Walker, Marti

From: Walker, Marti
Sent: Thursday, December 10, 2015 2:44 PM
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Subject: FW: Subcommittee on Time Standards for Criminal Cases
Attachments: Hecht letter and speedy trial statutes.pdf

Committee Members:
On behalf of the 166-166a Sub-Committee, please see the attachment and below email (which will serve as item "N") on the Agenda. Thank you for your attention to this matter.

From: Peeples, David [mailto:dpeeples@bexar.org]
Sent: Thursday, December 10, 2015 2:37 PM
To: Walker, Marti
Subject: Subcommittee on Time Standards for Criminal Cases

To the SCAC:

The Subcommittee on Time Standards for Criminal Cases recommends that a task force be created to draft a set of time standards. Then, at a later meeting, the SCAC could consider the three options stated below. The task force would consist of a few members of the SCAC and other members chosen by the Court of Criminal Appeals. Here is some background and further information.

Chief Justice Hecht's October 9 letter to the SCAC asked our subcommittee to recommend language for Administrative Rule 6.1(a). That rule reads as follows:

Rule 6.1 District and Statutory County Courts.

District and statutory county court judges of the county in which cases are filed should, so far as reasonably possible, ensure that all cases are brought to trial or final disposition in conformity with the following time standards:

(a) Criminal Cases. As provided by Article 32A.02, Code of Criminal Procedure.

As the Chief's letter says, in 1987 the Court of Criminal Appeals held that article 32A.02 violates the separation of powers and is unconstitutional. In 2005 the Legislature repealed article 32A.02. Yet Administrative Rule 6.1 still refers to it. What should the Supreme Court do?

I have attached copies of three parts of the Code of Criminal Procedure that deal with speedy trial principles. They are: (1) article 17.151 (delay when accused has been indicted and is in custody or out on bail), (2) article 32.01 (delay when person is in custody but not yet officially charged), and (3) article 32A.01 (trial priorities).

The Sixth Amendment to the U.S. Constitution says in part, "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial . . . ." This command has been incorporated and it applies to the states.

The subcommittee has identified the following three options:

(1) Simply delete the section on time standards for criminal cases.

(2) Delete the reference to art. 32A.02 and replace it with the three CCP articles mentioned above.

(3) Delete the reference to art. 32A.02, draft time standards, and perhaps refer to the three CCP articles mentioned above.

We have not yet drafted time standards for option three because we feel that this group of primarily civil lawyers and judges should seek input from the Court of Criminal Appeals. After the meeting on December 11, we should be in communication with the CCA through Judge Alcala.

For the December 11 meeting we recommend that a joint subcommittee (or task force) be created to draft time standards for the full SCAC's consideration. The full committee would then have a tangible option three to evaluate when it decides, at a later meeting, which of the three options to recommend to the court.

I add that there is no real support for option one. The real decision seems to be whether the committee should recommend option two or three.

Thanks,
David Peeples

The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711
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October 9, 2015

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

Texas Rule of Evidence 203. The State Bar Administration of Rules of Evidence Committee (AREC) has submitted the attached proposal to amend Texas Rule of Evidence 203. AREC recommends changing the deadline in Rule 203(a)(2) for a party to produce any written material that the party intends to use to prove foreign law from 30 days before trial to 45 days before trial. The change would align the requirements of Rule 203 with the requirement in Rule 1009 that a party produce a translation of any foreign language document that the party intends to introduce into evidence at least 45 days before trial.

Texas Rule of Evidence 503. AREC has also submitted the attached proposal to amend Texas Rule of Evidence 503, which governs application of the attorney-client privilege. Rule 503(b)(1)(C) codifies the "allied litigant" doctrine. *In re XL Specialty Ins. Co.*, 373 S.W.3d 46, 52 (Tex. 2012). As set forth in the rule, the doctrine protects communications (1) between a client or the client's lawyer (or the representative of either); (2) to a lawyer for another party (or the lawyer's representative); (3) *in a pending action*; and (4) concerning a matter of common interest in the pending action. *See* TEX. R. EVID. 503(b)(1)(C); *In re XL Specialty Ins. Co.*, 373 S.W.3d at 52-53. AREC recommends that the privilege be expanded to include communications made in anticipation of future litigation.

New TRAP Rule on Filing Documents Under Seal. Except for Rule 9.2(c)(3), which states that documents filed under seal or subject to a pending motion to seal must not be filed electronically, the Texas Rules of Appellate Procedure do not address under what circumstances a document may be filed under seal in an appellate court, nor do they set forth any procedure for filing a document under seal. The

Court requests that the Advisory Committee draft a new rule addressing how and under what circumstances a document may be filed under seal in an appellate court. The rule should address both documents that were filed under seal in the trial court and documents that were not filed under seal or were not filed at all in the trial court.

Rules for Juvenile Certification Appeals. SB 888, passed by the 84th Legislature, amends Family Code section 56.01 to permit an immediate appeal from the decision of a juvenile court under section 54.02 waiving its exclusive jurisdiction and certifying the juvenile to stand trial as an adult. Section 56.01(h-1) requires the Court to adopt rules to accelerate these appeals. Concerned that the statutory change might catch some practitioners unaware, the Court in August issued an administrative order (Misc. Docket No. 15-9156), which imposes temporary procedures for accelerated juvenile certification appeals pending the adoption of permanent rules. The Court requests the Advisory Committee to draft an appropriate rule.

Time Standards for the Disposition of Criminal Cases in District and Statutory County Courts. Rule of Judicial Administration 6.1 sets forth aspirational time standards for the disposition of cases in the district and statutory county courts. Since its adoption in 1987, subsection (a) has provided that, so far as reasonably possible, criminal cases should be brought to trial or final disposition "[a]s provided by Article 32A.02, Code of Criminal Procedure." Former article 32A.02, known as the Speedy Trial Act, required the trial court to grant a motion to set aside an indictment, information, or complaint if the state was not ready for trial within a specified time period. Shortly after Rule 6.1(a) became effective, the Court of Criminal Appeals ruled article 32A.02 unconstitutional as a violation of separation of powers. *See Meshell v. State*, 739 S.W.2d 246, 257-58 (Tex. Crim. App. 1987). Article 32A.02 was formally repealed in 2005, but Rule 6.1(a) has not been amended. The Court requests the Advisory Committee's recommendations on how Rule 6.1(a) should be amended to reflect the repeal of Article 32A.02.

Rules for the Administration of a Deceased Lawyer's Trust Account. SB 995, passed by the 84th Legislature, adds to the Estates Code Chapter 456, which governs the disbursement and closing of a deceased lawyer's trust or escrow account for client funds. Section 465.005 authorizes the Court to adopt rules for the administration of funds in a trust or escrow account that is subject to Chapter 456.

Constitutional Adequacy of Texas Garnishment Procedure. A federal district court has ruled that Georgia's post-judgment garnishment statute violates due process because it (1) does not require that the debtor be notified that seized property may be exempt under state or federal law; (2) does not require that the debtor be notified of the procedure for claiming an exemption; and (3) does not provide a prompt and expeditious procedure for a debtor to reclaim exempt property. *Strickland v. Alexander*, No. 1:12-CV-02735-MHS, 2015 WL 5256836, at *9, 12, 16 (N.D. Ga. Sept. 8, 2015). In light of this decision, the Court requests the Advisory Committee's recommendations on whether further revisions should be made to the garnishment rules proposed in the final report of the Ancillary Proceedings Task Force.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

Nathan L. Hecht
Chief Justice

Attachments

ANNOTATIONS

Ludwig v. State, 812 S.W.2d 323, 325 (Tex.Crim. App.1991). "We are not inclined to read 'victim' in [art. 17.15(5)] to cover anyone not actually a complainant in the charged offense."

Ex parte Brooks, 376 S.W.3d 222, 223 (Tex.App.—Fort Worth 2012, pet. ref'd). "In addition to [the rules listed in art. 17.15,] the Texas Court of Criminal Appeals [in *Ex parte Rubac*, 611 S.W.2d 848 (Tex.Crim. App.1981),] stated that the court should also weigh the following factors: (1) the accused's work record; (2) the accused's family ties; (3) the accused's length of residence; (4) the accused's prior criminal record, if any; (5) the accused's conformity with the conditions of any previous bond; (6) the existence of outstanding bonds, if any; and (7) aggravating circumstances alleged to have been involved in the charged offense."

Montalvo v. State, 315 S.W.3d 588, 592-93 (Tex. App.—Houston [1st Dist.] 2010, no pet.). "A defendant carries the burden of proof to establish that bail is excessive. In reviewing a trial court's ruling for an abuse of discretion, an appellate court will not intercede as long as the trial court's ruling is at least within the zone of reasonable disagreement. We acknowledge, however, that an abuse-of-discretion review requires more of the appellate court than simply deciding that the trial court did not rule arbitrarily or capriciously. The appellate court must instead measure the trial court's ruling against the relevant criteria by which the ruling was made."

Perez v. State, 897 S.W.2d 893, 898 (Tex.App.—San Antonio 1995, no pet.). "[T]he court of criminal appeals has considered the nonviolent aspect of an offense as a factor favorable to a bond reduction."

ART. 17.151 RELEASE BECAUSE OF DELAY

Sec. 1. A defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within:

(1) 90 days from the commencement of his detention if he is accused of a felony;

(2) 30 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days;

(3) 15 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or

(4) five days from the commencement of his detention if he is accused of a misdemeanor punishable by a fine only.

Sec. 2. The provisions of this article do not apply to a defendant who is:

(1) serving a sentence of imprisonment for another offense while the defendant is serving that sentence;

(2) being detained pending trial of another accusation against the defendant as to which the applicable period has not yet elapsed;

(3) incompetent to stand trial, during the period of the defendant's incompetence; or

(4) being detained for a violation of the conditions of a previous release related to the safety of a victim of the alleged offense or to the safety of the community under this article.

Sec. 3. Repealed by Acts 2005, 79th Leg., ch. 110, §2, eff. Sept. 1, 2005.

History of CCP art. 17.151: Arts 1977, 65th Leg., ch. 787, §2, eff. July 1, 1978. Amended by Acts 2005, 79th Leg., ch. 110, §§1, 2, eff. Sept. 1, 2005.
See also CCP art. 29.12.

ANNOTATIONS

Rowe v. State, 853 S.W.2d 581, 582 (Tex.Crim.App. 1993). "Article 17.151 provides that if the State is not ready for trial within 90 days after commencement of detention for a felony, the accused 'must be released either on personal bond or by reducing the amount of bail required[.]' Thus the trial court has two options: release upon personal bond or reduce the bail amount. However, there is nothing in the statute indicating that the provisions do not apply if the delay was based upon the accused's request to testify before the grand jury. Article 17.151 contains no provisions excluding certain periods from the statutory time limit to accommodate exceptional circumstances." *But see Ex Parte Matthews*, 327 S.W.3d 884, 888 (Tex.App.—Beaumont 2010, no pet.) (because CCP art. 17.15 applies to CCP art. 17.151, trial court may consider victim and community safety concerns in determining amount of bail under art. 17.151).

Ex parte Shaw, ___ S.W.3d ___ (Tex.App.—Fort Worth 2012, pet. ref'd) (No. 02-12-00116-CR; 12-21-12). Held: D was charged with three offenses. Although one offense had an indictment returned within 90 days, the

other two offenses had no indictments returned, and D continued to be jailed longer than 90 days. Appellate court held D must either be released on personal bond or have bail reduced on the unindicted charges.

Ex parte Okun, 342 S.W.3d 184, 185-86 (Tex. App.—Beaumont 2011, no pet.). "A habeas applicant has the burden of proving bail is excessive. [D] did not present any evidence about any discussions with bail bondsmen or any evidence regarding the maximum amount of bail that [D] believed he could satisfy. [¶] [D] sought a reduction in the bail amount. The trial court granted a substantial reduction in the bail amount. Under the circumstances, given the trial court's grant of [D's] motion, it was incumbent upon [D] to inform the trial court before filing this appeal that the reduced bail was not affordable, or that his request was not for a reduction in bail but for a release on personal bond."

Ex parte Castellano, 321 S.W.3d 760, 764 (Tex. App.—Fort Worth 2010, no pet.). "The stipulated evidence demonstrates that the trial court released [D] on personal bond pursuant to art. 17.151 after he had remained continuously incarcerated on the possession charge for more than 90 days without being indicted. The State thereafter rearrested [D] after he was indicted for the same possession offense. [T]he return of the indictment is the only evidence in the record that supports the trial court's decisions to revoke [D's] personal bond, to set the bond at $100,000, and to deny his requested relief to reinstate the personal bond. Article 17.151, however, 'does not permit the State to obtain an indictment, rearrest [D,] and begin the 90 day period anew from the date of the indictment or rearrest.'"

Vargas v. State, 109 S.W.3d 26, 29 (Tex.App.—Amarillo 2003, no pet.). "The courts of appeals have split over whether appellate jurisdiction exists in regard to direct appeals from pretrial bail rulings such as the one before us. [¶] We lack a statutory grant of jurisdiction over this appeal. And, although TRAP 31 addresses, in part, appeals from bail proceedings, we note that the [TRAPs] do not establish jurisdiction of courts of appeals, and cannot create jurisdiction where none exists. [¶] We lack jurisdiction over this direct appeal from interlocutory pretrial orders refusing to lower bail pursuant to CCP [art.] 17.151." *See also Sanchez v. State*, 340 S.W.3d 848, 850-52 (Tex.App.—San Antonio 2011, no pet.) (no appellate jurisdiction); *Keaton v. State*, 294 S.W.3d 870, 872-73 (Tex.App.—Beaumont 2009, no pet.) (same); *Benford v. State*, 994 S.W.2d 404, 409 (Tex.App.—Waco 1999, no pet.) (same); *Ex parte Shumake*, 953 S.W.2d 842, 846-47 (Tex.App.—Austin 1997, no pet.) (same). *But see Ramos v. State*, 89 S.W.3d 122, 124-26 (Tex.App.—Corpus Christi 2002, no pet.) (TRAP 31.1 contemplates appeals of orders in bail proceedings); *Saliba v. State*, 45 S.W.3d 329, 329 (Tex.App.—Dallas 2001, no pet.) (same); *McKown v. State*, 915 S.W.2d 160, 161 (Tex.App.—Fort Worth 1996, no pet.) (same); *Clark v. Barr*, 827 S.W.2d 556, 556-57 (Tex.App.—Houston [1st Dist.] 1992, no pet.) (same).

Ramos v. State, 89 S.W.3d 122, 128 (Tex.App.—Corpus Christi 2002, no pet.). "Article 17.151 does not require the State to 'announce ready.' The question of the State's 'readiness' within the statutory limits refers to the preparedness of the prosecution for trial. We hold that the State made a *prima facie* showing that it was ready for trial within the statutory period. Accordingly, it became [D's] burden to rebut the State's showing of readiness."

Ex parte McNeil, 772 S.W.2d 488, 489 (Tex.App.—Houston [1st Dist.] 1989, orig. proceeding). "Readiness for trial should be determined [by] the existence of a charging instrument [as] an element of preparedness. Where there is no indictment, the State cannot announce ready for trial." *See also Ex parte Craft*, 301 S.W.3d 447, 449 (Tex.App.—Fort Worth 2009, no pet.); *Ex parte Avila*, 201 S.W.3d 824, 826-27 (Tex.App.—Waco 2006, no pet.).

ART. 17.152. DENIAL OF BAIL FOR VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE CASE

(a) In this article, "family violence" has the meaning assigned by Section 71.004, Family Code.

(b) Except as otherwise provided by Subsection (d), a person who commits an offense under Section 25.07, Penal Code, related to a violation of a condition of bond set in a family violence case and whose bail in the case under Section 25.07, Penal Code, or in the family violence case is revoked or forfeited for a violation of a condition of bond may be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate determines by a preponderance of the evidence that the person violated a condition of bond related to:

ART. 31.08. RETURN TO COUNTY OF ORIGINAL VENUE

Sec. 1. (a) On the completion of a trial in which a change of venue has been ordered and after the jury has been discharged, the court, with the consent of counsel for the state and the defendant, may return the cause to the original county in which the indictment or information was filed. Except as provided by Subsection (b) of this section, all subsequent and ancillary proceedings, including the pronouncement of sentence after appeals have been exhausted, must be heard in the county in which the indictment or information was filed.

(b) A motion for new trial alleging jury misconduct must be heard in the county in which the cause was tried. The county in which the indictment or information was filed must pay the costs of the prosecution of the motion for new trial.

Sec. 2. (a) Except as provided by Subsection (b), on an order returning venue to the original county in which the indictment or information was filed, the clerk of the county in which the cause was tried shall:

(1) make a certified copy of the court's order directing the return to the original county;

(2) make a certified copy of the defendant's bail bond, personal bond, or appeal bond;

(3) gather all the original papers in the cause and certify under official seal that the papers are all the original papers on file in the court; and

(4) transmit the items listed in this section to the clerk of the court of original venue.

(b) This article does not apply to a proceeding in which the clerk of the court of original venue was present and performed the duties as clerk for the court under Article 31.09.

Sec. 3. Except for the review of a death sentence under Section 2(h), Article 37.071, or under Section 2(h), Article 37.072, an appeal taken in a cause returned to the original county under this article must be docketed in the appellate district in which the county of original venue is located.

History of CCP art. 31.08: Acts 1989, 71st Leg., ch. 824, §1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 651, §1, eff. Sept. 1, 1995; Acts 2007, 80th Leg., ch. 593, §3.17, eff. Sept. 1, 2007.

ART. 31.09. CHANGE OF VENUE; USE OF EXISTING SERVICES

(a) If a change of venue in a criminal case is ordered under this chapter, the judge ordering the change of venue may, with the written consent of the prosecuting attorney, the defense attorney, and the defendant, maintain the original case number on its own docket, preside over the case, and use the services of the court reporter, the court coordinator, and the clerk of the court of original venue. The court shall use the courtroom facilities and any other services or facilities of the district or county to which venue is changed. A jury, if required, must consist of residents of the district or county to which venue is changed.

(b) Notwithstanding Article 31.05, the clerk of the court of original venue shall:

(1) maintain the original papers of the case, including the defendant's bail bond or personal bond;

(2) make the papers available for trial; and

(3) act as the clerk in the case.

History of CCP art. 31.09: Acts 1995, 74th Leg., ch. 651, §2, eff. Sept. 1, 1995.

CHAPTER 32. DISMISSING PROSECUTIONS

ART. 32.01 DEFENDANT IN CUSTODY & NO INDICTMENT PRESENTED

When a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant on or before the last day of the next term of the court which is held after his commitment or admission to bail or on or before the 180th day after the date of commitment or admission to bail, whichever date is later.

History of CCP art. 32.01: Acts 1965, 59th Leg., ch. 722, §1, eff. Jan. 1, 1966. Amended by Acts 1997, 75th Leg., ch. 289, §2, eff. May 26, 1997; Acts 2005, 79th Leg., ch. 743, §6, eff. Sept. 1, 2005.

See also CCP art. 15.14.

ANNOTATIONS

Ex parte Countryman, 226 S.W.3d 435, 436 (Tex. Crim.App.2007). "Because the State had not obtained an indictment by the next term of court, [D] filed an application for writ of habeas corpus to have the case dismissed. After [D] filed the application, but before the trial court held a hearing, the grand jury returned an indictment. The trial court denied the application and [D]

appealed. The court of appeals reversed the trial court's order denying habeas relief and ordered that the indictment be dismissed. We granted the State's petition for discretionary review to determine whether a speedy-indictment claim is moot when it is filed before the indictment, but not heard until after the indictment is returned." Held: The court of appeals erred. The claim was moot because even a determination that the State did not show good cause would not provide a remedy to D.

Ex parte Seidel, 39 S.W.3d 221, 223-24 (Tex.Crim. App.2001). "[A] district court lacks jurisdiction over a case when an information or indictment has not yet been filed in that court. In this case, an information or indictment had not yet been filed when the trial judge dismissed the bail and prosecution against [D]. The district court, however, had proper jurisdiction to act under the Speedy Trial Act because [D] was 'held to bail for his appearance to answer any criminal accusation before the district court.' [¶] Generally, a trial court does not have the power to dismiss a case unless the prosecutor so requests. A trial court does, however, have the power to dismiss a case without the State's consent under [CCP] art. 32.01. [CCP] art. 28.061, which bars further prosecution for a discharged offense ... no longer applies to a discharge under Art. 32.01. Therefore, even if a defendant is entitled to discharge from custody under Art. 32.01, that defendant is not free from subsequent prosecution."

Author's comment: The dismissal cannot be with prejudice.

Ex parte Martin, 6 S.W.3d 524, 528 (Tex.Crim.App. 1999). "In *Barker v. Wingo*, the [U.S.] Supreme Court set out a balancing test with four factors to determine when pretrial delay denies an accused of his right to a speedy trial.... Today we adopt a *Barker*-like, totality-of-circumstances test for the determination of good cause under art. 32.01. The habeas court should consider, among other things, the length of the delay, the State's reason for delay, whether the delay was due to lack of diligence on the part of the State, and whether the delay caused harm to the accused. [¶] Another relevant inquiry is whether the grand jury has voted not to present an indictment. *At 529:* By adopting this test, we are not adding constitutional, speedy-trial rights to art. 32.01. We are adopting a test for a fact-based situation."

Cameron v. State, 988 S.W.2d 835, 843 (Tex. App.—San Antonio 1999, pet. ref'd). "[A] defendant cannot complain of the timeliness of a second or other indictment under art. 32.01 once a valid and timely indictment is secured by the State. For timeliness purposes, we hold that art. 32.01 is satisfied once the State secures a timely indictment arising out of the same criminal transaction or occurrence. The defendant suffers no due process violation if he continues under a valid indictment, although it is not the indictment he is ultimately prosecuted and convicted for, so long as the indictment arises out of the same criminal transaction or occurrence. ... Article 32.01 should not be read to preclude the State from advancing alternative theories or charges arising out of the same criminal transaction once the State has acted within the timetable prescribed by art. 32.01 for initially securing a timely indictment. If the State is dilatory in prosecuting the case, the defendant may invoke his speedy trial right."

Soderman v. State, 915 S.W.2d 605, 608 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd). "[T]his provision applies only to district courts. Absent any language in the statute or case law to support applying this provision to county courts, we are without authority to do so."

Uptergrove v. State, 881 S.W.2d 529, 531 (Tex. App.—Texarkana 1994, pet. ref'd). Article 32.01 "does not apply to a juvenile proceeding to determine whether a juvenile is to be transferred to district court to be tried as an adult."

ART. 32.02. DISMISSAL BY STATE'S ATTORNEY

The attorney representing the State may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.

History of CCP art. 32.02: Acts 1965, 59th Leg., ch. 722, §1, eff. Jan. 1, 1966.

ANNOTATIONS

Smith v. State, 70 S.W.3d 848, 850-51 (Tex.Crim. App.2002). "The authority to grant immunity derives from the authority of a prosecutor to dismiss prosecutions. The authority to dismiss a case is governed by [art.] 32.02. A grant of immunity from prosecution is, conceptually, a prosecutorial promise to dismiss a case. Article 32.02 directs that a dismissal made by the prosecutor must be approved by the trial court. Therefore, a District Attorney has no authority to grant immunity

without court approval, for the approval of the court is 'essential' to establish immunity. *At 855:* Provided the judge approves the dismissal that results from an immunity agreement, and is aware that the dismissal is pursuant to an immunity agreement, the judge does not have to be aware of the specific terms of that immunity agreement for it to be enforceable."

CHAPTER 32A. SPEEDY TRIAL

ART. 32A.01 TRIAL PRIORITIES

Insofar as is practicable, the trial of a criminal action shall be given preference over trials of civil cases, and the trial of a criminal action against a defendant who is detained in jail pending trial of the action shall be given preference over trials of other criminal actions.

History of CCP art. 32A.01: Acts 1977, 65th Leg., ch. 787, §1, eff. July 1, 1978.

ART. 32A.02. REPEALED

Repealed by Acts 2005, 79th Leg., ch. 1019, §2, eff. June 18, 2005.

CHAPTER 33. THE MODE OF TRIAL

ART. 33.01. JURY SIZE

(a) Except as provided by Subsection (b), in the district court, the jury shall consist of twelve qualified jurors. In the county court and inferior courts, the jury shall consist of six qualified jurors.

(b) In a trial involving a misdemeanor offense, a district court jury shall consist of six qualified jurors.

History of CCP art. 33.01: Acts 1965, 59th Leg., ch. 722, §1, eff. Jan. 1, 1966. Amended by Acts 2003, 78th Leg., ch. 466, §1, eff. Jan. 1, 2004.

See also Tex. Const. art. 5, §13; Gov't Code §62.201.

ANNOTATIONS

Roberts v. State, 957 S.W.2d 80, 81 (Tex.Crim.App. 1997). "[A] defendant may waive his statutory right to a jury of 12 members."

ART. 33.011. ALTERNATE JURORS

(a) In district courts, the judge may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. In county courts, the judge may direct that not more than two jurors in addition to the regular jury be called and impaneled to sit as alternate jurors.

(b) Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury renders a verdict on the guilt or innocence of the defendant and, if applicable, the amount of punishment, become or are found to be unable or disqualified to perform their duties or are found by the court on agreement of the parties to have good cause for not performing their duties. Alternate jurors shall be drawn and selected in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, security, and privileges as regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury has rendered a verdict on the guilt or innocence of the defendant and, if applicable, the amount of punishment.

History of CCP art. 33.011: Acts 1983, 68th Leg., ch. 775, §2, eff. Aug. 29, 1983. Amended by Acts 2007, 80th Leg., ch. 846, §1, eff. Sept. 1, 2007.

ANNOTATIONS

Trinidad v. State, 312 S.W.3d 23, 24 (Tex.Crim.App. 2010). "In 2007, the Texas Legislature amended art. 33.011(b).... According to the amendment, an alternate juror in a criminal case tried in the district court, if not called upon to replace a regular juror, shall no longer be discharged at the time that the jury retires to deliberate, but shall now be discharged after the jury has rendered a verdict. Unfortunately, the amended statute does not indicate whether the alternate juror should be allowed to be present for, and to participate in, the jury's deliberations or, instead, whether he should be sequestered from the regular jury during its deliberations until such time as the alternate's services might be required by the disability of a regular juror. In the instant cases, the trial court opted for the former contingency. The court of appeals held in each case that, in doing so, the trial court violated the constitutional requirement of a jury composed of 12 persons, or, alternatively, that the trial court violated the statutory prohibition against permitting any person not a juror into the jury deliberation room. We granted the State's