected since the DA's Office has announced publicly that they will 'paper' that particular Judge at every opportunity. Therefore, if a case is assigned to him, and if he is 'papered', an additional 'last day' is not created.

"We have Calendar Courts, each of which handle hundreds of cases, each day. If the Judicial Officer were not there, then cases would be dismissed. We have no spare Calendar Judges. If they are not present, no one will be available to do the Calendar. We will not reallocate a Calendar Judge to do a criminal jury trial.

"We have informed the Chair of the Judicial Counsel, pursuant to section 1050 of the Penal Code, that we are in danger of dismissing cases.

"Therefore, we have done everything possible to find a place for the last remaining case(s). No courtroom is available. The defense motion to dismiss will be heard on the next business day at 8:30 a.m. Each defendant is ordered back to this courtroom at 8:30 tomorrow morning. Each defendant and defense counsel and prosecutor is ordered to stay in this courtroom until 4:30 p.m. today, just in case a courtroom becomes available for jury trial."

criminal cases over any civil matters or proceedings. The court has, as it noted, designated two courtrooms, Judge Hopp of Indio, and Judge Trask of Riverside[,] to do solely civil cases. [¶] We believe that expressly goes against 1050 PC, and object to that here. We believe the court should also look to family law, probate, guardianship and other specifically designated non-criminal departments for a home for these jury trials. We disagree with the court's policy of not checking those courtrooms to determine if any of them are available to hear one of these jury trials. [¶] We believe the Judicial [Council] also cannot order this court to deviate from 1050 PC, therefore, we believe that all the Hawthorne and Palm Springs court judges should be used to hear one of these cases. They can use one of our courtrooms if necessary for security. [¶] Finally, it is the position of the People [that if] the court has done everything required of it to find a courtroom and none appear available, then that would constitute good cause, and the case should be continued for one day. The People hereby object to any dismissals that occur on these cases because of what is termed, quote, a lack of available courtrooms, end quote."

After the deputy district attorney finished his statement, Judge Webster informed the defendants that their cases would be dismissed the following day. On April 7, 2009, Judge Webster dismissed defendant's case.

The district attorney filed a timely notice of appeal.

LEGAL ANALYSIS

Standard of Review

"The right to a speedy trial is a fundamental right. [Citation.] It is guaranteed by the state and federal Constitutions. [Citations.] The Legislature has also provided for '"a speedy and public" trial as one of the fundamental rights preserved to a defendant in a criminal action. [Citation.]' [Citation.] To implement an accused's constitutional right to a speedy trial, the Legislature enacted section 1382. [Citation.]" (*Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 776.) "Section 1382 provides statutory deadlines for bringing a criminal defendant to trial. If these deadlines are not met, and no good cause is shown, then a defendant has a statutory right to have the claims against him dismissed." (*Baustert v. Superior Court* (2005) 129 Cal.App.4th 1269, 1275.)

The District Attorney acknowledges that a determination of good cause to continue a trial beyond the statutory speedy trial period is evaluated under an abuse of discretion standard. (See *People v. Memro* (1995) 11 Cal.4th 786, 852; *Baustert v. Superior Court*, *supra*, 129 Cal.App.4th at p. 1275.) He contends, however, that he is "not challenging exercises of discretion, but the calendar judge's refusal to give actual consideration to the use of certain courtrooms to prevent the dismissal of this last-day criminal trial matter." He contends that this is primarily an error of law, to be reviewed de novo based on the uncontradicted facts presented in the court below. (*People v. Waidla* (2000) 22 Cal.4th 690, 730 [an appellate court independently reviews a trial court's resolution of pure questions of law and mixed questions of law and fact that are

predominantly legal].) However, in reality, the District Attorney argues both that the calendar judge committed legal error *and* that he abused his discretion in failing to consider the use of noncriminal courtrooms.

As we discuss below, section 1050 subdivision (a) (hereafter section 1050(a)) afforded the court ample discretion to determine whether any courtrooms were available to try defendant's case. We therefore review the court's determination that no courtrooms were available for an abuse of discretion. (§ 1050(a).) We then address whether the court abused its discretion in determining that the lack of an available courtroom did not constitute good cause to continue the case, indefinitely, until a courtroom became available. (§ 1382.)

Section 1050(a) afforded the court ample discretion to determine whether a courtroom was available to try defendant's case.

Section 1050(a) states, in pertinent part, that criminal cases "shall be set for trial and heard and determined at the earliest possible time," and expedited "to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters . . . ."[5] Despite the statute's use of the phrase "without

[5] Section 1050(a) states in full: "The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those

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regard to," the statute does not state an absolute rule that criminal trials must always take precedence over pending noncriminal matters regardless of the circumstances. Rather, section 1050(a) affords courts discretion in determining whether to give a criminal case trial preference over noncriminal matters.

In *People v. Osslo* (1958) 50 Cal.2d 75 (*Osslo*), the defendant's case was assigned for trial to a criminal courtroom which was then engaged in another matter. The court stated that the defendant's case would be continued "half a day at a time" until the courtroom became available. The case was continued multiple times over the defendant's objections. In overruling the defendant's objection to one continuance, the court explained that the delays were caused by the court's congested calendar, the fact that there were several judges out on assignment, the juvenile calendar was very congested, another department was handling the case of a person who was confined as mentally ill, and that there were three criminal trials going on. It also rejected the

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defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. In further accordance with this policy, death penalty cases in which both the prosecution and the defense have informed the court that they are prepared to proceed to trial shall be given precedence over, and set for trial and heard without regard to the pendency of, other criminal cases and any civil matters or proceedings, unless the court finds in the interest of justice that it is not appropriate."

defendant's objection to the continuance on the ground that there were civil trials occurring in other departments. (*Id*. at pp. 104-106.)

The defendant contended that continuing his case while civil cases were being conducted violated former section 681a and former section 1050. Former section 681a provided, "'The welfare of the people of the state of California requires that all proceedings in criminal cases shall be heard and determined at the earliest possible time. It shall be the duty of all courts and judicial officers and of all district attorneys to expedite the hearing and determination of all such cases and proceedings to the greatest degree that is consistent with the ends of justice.'" (*Osslo, supra*, 50 Cal.2d at p. 106.) The version of section 1050 then in effect provided, "'Criminal cases shall be given precedence over all civil matters and proceedings.'" (*Osslo*, at p. 106.)[6] The Supreme Court held that the trial court's order was not an abuse of discretion: "It does not appear that the policy of [former section 681a and former section 1050] was disregarded. [The trial court's] explanation of the condition of the calendar shows that defendants were not being deprived of precedence over civil cases for any arbitrary reason . . . . Rather, it appears that the orderly administration of a crowded calendar required the continuances to enable trial of the case in a proper department. The precedence to which criminal cases are entitled is not of such an absolute and overriding character that the system of

[6] In 1959, the Legislature amended section 1050 to include the language in former section 681a and repealed former section 681a. (Stats. 1959, ch. 1693, §§ 1, 2, pp. 4092-4093.)

having separate departments for civil and criminal matters must be abandoned." (*Osslo*, at p. 106.)

Osslo establishes that the provisions of current section 1050 are not absolute and that a trial court is afforded the discretion to determine which cases are to be given priority, as long as it does not do so in an arbitrary manner.[7] Accordingly, the court in this case had the discretion to determine whether a criminal case should be given trial preference over noncriminal matters in light of the court's overall workload and the relative interests of criminal and noncriminal litigants having cases pending before the court.

The court did not abuse its discretion in determining there were no courtrooms available to try defendant's case.

The district attorney argues that the court abused its discretion in determining that there were no courtrooms available to try defendant's case, because it "refus[ed] to give actual consideration" to transferring this last-day criminal case to a courtroom hearing probate or family law cases, or another noncriminal department, instead relying on its "inflexible" dismissal policy. Quoting *People v. Russel* (1968) 69 Cal.2d 187, 195, and citing *People v. Belmontes* (1983) 34 Cal.3d 335, 348, footnote 8, and *People v. Superior*

[7] Although in *Osslo* the trial court granted the continuance of the case to be heard in an available criminal department so as not to disrupt a courtroom conducting a civil trial, the reasoning equally applies to the situation here where the trial court denied the continuance. As discussed, *post*, subsequent to *Osslo*, the Supreme Court has found that chronic court congestion does not constitute good cause for a continuance, but the court has never changed its interpretation that section 1050 is discretionary.

Court (Alvarez) (1997) 14 Cal.4th 968, 977, the district attorney argues that the court necessarily abused its discretion because it failed to apply the "'legal principles and policies appropriate to the particular matter at issue.'"

As discussed above, section 1050(a) affords courts discretion to determine whether a criminal case should be given trial preference over noncriminal matters, in view of the court's overall workload and the interests of both criminal and noncriminal litigants having cases pending before the court. In addition, section 1050(a) does not require courts to abandon their practice of designating separate departments to handle criminal and noncriminal matters. (*Osslo, supra*, 50 Cal.2d at p. 106.) The sole limitation on this discretion is that the court must not exercise its discretion in an arbitrary manner. (*Ibid*.)

The Riverside Superior Court's "dismissal policy" is neither arbitrary nor inflexible as the district attorney maintains. Instead, the policy reflects a well-reasoned and well-considered exercise of the court's discretion in view of its overall workload and the general importance of noncriminal matters pending before the court at any given time. (*Osslo, supra*, 50 Cal.2d at pp. 104-106.) The policy first provides that criminal jury trials will not be assigned to the family law, juvenile, guardianship, probate, or master calendar courts, under any circumstances, and explains why. Each of these courts conducts important business that affects the lives of children or other members of the public. The judges in the family law court, for instance, have "full calendars" and protect the needs of children of divorcing families. If a family law judge is required to handle a

criminal jury trial, there is no one to replace that judge in family law court. The policy states similar reasons for not requiring the juvenile or probate court judges, or the sole judicial officer handling guardianships, to abandon their busy calendars in order to conduct criminal jury trials. Nor will the court assign criminal jury trials to its calendar courts, because these courts "handle hundreds of cases each day," and the cases would be dismissed if the calendar judge were not there to handle them. There is nothing arbitrary about these aspects of the court's dismissal policy.

The policy further states that there are four "visiting Judges" assigned for the sole purpose of conducting civil jury trials in two temporary facilities, one at Hawthorne Elementary School in Riverside and the other in the "desert area." The policy provides that these four judges and two facilities will not, under any circumstances, be used for criminal jury trials because the facilities have inadequate security; hence, conducting criminal jury trials in them would be unsafe for jurors, the district attorney, defense counsel, and witnesses. And, although one of these four judges could "theoretically" be moved to a secure courtroom in the Riverside Hall of Justice, the court would not do so because the Administrative Office of the Courts had assigned all four of the judges to Riverside County "for the specific purpose" of conducting civil trials. Thus, unless ordered to do so, the court would not use any of the four judges or two temporary facilities to conduct criminal jury trials.

There is nothing arbitrary about this aspect of the policy either. As indicated in *People v. Flores* (2009) 173 Cal.App.4th Supp. 9, 22, very few civil cases were being

tried in Riverside County before the Hawthorne judges were appointed. In addition, the court had already given "extraordinary precedence to criminal trials over traditional civil matters," and still lacked the resources necessary to try all criminal cases in a timely manner. (*Id.* at p. Supp. 23.) In view of the ongoing backlog of civil cases in the county and the lack of permanent judges and facilities to try them, the court's policy of designating the temporary judges and facilities solely to try civil cases was reasonable and well considered.

Lastly, the policy states that the court's civil courtrooms—apparently courtrooms other than the temporary facilities—are "frequently" made available for criminal jury trials, and most civil courtrooms are used for civil and criminal matters.[8] The policy also states: "We will not interrupt an ongoing civil jury trial except in the rarest and most exigent of circumstances." This aspect of the policy is certainly not arbitrary: Interrupting an ongoing civil jury trial will almost certainly waste the civil litigants' resources to their detriment or "actual prejudice." Still, this aspect of the policy is flexible because it allows for the possibility that an ongoing civil trial may be interrupted so that, for example, an important last-day criminal case could be sent to that courtroom

[8] On the date at issue, the court had in fact assigned 23 out of the 31 last-day cases, despite the fact that only two courtrooms were open at the beginning of the day. Presumably, some of those 23 cases went to courtrooms which ordinarily try civil cases.

for trial. It is reasonable, however, for the court to require that an ongoing civil jury trial will be interrupted only "in the rarest and most exigent of circumstances."[9]

The district attorney asserts that section 1050(a) requires the calendar court to compare the seriousness of actual matters pending in noncriminal courts with the seriousness of the charges in the criminal case to determine whether to dismiss the criminal case. He contends that this is not a matter of discretion but a determination of fact necessary to the informed exercise of discretion pursuant to section 1050(a). We disagree. This would be an insurmountable task, and it is not required by section 1050(a). Nor is it required by *Osslo*. (*Osslo*, *supra*, 50 Cal.2d at p. 106.) Moreover, the court's dismissal policy demonstrates that the court reasonably determined that noncriminal matters would generally be prejudiced if interrupted or suspended so that a criminal jury trial could be conducted in courtrooms previously designated to handle those matters.

In sum, the court's dismissal policy is not arbitrary; it is well considered and reasonably accounts for the interests of criminal defendants and all other persons having business before the court or interests the court is charged with protecting. The policy is also flexible in at least one respect: It allows for the possibility that an ongoing civil jury

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9 The policy further states there is "one [c]ivil [j]udge," apparently Judge Tranbarger, whom the Riverside County District Attorney routinely "papers" or peremptorily challenges pursuant to Code of Civil Procedure section 170.6 every time a criminal case is assigned to him. The policy states that if a criminal case is assigned to this judge and he is peremptorily challenged, "an additional 'last day' is not created," meaning there will not be good cause to continue the case to another day. The People do not challenge this aspect of the policy, so we do not address it here.

trial in a permanent and secure courtroom may be interrupted to conduct a criminal jury trial, albeit "in the rarest and most exigent of circumstances." Here, however, the prosecutor made no effort to argue that "rare and exigent" circumstances required the court to interrupt a civil jury trial so that defendant's misdemeanor case could be tried.

The court did not abuse its discretion in determining good cause had not been shown to continue defendant's case.

The deputy district attorney argued to the court that the lack of an available courtroom constituted good cause to continue the eight cases "for one day." The district attorney concedes that court congestion is not, in general, good cause for continuing a criminal case beyond the statutory speedy trial period. (See *People v. Johnson* (1980) 26 Cal.3d 557, 571-572 [court congestion will constitute good cause to deny a section 1382 motion to dismiss only when the congestion is attributable to exceptional circumstances].) However, he contends that the calendar court's alleged legal error in failing to find good cause to continue the case, combined with court congestion, constituted an exceptional circumstance. The logic of this argument escapes us. The continuance was denied and the case dismissed based on the trial court's policy pertaining to last-day criminal cases. The policy is a response to the chronic congestion of the Riverside County Superior Court, which results from the inadequacy of the resources provided by the state to meet the demand for trials in that court. By definition, chronic court congestion resulting from the state's failure to provide resources sufficient to meet the demand for trials is not an exceptional circumstance which constitutes good

cause for a continuance in last-day cases. (*People v. Johnson*, *supra*, at pp. 571-572 [applied to individuals in custody awaiting trial]; see also *Rhinehart v. Municipal Court*, *supra*, 35 Cal.3d at p. 782 [applied to individuals not in custody].) The court's denial of the continuance based on its asserted failure to give "actual consideration" to utilizing a noncriminal courtroom does not elevate this chronic circumstance to an exceptional one.

In any event, as we have discussed, the court's policy with respect to the assignment of last-day criminal cases is not an abuse of discretion. Consequently, the court's application of the policy in this case was neither an abuse of discretion nor a legal error. Thus, the court properly determined that the lack of an available courtroom to try defendant's case did not constitute good cause to continue the case.[10]

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[10] The district attorney cites *People v. Yniquez* (1974) 42 Cal.App.3d Supp. 13, in which the court held that court congestion is good cause for continuing a case beyond the statutory speedy trial period. (*Id*. at pp. Supp. 19-20.) However, that case and others which assume that court congestion necessarily constitutes good cause were called into question by the California Supreme Court in *People v. Johnson*, *supra*, 26 Cal.3d 557, and it was implicitly overruled on that point when the court held that chronic court congestion does not constitute good cause. (*Id*. at pp. 571-572; see also *Rhinehart v. Municipal Court*, *supra*, 35 Cal.3d at pp. 781-783.)

DISPOSITION

The order of dismissal is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ McKinster
J.

We concur:

/s/ Ramirez
P.J.

/s/ Miller
J.