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Respondent.

Docket 62649 Document 2013-29301

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However, the prosecutor asks this Court to strike issues I and II from Jaquez Barber's Opening Brief because he believes this Court does not have jurisdiction to decide the issues. The prosecutor cites no Nevada statutes, no Nevada Supreme Court rules, and no case law as authority holding that a defendant in a criminal case should be prohibited from raising any and all issues he or she may want to raise in an appellate brief.

A review of the State's motion to strike shows that the prosecutor simply claims Barber should be denied his right to argue issues I and II because he

1 believes these issues only challenge the manner the Juvenile Court disposed of the  
2 case. The prosecutor is incorrect.

3  
4 **Issue I** asks this Court to decide whether the District Court had  
5 jurisdiction to prosecute this case. In order to properly address the District  
6 Court's jurisdiction, Barber provided the Court with the documents from juvenile  
7 court because that is where the case originated. As this Court knows, issues of  
8 jurisdiction may be raised on appeal for the first time. *Landreth v. Malik*, 127 Nev.  
9 Adv. Op. No. 16, 251 P.3d 163, 166 (2011) citing *Swan v. Swan*, 106 Nev. 464,  
10 469 (1990) (holding "[W]hether a court lacks subject matter jurisdiction 'can be  
11 raised by the parties at any time, or sua sponte by a court of review, and cannot be  
12 conferred by the parties.'"); *Pershing Quicksilver Co. v. Thiers*, 62 Nev. 382, 387  
13 (1944) ("[A] jurisdictional question may be raised for the first time on appeal.").

14  
15 Within **Issue I**, Barber argues that if the juvenile court did not have  
16 jurisdiction then the district court could not have jurisdiction. If the analysis  
17 within Issue I is unclear about what is being argued, Barber can clear it up for the  
18 prosecutor by filing a supplemental brief. However, the title says: District Court.  
19 Thus, this jurisdictional issue is ripe for the court to decide. See *Exhibit C*.

20  
21 **Issue II** addresses whether or not the waiver made by Barber at the  
22 certification hearing was a knowingly and intelligent waiver of a known right. See  
23 *Exhibit D*. Within Issue II, Barber acknowledges that a court's decision to certify  
24  
25  
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1 a case to adult court is an appealable order under NRS 62D.500. However, Barber  
2 argues that this case is different because it involves a situation where a juvenile  
3 waives certification proceedings. In a situation like this, a juvenile is not  
4 challenging the order of certification but waiving the challenge. Based on the  
5 waiver, there would not be a reason for a juvenile to then appeal the order. Thus,  
6 the only way this Court may review a waiver of certification by a juvenile would  
7 be on direct appeal of the District Court case.

8  
9 **Issue II** indirectly asks this Court to decide if the waiver issue is reviewable  
10 on direct appeal of the District Court case because it is a waiver to District Court.  
11 Issue II specifically asks this Court to decide whether Barber made a knowing  
12 intelligent waiver of his constitutional rights. If this is not clear from a reading of  
13 the issue then Barber would be willing to file a supplement to make the argument  
14 clearer.

15  
16 The time and place for the Court to decide the issues Prosecutor  
17 Vanboskerck raises within his motion to strike is during the appellate process. The  
18 prosecutor should file his Answering Brief and lay out his arguments there rather  
19 than in a motion. This is the way the appellate process works. For example, in  
20 *Truesdell v. State*, 304 P.3d 396 (Nev. 2013), the defendant raised the issue of lack  
21 of constitutionality of a TPO, the issue was briefed by the parties, and the court  
22 ruled that the defendant could not collaterally attack the TPO.

1        Additionally, although the caption of Prosecutor Vanboskerck's motion only  
2 asks this Court to strike "portions of Appellant's brief for lack of jurisdiction"  
3 within the brief he also argues that this Court should find Barber's Motion to Seal  
4 the Juvenile Documents moot. The prosecutor contends that if this Court agrees  
5 with him and strikes issues I and II from the brief, then Barber's Motion to Seal  
6 documents from the juvenile court filed on 09/17/13 would be moot and therefore  
7 should not be sealed.  
8

9  
10  
11        The prosecutor's argument regarding Barber's Motion to Seal is  
12 inappropriate because he has already opposed that motion in his filing on  
13 09/20/13. If the prosecutor wants to further oppose Barber's Motion to Seal then  
14 he should file additional points and authorities with that Motion. Moreover, his  
15 suggestion is wrong because Barber needs the documents for Issue III, the right to  
16 a speedy trial issue.  
17

18  
19        One of the most troubling parts of the State's motion to strike issues I and II  
20 is that not only is Prosecutor Vanboskerck's motion an attempt to prohibit Barber  
21 from raising issues in his appeal, in doing so, the prosecutor attached one of the  
22 documents that Barber sought to seal to his Motion to Seal Juvenile Documents.  
23 When Barber filed his Motion to Seal juvenile documents on 09/17/13, the  
24 certification to adult status order was one of the documents Barber asked his Court  
25 to seal. This Court has not yet ruled on Barber's motion. But, Prosecutor  
26  
27  
28

1 Vanboskerck did not wait for a ruling. The prosecutor filed the document with his  
2 motion to strike thereby making the document available to the public on the  
3 Nevada Supreme Court's website.  
4

5 "A prosecutor's primary is not to convict, but to see that justice is done."  
6 *Williams v. State*, 103 Nev. 106, 110 (1987). Thus, the prosecutor must refrain  
7 from taking actions that may trample on a defendant's right to obtain due process  
8 during the appellate process. Due Process gives Barber the right to present all his  
9 grievances to this Court and petition for review. Moreover, the failure of counsel  
10 to raise all issues on direct appeal will affect Barber's post-conviction writs and  
11 may result in a finding that defense counsel was ineffective.  
12  
13  
14

15 "Due process requires a criminal appeals system to provide 'each defendant  
16 a fair opportunity to obtain an adjudication on the merits of his appeal.'"  
17 *Hernandez v. State*, 117 Nev. 463, 467 (2001) citing *Evitts v. Lucey*, 469 U.S. 387,  
18 405 (1985). By filing this motion to strike Issue I and Issue II, the prosecutor  
19 seeks to deny Barber "a fair opportunity" to litigate his issues on the merits. *Id.*  
20 Instead, the prosecutor wants this Court to decide these issues by way of this  
21 motion. But, to do so would take away Barber's right to obtain a review on the  
22 merits of the case through the briefing process.  
23  
24  
25

26 Prosecutor Vanboskerck's motion to strike several issues Jaquez Barber  
27 raised within his Opening Brief is unprecedented. It is either a thinly veiled  
28

1 attempt to obtain a continuance by holding briefing in abeyance while the Court  
2 decides his motion or it is an attempt to deny Barber his rights to Due Process on  
3 appeal. His attachment of a document Barber sought to seal questions further  
4 shows his contempt for Barber's Due Process procedural rights in this Court.  
5

6  
7 Based on the above, Barber asks this Court to deny the prosecutor's motion  
8 to strike and order him to file the Answering Brief.

9 DATED this 1st day of October, 2013.

10  
11 PHILIP J. KOHN  
12 CLARK COUNTY PUBLIC DEFENDER

13  
14 By Sharon Dickinson  
15 SHARON G. DICKINSON, #3710  
16 Deputy Public Defender  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 1<sup>st</sup> day of October, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO	SHARON G. DICKINSON
STEVEN S. OWENS	HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to: JAQUEZ DEJUAN BARBER, NDOC No: 1039024, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070.

BY /s/ Carrie M. Connolly  
Employee, Clark County Public  
Defender's Office



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**EXHIBIT A**

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
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Respondent.

Docket 62649 Document 2013-22850

1 POINTS AND AUTHORITIES

2 Jaquez Barber seeks full briefing of the issues in his case because at

3  
4 least three of the issues in his Fast Track Statement involve substantial  
5 precedential and public policy concerns regarding the juvenile courts and  
6 involve matters of first impression which are legally complex.  
7

8 A party may seek leave for full briefing pursuant to NRAP 3C (k)  
9 which states:  
10

11 **(k) Full Briefing, Calendaring or Summary Disposition.**

12  
13 (1) Based solely upon review of the rough draft transcript, fast  
14 track statement, fast track response, and any supplemental  
15 documents, the Supreme Court may summarily dismiss the  
16 appeal, may affirm or reverse the decision appealed from  
17 without further briefing or argument, may order the appeal to be  
18 fully briefed and argued or submitted for decision without  
19 argument, may order that briefing and any argument be limited  
20 to specific issues, or may direct the appeal to proceed in any  
21 manner reasonably calculated to expedite its resolution and  
22 promote justice.

23 **(2) Motion for Full Briefing.**

24  
25 (A) A party may seek leave of the Supreme Court to remove an  
26 appeal from the fast track program and direct full briefing. The  
27 motion may not be filed solely for purposes of delay. It may be  
28 filed in addition to or in lieu of the fast track pleading.

(B) The motion must identify specific reasons why the appeal is  
not appropriate for resolution in the fast track program. Such  
reasons may include, but are not limited to, the following  
circumstances:

1 (i) The case raises one or more issues that involve substantial  
2 precedential, constitutional, or public policy questions; and/or

3 (ii) The case is legally or factually complex.  
4

5 (C) If the issues or facts are numerous but not complex, full  
6 briefing will not be granted but an excess page motion may be  
7 entertained.

8 **REASONS FOR FULL BRIEFING**

9 Jaquez appeals from his convictions for the crimes of burglary and  
10 grand larceny. *Exhibit A: Judgment of Conviction.* The allegations in the  
11 Amended Information in this case arise out of a juvenile petition that was  
12 certified to adult court upon Jaquez's waiver. *See Exhibit B: Amended*  
13 *Information; Exhibit C: Juvenile Court documents filed under seal.* Jaquez  
14 gives the following reasons for full briefing:  
15  
16  
17

18 **1. The juvenile court lost jurisdiction over the petition.**

19 The first issue of first impression involves whether the juvenile court  
20 maintains jurisdiction of a juvenile petition filed outside the one year limit of  
21 NRS 62D.310. If the juvenile court did not have jurisdiction over the  
22 petition then the district court did not have jurisdiction to precede either.  
23  
24

25 The final disposition of the juvenile petition in this case occurred on  
26 09/27/10, when the juvenile court certified the case to adult court. But the  
27  
28

1 juvenile petition was filed on 05/13/09 thereby making the final disposition  
2 of the petition outside the one year limit of NRS 62D.310.  
3

4 NRS 62D.310 provides that:

5  
6 1. Except as otherwise provided in this section, the juvenile  
7 court shall make its final disposition of a case not later than 60  
8 days after the date on which the petition in the case was filed.

9 2. The juvenile court may extend the time for final disposition  
10 of a case if the juvenile court files an order setting forth specific  
11 reasons for the extension:

12 (a) Not later than 60 days after the date on which the petition in  
13 the case was filed; or

14 (b) Later than 60 days after the date on which the petition in the  
15 case was filed, if the juvenile court finds that the extension  
16 would serve the interests of justice. In determining whether an  
17 extension would serve the interests of justice, the juvenile court  
18 shall consider:

19 (1) The gravity of the act alleged in the case;

20 (2) The reasons for any delay in the disposition of the case; and

21 (3) The potential consequences to the child, any victim and the  
22 public of not extending the time for final disposition of the  
23 case.

24 3. The juvenile court shall not extend the time for final  
25 disposition of a case beyond 1 year from the date on which the  
26 petition in the case was filed.

27 The juvenile court minutes do not reflect any extensions. *See Exhibit B sent*  
28 *under seal.*

1 This case represents an issue of first impression as to how the Court  
2 will interpret NRS 62D.310 and whether the juvenile court lost jurisdiction  
3

4 over the case.

5 **2. Arrest warrants do not toll the time period within NRS 62D.310.**  
6

7 The second issue of first impression is whether the arrest warrant  
8 tolled the one year limitation of NRS 62D.310.

9 The actual petition indicates it was signed on 02/15/08 but filed on  
10 05/12/09. The date of the incident is 01/21/09. The words "Arrest Warrant"  
11 are typed on the Petition. *Exhibit B: 652-3; 700-91.*  
12

13 Other documents filed in juvenile court indicate the State identified  
14 Jaquez as a suspect in the incident on 03/12/09, the police sought an arrest  
15 warrant on 04/03/09, the court issued an arrest warrant on 05/12/09, the  
16 arrest warrant was received by METRO on 05/12/09, possibly served by  
17 METRO on 05/12/09, and Jaquez was brought to Juvenile Justice Services  
18 on 08/16/10. *Exhibit B: 668-09; 675; 679-80.*  
19  
20  
21

22 Therefore, the court must decide if the arrest warrant tolled the one  
23 year time limit. Jaquez contends that it does not toll the time period because  
24 the State could have obtained the arrest warrant without filing the petition.  
25

26 ///

27 ///

1 3. Arrest warrants issued in juvenile court are being ignored as  
2 evidenced by the fact that Jaquez was in the custody of the state when  
3 the court issued the arrest warrant.

4 If the Court decides that the arrest warrant tolls the one year time  
5 period, then the Court must decide if the time period is tolled when the State  
6 fails to serve the arrest warrant or bring the defendant to court when the  
7 defendant is in State custody the entire time.  
8

9 The judge issued the arrest warrant in juvenile court on 05/12/09.  
10  
11 *Exhibit B: 679.* The police officer who prepared the affidavit and requested  
12 the arrest warrant said Jaquez was arrested on 03/03/09 in another case; and,  
13 when his fingerprints were put into the AFIS system, METRO received a  
14 match indicating that he was a suspect in the case at bar. *Exhibit B: 668.*  
15

16 The case the police officer references is 94F04443B, district court  
17 case no. C253779. *Exhibit C.* The minutes from this other case show that  
18 Jaquez was in court, in custody, on 03/20/09, after his arrest on 03/03/09,  
19 and remained in custody the entire time the case was pending, until he was  
20 sentenced to prison on 07/21/09. *See Exhibit C and D.* Jaquez remained in  
21 prison until he was brought to juvenile court on 09/13/19. *Exhibit B: 704.* In  
22 fact, the minutes reflect the attorney representing Jaquez sought to visit him  
23 in prison. *Exhibit B: 704, 707.*  
24  
25  
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28

1 Jaquez contends that the arrest warrant did not toll the time period  
2 because he was in the custody of the State the entire time. Moreover, the  
3

4 State's failure to bring him to juvenile court for more than one year not only  
5 violated his right to due process but showed a conscious indifference to the  
6 rules of procedure. Because this appears to be a practice allowed by the  
7 juvenile court, this issue is a matter of public policy concerns that needs to  
8 be addressed by this Court.  
9  
10

11 **4. Waiver of the certification hearing.**

12 What procedures are required for a valid waiver of a certification  
13 hearing also appears to be a matter of first impression.  
14

15 At the certification hearing on 09/27/10, the Defense attorney told the  
16 court that Jaquez waived his certification hearing. *Exhibit B: 683.*  
17 Thereafter, the court asked him a few questions and then made a finding that  
18 certification was warranted based on prosecutorial merit and that there was  
19 nothing more the juvenile court could do for him based on his age. *Exhibit*  
20 *B: 691—93.* The court also noted that because Jaquez was already in adult  
21 prison it was more likely that he would grant the State's motion for  
22 certification. *Exhibit B: 692.*  
23  
24  
25

26 Although a court's decision to certify a case to adult court is an  
27 appealable order (NRS 62D.500), here, Jaquez waived the certification.  
28



1 Therefore, the only way this Court may review the certification, jurisdiction,  
2 and waiver of the certification for statutory and constitutional violations is  
3

4 on direct appeal of his adult case.

5 **5. Right to a speedy trial and right to a trial or hearing.**

6 The remedy for a violation of the right to a speedy trial and due  
7 process is dismissal of the charges. *Piland v. Clark County Juvenile*  
8 *Services*, 85 Nev. 489, (1969). Thus, the case should be dismissed because  
9 of the delay in juvenile and adult court.  
10  
11

12 In Nevada, a seven month delay is enough to trigger a violation of the  
13 right to a speedy trial. In *State v. Erenvi*, 85 Nev. 285 (1969) the Nevada  
14 Supreme Court affirmed the dismissal of several cases on the basis of  
15 violation of the right to a speedy trial when the prosecutor would not  
16 extradite a defendant for trial in Nevada until the defendant's out-of-state  
17 prison term was completed. In *Erenvi*, the defendant was scheduled for  
18 preliminary hearing on January 9, 1968. Prior to the hearing, the defendant  
19 was released to California authorities on a parole violation and then  
20 imprisoned in California. The defendant made several requests to be  
21 brought to Nevada which were denied. In July of 1968, the defendant filed a  
22 motion to dismiss which was granted by the court and affirmed on appeal.  
23  
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1 In *Wood v. Sheriff, Carson City*, 88 Nev. 547 (1972), the  
2 Nevada Supreme Court granted a pretrial writ of habeas corpus based on a  
3

4 violation of the right to a speedy trial. In *Wood*, there was a sixteen month  
5 delay between the time the defendant requested a disposition of the charge  
6 against him and the time he was returned to Nevada for trial. While in  
7 prison in Colorado, Wood learned of the case pending against him in Nevada  
8 and wrote the prosecutor asking for disposition of the charge. He received  
9 no response. Later, Wood wrote the justice of the peace. Again, no  
10 response. Next, an attorney acting on his behalf contacted the prosecutor.  
11 Again, no response. Instead, Nevada waited until Wood had completed his  
12 time in the Colorado prison and then extradited him to Nevada to stand  
13 charges.  
14

15 Also, in *State v. Lujan*, 112 N.M. 346, 815 P.2d 642 (1991), the  
16 New Mexico District Court dismissed a charge with prejudice for a 13-  
17 month delay on a charge of an aggravated assault on a police officer. In  
18 *Lujan*, Lujan was arrested on June 12, 1989. At the time of the arrest, Lujan  
19 was on parole and his parole was revoked. Lujan was released from prison  
20 in December of 1989. Subsequently, on February 8, 1990, Lujan was  
21 indicted on the charges of aggravated assault on a police officer. The New  
22 Mexico District Court's decision to dismiss this indictment with prejudice  
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1 was affirmed on appeal. The court of appeals noted that: "Because this case  
2 involves a relatively lengthy delay considering the simple nature of the  
3 charge and the readily available evidence, we believe the trial court correctly  
4 determined that the length of the delay was presumptively prejudicial." *Id.* at  
5 644.  
6  
7

### 8 CONCLUSION

9 Based on the above, Appellant asks this Court to grant full briefing so  
10 the above issues will be thoroughly addressed along with other issues he  
11 may raise.  
12

13 DATED this 2<sup>nd</sup> day of August, 2013.  
14

15 PHILIP J. KOHN  
16 CLARK COUNTY PUBLIC DEFENDER

17 By Sharon Dickinson  
18 SHARON G. DICKINSON, #3710  
19 Deputy Public Defender  
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**EXHIBIT B**

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAQUEZ DEJUAN BARBER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 62649

**FILED**

AUG 09 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

*ORDER GRANTING MOTION*

Cause appearing, appellant's motion for the full briefing of this appeal is granted. NRAP 3C(k)(2). Accordingly, counsel for the parties shall fully brief the issues as provided in NRAP 28, 28.2, 30, 31, and 32. Appellant shall have 30 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with the schedule set forth in NRAP 31(a)(1). We caution the parties that failure to comply with this order may result in the imposition of sanctions. See NRAP 28(j), 28.2(b), 30(g), and 31(d). In light of this order, appellant's motions for extensions of time to file the fast track statement and appendix are moot and we take no action on them.

It is so ORDERED.

Pickering, C.J.

cc: Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney

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**EXHIBIT C**

1 Latent print examiner Kathryn Aoyama testified that eight readable  
2 prints were recovered. III:570. Four of the eight prints inside the home were  
3 unidentified to any suspects. III:570. The four unmatched prints were not  
4 entered into AFIS. III:572. Three of the prints inside the home belonged to  
5 Michael Palmer. III:548; 570. None of the palm or fingerprints found inside  
6 the home belonged to Jaquez. III:590. However, Aoyama identified one  
7 palm print found outside the home by the rear bathroom entry as belonging to  
8 Jaquez. III:544.

12 The identification of Jaquez as a suspect through AFIS was a reverse  
13 hit: an AFIS hit sometime after it was entered into the system. III:574. The  
14 reverse hit occurred on or about 03/17/09, after Jaquez was arrested on  
15 03/03/09 and processed in the adult system in Case 09F0443B (C253779), a  
16 case arising out of an incident occurring on 02/24/09. IV:652;668-69;711-20.  
17 Thus, the prints the police took when Jaquez was arrested on 03/17/09  
18 resulted in an AFIS hit for the prior 01/21/09 incident.

## 22 ARGUMENT

### 23 **I. THE CONVICTIONS MUST BE REVERSED BECAUSE** 24 **THE DISTRICT COURT WAS WITHOUT** 25 **JURISDICTION TO PROSECUTE THE CASE.**

#### 26 **A. The juvenile court's jurisdiction over Jaquez began when the State** 27 **filed a petition alleging a delinquent act.**

1 On 03/17/09, METRO identified Jaquez Barber as a suspect in a  
2 burglary occurring on 01/21/09 and sought an arrest warrant on 04/03/09.  
3  
4 IV:652;668-69. Because Jaquez was less than 18 years of age at the time of  
5 the burglary and at the time of the request for a warrant, METRO obtained  
6 the warrant through juvenile court. *See* NRS 62A.030(1)(a); IV: 652;668-69.  
7

8 The juvenile court issued an arrest warrant on 05/12/09, the same day  
9 the State filed the delinquency petition against Jaquez in juvenile court.<sup>2</sup>  
10  
11 IV:652-3;679-80. METRO received the arrest warrant on 05/12/09 and  
12 possibly served it the same day while Jaquez was in custody on his other  
13 case, C253779. IV:668-69;675;679-80.  
14

15 “[T]he juvenile court has exclusive original jurisdiction over a child  
16 living or found within the county who is alleged or adjudicated to have  
17 committed a delinquent act.” NRS 62B.330(1); NRS 62A.030. The crimes  
18 of burglary and grand larceny fall within the definition of a delinquent act.  
19  
20 NRS 62B.330(2)(c). Thus, because Jaquez was under the age of 18 years and  
21 the petition filed alleged a delinquent act, the juvenile court gained original  
22 exclusive jurisdiction over Jaquez and the crimes the State alleged when the  
23 petition was filed on 05/12/09.  
24  
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26  
27 <sup>2</sup> The actual petition indicates it was signed on 02/15/08 but filed on  
28 05/12/09. IV:652-53. The date of the incident is 01/21/09. The words  
“Arrest Warrant” are typed on the Petition. IV: 652-3; 700-91.



1 **B. The juvenile court lost jurisdiction over Jaquez and the petition after**  
2 **one year passed without the court making a final disposition.**

3 Between 05/12/09 (the date the petition was filed) and 08/16/10 (the  
4 date the State requested certification proceedings), the State did nothing on  
5 Jaquez's case. Thus, more than 15 months passed before the State proceeded  
6 on the petition. During this entire time Jaquez remained in State custody.<sup>3</sup>

7  
8  
9 On 08/16/10, the juvenile court granted the State's request for a  
10 certification hearing and ordered the proceedings in Jaquez's case stayed to  
11 allow the Juvenile Probation Department time to prepare a report for a  
12 certification hearing. IV:677-788. Jaquez was brought to juvenile court on  
13 09/13/10. VI:704. The juvenile court held the certification hearing on  
14 09/27/10. IV:681-95.

15  
16  
17 Whether the juvenile court maintains jurisdiction of a juvenile petition  
18 after the one year time limit of NRS 62D.310 passes is an issue of first  
19 impression for this Court. Although the issue of jurisdiction was not  
20

21  
22  
23 <sup>3</sup> The judge issued the arrest warrant in juvenile court on 05/12/09.  
24 IV:679. The police officer who prepared the affidavit and requested the  
25 arrest warrant said Jaquez was arrested on 03/03/09 in another case  
26 (C253779); and, when his fingerprints were put into the AFIS system,  
27 METRO received a match indicating that he was a suspect in the case at bar.  
28 IV: 668. The minutes from C253779 show that Jaquez was in court, in  
custody, on 03/20/09, after his arrest on 03/03/09, and remained in custody  
the entire time the case was pending, until he was sentenced to prison on  
07/21/09. VI:711-20.

1 challenged in juvenile court or district court, this Court can sua sponte  
2 consider jurisdictional issues. *Landreth v. Malik*, 127 Nev. Adv. Op. No. 16,  
3 251 P.3d 163, 166 (2011) citing *Swan v. Swan*, 106 Nev. 464, 469 (1990)  
4 (holding “[W]hether a court lacks subject matter jurisdiction ‘can be raised  
5 by the parties at any time, or sua sponte by a court of review, and cannot be  
6 conferred by the parties.’”) ; *Pershing Quicksilver Co. v. Thiers*, 62 Nev. 382,  
7 387 (1944) (“[A] jurisdictional question may be raised for the first time on  
8 appeal.”).

9  
10 Because the jurisdiction of the juvenile court is statutory, the Court  
11 uses de novo review to interpret NRS 62D.310. *In the Matter of George J. v.*  
12 *State*, 128 Nev. Adv. Op. 32, 279 P.3d 187, 189 (2012). The Court begins by  
13 examining the plain language of the statute. *Id.*

14  
15 NRS 62D.310 provides that:

16  
17 1. Except as otherwise provided in this section, the juvenile  
18 court shall make its final disposition of a case not later than 60  
19 days after the date on which the petition in the case was filed.

20  
21 2. The juvenile court may extend the time for final disposition of  
22 a case if the juvenile court files an order setting forth specific  
23 reasons for the extension:

24  
25 (a) Not later than 60 days after the date on which the petition in  
26 the case was filed; or

27  
28 (b) Later than 60 days after the date on which the petition in the  
case was filed, if the juvenile court finds that the extension

1 would serve the interests of justice. In determining whether an  
2 extension would serve the interests of justice, the juvenile court  
3 shall consider:

4 (1) The gravity of the act alleged in the case;

5 (2) The reasons for any delay in the disposition of the case; and

6  
7 (3) The potential consequences to the child, any victim and the  
8 public of not extending the time for final disposition of the case.

9 3. The juvenile court shall not extend the time for final  
10 disposition of a case beyond 1 year from the date on which the  
11 petition in the case was filed.

12 Thus, the plain language of NRS 62D.310 indicates that the legislature  
13 prohibited the juvenile court from extending the final disposition of a petition  
14 beyond one year.  
15

16 The final disposition of the juvenile petition in this case occurred on  
17 09/27/10, when the juvenile court certified the case to adult court. But the  
18 juvenile petition was filed on 05/13/09 thereby making the final disposition  
19 of the petition outside the one year limit of NRS 62D.310.  
20  
21

22 The juvenile court minutes do not reflect any extensions ordered  
23 during the one year time limit. IV:702-10. But the certification order signed  
24 by the judge on 08/16/10 says: “[T]he proceedings in this matter be arrest  
25 until the time of the submission of the report from the Juvenile Probation  
26 Department. . .” IV:678. This brief stay occurred long after the one year  
27  
28

1 time period had passed. Thus, the juvenile court lost jurisdiction over this  
2 petition and was without power to certify the case to district court because it  
3 did not follow the mandates of NRS 62D.310.  
4

5 NRS 62D.310 is akin to a statute of limitations requiring dismissal  
6 when a case is not filed within a determined period. If the juvenile court did  
7 not have jurisdiction over the petition because more than one year had passed  
8 then the juvenile court's order certifying Jaquez's case to district court is  
9 void. *Landreth* at 166. Thus, the district court did not have jurisdiction to  
10 go forward with the case either.  
11  
12

13  
14 **C. Arrest warrants do not toll the time period within NRS 62D.310.**

15 The second issue of first impression is whether the arrest warrant tolled  
16 the one year limitation of NRS 62D.310. Because NRS 62D.310 does not list  
17 an arrest warrant as an exception to the one year rule, an arrest warrant does  
18 not toll the time period for final deposition after the filing of a petition.  
19 Moreover, the State could have obtained the arrest warrant without filing the  
20 petition and then avoided the one year time limit by filing the petition at a  
21 later date.  
22  
23

24  
25 When the State fails to serve an arrest warrant or serves the warrant but  
26 does not bring a defendant to court (even though the defendant is in State  
27 custody) then the State cannot claim the time period is tolled because the  
28

1 State intentionally failed to proceed on the petition. Jaquez was in the  
2 custody of the State from the time the arrest warrant issued and the 08/16/10  
3 date for the juvenile hearing on the petition.  
4

5 **D. Conscious indifference to rules of procedure.**  
6

7 The State's failure to bring Jaquez to juvenile court for more than one  
8 year not only violated NRS 62D.310, it violated his right to due process by  
9 showing that the prosecutor and the court had a conscious indifference to  
10 following the rules of procedure. This Court recognizes a policy of  
11 dismissing a cause of action in a criminal case due to a prosecutor's willful  
12 failure to comply with important procedural rules meant to protect a  
13 defendant's due process rights, such as delays a preliminary hearing or a  
14 contested hearing beyond the statutory time limit. *Maes v. Sheriff*, 86 Nev.  
15 317, 319 (1970); *Joseph John H., a minor v. State*, 113 Nev. 621, 621-24  
16 (1997); *Bustos v. Sheriff*, 87 Nev. 622, 623-24 (1071).  
17  
18  
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21 Here, the State made no attempt to comply with the one year rule of  
22 NRS 62D.310 thereby showing a conscious indifference to the rules of  
23 procedure and a violation of Jaquez's right to due process. U.S. Const.  
24 Amend. V, Amend IVX; Nev. Const. Art. 1 Sec. 8. Jaquez was prejudiced  
25 by the delay because the juvenile court factored in his conviction and  
26 sentence in C253779 at the certification hearing. IV:690-94.  
27  
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**EXHIBIT D**

1           **II. JAQUEZ DID NOT MAKE A KNOWING AND**  
2           **INTELLIGENT WAIVER OF HIS RIGHT TO THE**  
3           **CERTIFICATION HEARING.**

4           What procedures are required for a valid waiver of a certification  
5 hearing also appears to be a matter of first impression for this Court.

6  
7           At the certification hearing on 09/27/10, the Defense attorney told the  
8 court that Jaquez waived his certification hearing. IV: 683. Thereafter, the  
9 court asked him a few questions as follows:

10  
11           D. ATTN: No, he was just going to waive. . .there's no  
12 negotiations. . .

13           . . .

14           COURT: You've seen a copy of Petition 4, haven't you?

15           SUBJECT MINOR: Yeah.

16           COURT: It says here that you committed a burglary. .  
17 .You understand that, right?

18           SUBJECT MINOR: Yeah

19           COURT: . . .[T]he second count . . .says that you actually  
20 removed some property from the home during the burglary.  
21 You understand that also, right?

22           SUBJECT MINOR: Yeah.

23           COURT: . . you're asking the Court to go ahead and  
24 transfer this case, essentially granting the State's petition to  
25 transfer this case to the adult system for it to be what we call  
26 adjudicated, or resolved, in the adult system whether by trial or  
27 by a plea of some sort. You understand that?

28           SUBJECT MINOR: Yeah.

          COURT: . . .you talked to Ms. Maxey about the  
likelihood of me granting, or not granting, the State's request to  
transfer this case to the adult system, right?

          SUBJECT MINOR: Yeah.

          COURT: And given . . .your age, , the – your – actually I  
do have to factor in your current situation being at High Desert  
already with the charges and the sentence you have there. And  
the fact that this occurred – allegedly occurred in – less than a

1 year ago, that I would be more likely than not to grant the State's  
2 request under those circumstances. You understand that?

SUBJECT MINOR: Yeah.

3 COURT: . . .so in order [to] get this matter dissolved  
4 sooner than later, you're asking the Court to go ahead. . .and  
5 make the findings and grant the State's request. Is that correct?

SUBJECT MINOR: Yeah.

6 COURT: . . .No one has forced you are threatened you to  
7 get you to do this, right?

SUBJECT MINOR: No.

8 COURT: . . .you thing it's in your best interest to get this  
9 resolved sooner than later?

SUBJECT MINOR: Yeah.

10  
11 In waiving his certification hearing, Jaquez gained no benefit and showed no  
12 understanding of what he was waiving.

13  
14 After questioning Jaquez, the juvenile court made findings:

15 COURT: . . .Well based upon the – there's slight or  
16 marginal evidence to support prosecutorial merit. . .under Seven  
17 Minors. . .it is a burglary of the home. . .There are some prior  
18 services in the juvenile system. . .However, this case turns on the  
19 subjective factors which is the subject minor's age. . .there is  
20 nothing the Juvenile Court could offer in this case. . .other than  
21 an order of restitution. . .therefore the Court finds the matter of  
22 public safety, that the State's petition be granted. IV: 690-94.

23 A waiver "is the intentional relinquishment of a known right."  
24 *Mahbanah v. MGM Grand Hotel*, 100 Nev. 593, 596, (1984). When a  
25 juvenile waives the jurisdiction of the juvenile court during a certification  
26 hearing, the juvenile also waives the protections of the juvenile system geared  
27 to rehabilitation and enters an adult system focused on punishment. Thus, a  
28 waiver to adult court by a juvenile is a critical action that must not be taken



1 lightly. *State v. Saenz*, 175 Wash. 2d 167, 174-75 (2012). In Washington, a  
2 juvenile may not waive his or her right to juvenile court jurisdiction unless  
3 the court, the parties, and the attorneys agree to the waiver. RCW  
4 13.40.110(2).  
5

6  
7 Because of the critical nature of the decision, a juvenile's waiver of  
8 juvenile court jurisdiction and a certification hearing must be an " 'express  
9 wavier intelligently made by the juvenile after the juvenile has been fully  
10 informed of the right being waived.'" *Saenz* at 174-75 citing RCW  
11 13.40.140(9). Additionally, the juvenile court must make findings in the  
12 record as to the reason to why the transfer is in the best interests of the  
13 juvenile and the public. *Saenz* at 175.  
14  
15

16 Here, the court's questioning of Jaquez did not show a knowing,  
17 intelligent waiver of his rights for several reasons. The court did not explain  
18 the difference between juvenile and adult court and did not tell him that the  
19 certification hearing would only be a brief delay in his case. This was  
20 important because it appeared that Jaquez's sole reason for his waiver was to  
21 speed up the process. The court never discussed the elements of the crimes  
22 or the punishments he could receive in adult court. The court asked no  
23 questions to confirm whether Jaquez understood the ramifications of his  
24 decision. Finally, the court announced that certification was likely during the  
25  
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1 waiver thereby making Jaquez believe an objection to certification would not  
2 help him.  
3

4       Additionally, the court made a less than adequate record on  
5 prosecutorial merit and the factors of *In re Seven Minors*, 99 Nev. 427  
6 (1983). If the court had thoroughly reviewed the evidence then he would  
7 have realized that the identification of Jaquez as a suspect was from a palm  
8 print outside the home. None of his prints were found inside. Thus,  
9 prosecutorial merit was minimal. Additionally, public safety was not at risk  
10 because Jaquez was already sentenced to prison in the other case.  
11  
12

13       Although a court's decision to certify a case to adult court is an  
14 appealable order (NRS 62D.500), here, Jaquez did not challenge the order but  
15 waived the certification. Therefore, in cases like this, the only way this Court  
16 may review the certification, jurisdiction, and waiver of the certification for  
17 statutory and constitutional violations is on direct appeal of his adult case.  
18  
19

20       Because Jaquez did not object to the inadequate waiver, this Court may  
21 use plain error review. NRS 178.602. Jaquez had a protected liberty interest  
22 in having his case decided by the juvenile court because the juvenile court  
23 had exclusive original jurisdiction over him and the delinquent act. NRS  
24 62B.330(1); NRS 62A.030; *see State v. Grigsby*, 818 N.W.2d 511, 517  
25  
26  
27  
28

1 (2012). Thus, the error is reviewable under plain error because his liberty  
2 interest is a substantial right.  
3

4 The error was not harmless because if the juvenile court had decided to  
5 retain jurisdiction of the case then Jaquez would not be facing an additional  
6 12 to 30 months in prison. Moreover, his attorney may have been able to  
7 convince the court to deny certification.  
8

9  
10 **III. DISMISSAL IS MANDATED BECAUSE THE COURT**  
11 **VIOLATED JAQUEZ'S RIGHT TO A SPEEDY TRIAL**  
12 **AND STATUTORY RIGHT TO A TRIAL IN 60 DAYS**  
13 **PURSUANT TO NRS 178.556.**

14 **A. Days it took to go to trial: 686 or 1235.**

15 Jaquez invoked his right to a speedy trial without ever making a  
16 waiver. During his certification hearing, he told the court that he wanted to  
17 resolve the matter sooner rather than later. IV:692. He waived his  
18 preliminary hearing but later rejected negotiations. I:2-2a;165-71. In district  
19 court he formally invoked his right to a speedy trial and right to a trial in 60  
20 days at his arraignment. I:168-71.  
21

22  
23 Between the time of his initial arraignment in district court on 11/18/10  
24 and the time his trial began on 10/04/12, the trial was continued 5 times for  
25 more than 686 days, with the last continuance being for 9 months. If you  
26  
27  
28

1 count the time from the request for an arrest warrant and the filing of the  
2 juvenile petition on 05/12/09 then 1235 days passed.  
3

4 The initial delay occurred because the State did not bring Jaquez to  
5 court after the arrest warrant issued on 05/12/09. However, after Jaquez's  
6 arraignment in district court, his attorney and the State requested several  
7 continuances.  
8

9 At his arraignment on 11/18/10, the court set Jaquez's trial to begin on  
10 01/18/11 with a calendar call date of 01/11/11. But, on 12/14/10, the court  
11 addressed a motion for a continuance filed by Jaquez's attorney. The State  
12 did not bring Jaquez to court for this motion. I:14-16;172-75. At this hearing,  
13 the Defense Attorney told the court that she talked to Jaquez and he was  
14 willing to waive the 60 day rule and that she needed a continuance because  
15 she had another trial scheduled on the same date that had a firm setting.  
16 I:173. She asked for a trial date in February or March of 2011. I:173. The  
17 court granted her request for a continuance and ordered her to obtain and file  
18 a written waiver from Jaquez. I:174. She never did.  
19  
20  
21  
22  
23

24 On 03/15/11, the next calendar call, the State filed a motion requesting  
25 a continuance because the latent print examiner moved out-of-state and they  
26 needed to find another examiner to testify. I:176-82. The Defense Attorney  
27 objected, announced ready, and argued that although Jaquez waived his right  
28

1 to a speedy trial at the last calendar call, he originally invoked it. Id. The  
2 court granted the State's motion. However, a closer look at the reason the  
3 State gave for the continuance seems unreasonable. At trial Aoyama testified  
4 that 4 different latent print examiners looked at the prints. Thus, all the State  
5 needed to do was to ask another latent print examiner who worked for  
6 METRO to review the prints and testify in court.  
7

8  
9 On 06/14/11, the next calendar call date, the Defense Attorney said she  
10 was missing discovery from the State. The court continued the trial again.  
11

12 On 10/25/11, the next calendar call date, both parties announced ready  
13 with a scheduling caveat because the lead detective for the State would not  
14 return from his vacation until 11/01/10. The court again continued the trial.  
15 But when the court stated that the defendant had already waived his right to a  
16 speedy trial, Jaquez objected and told the court he never waived the 60 day  
17 rule. I:208-11. His attorney then contradicted him and told the court he  
18 waived the right to a speedy trial. I:208-11. However, she was incorrect.  
19  
20  
21

22 On 01/10/12, the Defense Attorney announced ready but there were  
23 some issues. She then announced she had scheduling difficulties if the case  
24 was continued. I:222-26. She informed the court that she was going on leave  
25 and asked for a date in October for the trial. She indicated that she was the  
26 only attorney in her office that could handle this case. I:223. The court  
27  
28

1 responded that everyone on her tract was pregnant. I:223. Jaquez again told  
2 the court that he was upset about the continuance and suggested that he  
3 represent himself. I:223-26. The court continued the trial again.  
4

5 At the next calendar call date of 10/02/12, the parties announced ready  
6 and the trial began on 10/04/12, more than 686 days from the district court  
7 arraignment and 1235 days since the request for an arrest warrant.  
8

9 **B. Violation of the sixty day rule.**  
10

11 NRS 178.556 states in pertinent part:

12 ...If a defendant whose trial has not been postponed upon his  
13 application is not brought to trial *within 60 days after the*  
14 *arraignment* on the indictment or information, the district court  
15 may dismiss the indictment or information. (Emphasis added)

16 NRS 178.556(1). Dismissal is mandatory if the State fails to show good  
17 cause for a delay past the 60 day time limit. *Anderson v. State*, 86 Nev. 829  
18 (1970).  
19

20 Here, the first continuance was requested by his attorney. All of the  
21 remaining continuances were either requested by the State or caused by the  
22 State's failure to give discovery to the defense. The court also allowed a nine  
23 month continuance when Jaquez's attorney took a leave of absence without  
24 appointing another attorney. Thus, the court abused its discretion when  
25 granting the continuances without good cause and violated the 60 day rule.  
26  
27

28 **B. Violation of the right to a speedy trial.**

1       The Sixth Amendment right to a speedy trial attaches when a defendant  
2 is arrested or a criminal complaint or information is filed. *Dillingham v.*  
3  
4 *United States*, 423 U.S. 64 (1975). The test for determining a violation  
5 centers on four factors:

- 6           1. Was the delay before trial uncommonly long?
- 7           2. Who was more to blame for the delay, the
- 8           government or the defendant?
- 9           3. Did the defendant assert his right to a speedy trial
- 10          in due course?
- 11          4. Was the defendant prejudiced as a result of the
- 12          delay?

13 *Doggett v. United States*, 505 U.S. 647(1992).

14       In *Doggett*, an Indictment was filed within the time period allowed in  
15 the statute of limitations, but there was an eight and a half year delay before  
16 *Doggett* was arrested. The *Doggett* Court found a violation of the Sixth  
17 Amendment right to a speedy trial,<sup>4</sup> even though the government did not  
18 know *Doggett*'s exact whereabouts during that time period and without  
19 *Doggett* showing affirmative proof of particularized prejudice. The test used  
20 in *Doggett* is a modification of the four-prong balancing test used in *Barker v.*  
21 *Wingo*, 407 U.S. 514(1973).

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22       <sup>4</sup> "When the Government's negligence [caused a] delay six times as long as  
23 that generally sufficient to trigger judicial review, and when the presumption  
24 of prejudice is albeit unspecified, is neither extenuated, as by the defendant's  
25 acquiescence, (cite omitted) nor persuasively rebutted, the defendant is  
26 entitled to relief." *Doggett*, 505 U.S. at 658.

1           ***1. Was the delay before trial uncommonly long?***

2           How long is uncommonly long? Seven months, thirteen months or a  
3  
4 sixteen month delay are enough to trigger a violation of the right to a speedy  
5 trial. *See State v. Erenyi*, 85 Nev. 285 (1969) (finding a violation of the right  
6 to a speedy trial when the prosecutor did not extradite a defendant for trial in  
7 Nevada until the defendant's out-of-state prison term was completed); *Wood*  
8 *v. Sheriff, Carson City*, 88 Nev. 547 (1972) (finding a violation when there  
9 was a sixteen month delay between the time the defendant requested a  
10 disposition of the charge against him, under the IAD, and the time he was  
11 returned to Nevada for trial); *State v. Lujan*, 112 N.M. 346 (1991) (where the  
12 New Mexico Appeals Court affirmed the dismissal of a charge with prejudice  
13 for a 13-month delay in bringing a defendant to trial when the defendant was  
14 in the custody of the state, in a New Mexico prison, during the same time  
15 period). Here, the delay was more than in any of the cited cases.

16  
17           Dismissal of the charges is the remedy for a violation of the right to a  
18 speedy trial and due process. *Piland v. Clark County Juvenile Services*, 85  
19 Nev. 489 (1969). Clearly, a delay of 686 days or 1235 days is uncommonly  
20 long, triggering a right to a speedy trial violation.

21           ***2. Who was more to blame for the delay, the government or***  
22 ***the defendant?***  
23  
24  
25  
26  
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28



1 The State is more to blame because: (1) Jaquez was not brought to  
2 juvenile court for more than a year after the arrest warrant issued; (2) the  
3 State requested 2 continuances when the Defense announced ready; (3) many  
4 of the other continuances were due to discovery issues caused by the State.  
5 The defense only asked for the first continuance and the 9 month  
6 continuance. Therefore, the government was more to blame for the delay.  
7

8  
9 ***3. Did the defendant assert his right to a speedy trial in due course?***  
10

11 Jaquez invoked his right to a speedy trial at his district court  
12 arraignment and never formally waived that right. He also notified the  
13 juvenile court that he wanted a speedy resolution of his case when he waived  
14 his certification hearing.  
15

16 ***4. Was the defendant prejudiced as a result of the delay?***  
17

18 Even though this prong suggests that a defendant must show prejudice,  
19 this Court may grant relief, without a showing of particularized prejudice, if  
20 the delay is long or if the government negligently persisted in failing to  
21 prosecute the defendant. *Doggett*, 505 U.S. 656-658. "The presumption that  
22 pretrial delay has prejudiced the accused intensifies over time." *Doggett* at  
23 652.  
24

25  
26 Here, the delay was long and the government negligently or  
27 intentionally did not bring Jaquez to juvenile court for 15 months after  
28

1 obtaining the arrest warrant and filing of the petition. The government also  
2 contributed to the delay by not providing discovery in a timely manner and  
3 not having another latent print examiner ready to testify when needed.  
4

5         Nonetheless, Jaquez was prejudiced because he obtained little credit  
6 for time served on this case during the time it was pending and the original  
7 latent print examiner left. At trial, the State allowed the new latent print  
8 examiner to testify to the opinions of the one who left. Thus, a witness was  
9 lost during the delay and Jaquez's right of confrontation violated at trial.  
10  
11

12         **IV. THE COURT ERRED BY NOT PROPERLY**  
13         **CONDUCTING AN EVIDENTIARY HEARING**  
14         **REGARDING JAQUEZ'S MOTIONS ASKING FOR A**  
15         **NEW ATTORNEY OR SEEKING OTHER REMEDIES.**

16         Jaquez's relationship and communication with his attorneys was  
17 troubling as evidenced by the record.<sup>5</sup>  
18  
19  
20  
21

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22         <sup>5</sup> Before Jaquez filed a motion to dismiss his attorney, there was  
23 evidence of communication problems and a possible conflict. In juvenile  
24 court, Jaquez accepted no negotiations and waived a challenge to the  
25 certification process so as to speed things along. IV:681-95. Once in justice  
26 court, he waived his preliminary to accept negotiations under an *Alfred* plea,  
27 only to reject them in district court. I:2-4; 163-67. In district court, Jaquez  
28 invoked his right to a speedy trial and trial within 60 days, only to see the  
trial date continued numerous times by the court. His attorney told the court  
Jaquez waived his right to a speedy trial even though she never filed the  
document the court requested.