

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Appellant,

v.

JEREMY PRESTON MAYER,

Appellee.

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NOT FOR PUBLICATION

Case No. S-2015-445

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN 14 2016

MICHAEL S. RICHIE
CLERK

OPINION

HUDSON, JUDGE:

On June 25, 2013, Appellant, the State of Oklahoma, charged Appellee Jeremy Preston Mayer in Cleveland County District Court, Case No. CF-2013-1022, with Larceny of Merchandise, in violation of 21 O.S.2011, § 1731.¹ Appellee filed a pro se motion to dismiss on January 22, 2015 alleging his right to a speedy trial had been violated. Appellee, through appointed counsel, filed an additional motion to dismiss for failure to prosecute on April 28, 2015. A hearing on Appellee’s motions was held on May 1, 2015. At the conclusion of this hearing, Special Judge Steven Stice sustained Appellee’s motions, dismissing the case with prejudice. Appellant, the State of Oklahoma, now appeals.

We exercise jurisdiction pursuant to 22 O.S.2011, § 1053(1). After thorough consideration of the entire record before us on appeal, including the

¹ The State indicates in their brief that Appellee was charged after former conviction of two or more felonies; however, this Court is unable to confirm this from the record presented on appeal.

record, transcript, and briefs of the parties, we **REVERSE** the Magistrate's ruling for the reasons discussed below.

The State contends in its sole proposition of error that the trial court erroneously granted Appellee's motion to dismiss on speedy trial grounds. This Court reviews Sixth Amendment speedy trial claims de novo, applying the four balancing factors established in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192, 33 L. Ed. 2d 101 (1972). See *Ellis v. State*, 2003 OK CR 18, ¶¶ 24-64, 76 P.3d 1131, 1135-41, as corrected (Sept. 10 and Oct. 24, 2003); *Bauhaus v. State*, 1975 OK CR 34, ¶¶ 11-27, 532 P.2d 434, 438-42. The four balancing factors to be weighed are: (1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of his rights, and (4) the prejudice to the defendant. *Barker*, 408 U.S. at 530, 92 S. Ct. at 2192. "These are not absolute factors, but are balanced with other relevant circumstances in making a determination." *Lott v. State*, 2004 OK CR 27, ¶ 7, 98 P.3d 318, 327.

Before evaluating the four speedy trial factors set forth in *Barker v. Wingo*, we begin first by addressing Appellee's contention that the State failed to provide a sufficient record on appeal for this Court to make a proper determination of the issues raised. Without question, the Appellant bears the burden to provide a sufficient record upon which this Court may determine the issue raised. *Hill v. State*, 1995 OK CR 28, ¶ 10, 898 P.2d 155, 160. While the record on appeal in the present case is limited, it is nonetheless sufficient for this Court to conduct a proper review and determination of the issues presented herein.

We now turn to the first speedy trial factor—length of delay. “Generally, the speedy trial provisions are triggered by formal charge or actual arrest whichever occurs first.” *Bauhaus*, 1975 OK CR 34, ¶ 17, 532 P.2d at 439. In the present case, there was a time lapse of approximately 675 days—or 22 months and 7 days—from the date Appellee was charged by information to the date in which the case was dismissed. While this delay is not presumptively prejudicial, the length of the delay necessitates inquiry into the remaining three factors set forth in *Barker v. Wingo*. See *Lott*, 2004 OK CR 27, ¶ 9, 98 P.3d at 328; *Ellis*, 2003 OK CR 18, ¶¶ 29-30, 76 P.3d at 1136-37; *McDuffie v. State*, 1982 OK CR 150, ¶ 5, 651 P.2d 1055, 1056.

The next step in our analysis is to evaluate the reason for the delay. Essentially, this step requires this Court to ascertain what caused the delay and then ask if the cause was reasonable. *Lott*, 2004 OK CR 27, ¶ 10, 98 P.3d at 328; *Ellis*, 2003 OK CR 18, ¶ 48, 76 P.3d at 1139. This factor clearly hinges on the circumstances of the case. See *id.*, 2003 OK CR 18, ¶ 47, 76 P.3d at 1139. The Court in *Ellis* explained:

Deliberate delay weighs heavily against the government. Neutral reasons, like negligence or crowded courts, weigh slightly in a defendant's favor, for “ultimate responsibility for such circumstances must rest with the government rather than with the defendant.” *Barker v. Wingo*, 407 U.S. at 531, 92 S.Ct. at 2192. And a “valid reason, such as a missing witness, should serve to justify appropriate delay.” *Id.*

Id., 2003 OK CR 18, ¶ 47, 76 P.3d at 1139.

In the present case, Appellee, the State and the trial court contributed to a portion of the delay. The reasons for delay were both valid and neutral.

There is no evidence that the prosecution acted in bad faith or deliberately delayed the matter herein. *See Henderson v. State*, 1987 OK CR 205, ¶ 12, 743 P.2d 1092, 1094. The first delay occurred when Appellee failed to appear on August 1, 2013. Appellee's failure to appear resulted in a 39 day delay. While not substantial, Appellee was solely responsible for this delay.

The next delay was more sizable and was for valid, appropriate reasons. Although limited, the record on appeal demonstrates that Appellee was working toward a resolution of this case from September 11, 2013—the date in which Appellee bonded out of the Cleveland County jail—through June 16, 2014—the date in which Appellee was supposed to appear to enter a community sentencing plea. This timespan totals 9 months, 5 days or 278 days. During this time period, Appellee was arrested on November 20, 2013, on a Canadian County District Court bench warrant for failure to pay fines and costs in Canadian County Case No. CF-2010-403 (O.R. 15). From a court minute filed on March 3, 2014, it is apparent that all parties involved in this matter were aware of Appellee's incarceration in Canadian County and were awaiting his release in anticipation that Appellee would enter a community sentencing plea.² (O.R. 7). The plea was ultimately scheduled to occur on June 16, 2014. However, Appellee failed to appear on this date and the court directed a bench warrant be issued. The record reveals Appellee was unable to appear for the plea as he was still incarcerated in Canadian County on this date. Appellee actually completed serving out his fines and costs three days later on June 19,

² A copy of the court minute is attached as Exhibit "B" to Appellee's April 28, 2015 motion to dismiss.

2014. Also on June 19th, Appellee pled guilty to Canadian County Case No. CF-2014-76 and was sentenced to 6 years in the custody of the DOC (O.R. 21-22).³

It is reasonable to assume from the record that Appellee not only acquiesced to the 9 month and 5 day delay that transpired, but precipitated a significant portion of this delay. Appellee's unresolved criminal matter in Canadian County set the stage for the bulk of the delay that ensued. After his November 20, 2013 arrest, progress in the present case came to a halt after a plea agreement had been reached and the parties awaited Appellee's release. This delay solely inured to the benefit of Appellee and undoubtedly required the State's agreement. Thus, the reasons for this delay weigh in the State's favor. *See Fields v. State*, 1982 OK CR 96, ¶ 5, 648 P.2d 43, 44 (a defendant who is responsible for a delay should not be permitted to claim a violation of his right to speedy trial).

The final delay spans from June 16, 2014—the date Appellee purportedly failed to appear for his plea—to April 22, 2015—the date in which the State issued a Writ of Habeas Corpus to facilitate Appellee's return to Cleveland County. This timespan resulted in an additional delay of 10 months, 7 days or 310 days. Several events contributed to the delay that ensued after Appellee's June 16th plea went awry. Each of these delaying events involved lack of action

³ The charges in CF-2014-76 were filed on January 20, 2014 while Appellee was serving out his fines and cost in Canadian County Case No. CF-2010-403.

by the government.⁴ However, there is no evidence that the government's failure to timely locate Appellee and resume the proceedings against him was done in bad faith or deliberately to delay the matter. *See Henderson*, 1987 OK CR 205, ¶ 12, 743 P.2d at 1094. Rather, the delays were the result of neglect or negligence on the government's part. As previously set forth above, delay resulting from neglect or negligence on the part of the government is characterized by *Barker* as a neutral reason which weighs slightly in Appellee's favor.

Thus, in summary, there were three separate contributing factors that resulted in delay in the case. Appellee's conduct resulted in a 39 day delay. The next interruption—the 278 day delay while Appellee was serving out fines and costs in Canadian County—inured solely to the benefit of Appellee. Thus, the reasons for this delay weigh in the State's favor. The final 310 day delay was due to government neglect or negligence. This delay, which equates to approximately half of the total delay, is the only delay that weighs in Appellee's favor, albeit only slightly. *See Ellis*, 2003 OK CR 18, ¶ 47, 76 P.3d at 1139 (delays due to government negligence weigh slightly in a defendant's favor).

Turning now to the third speedy trial factor—assertion of the right by the accused—Appellee made an affirmative request for a speedy trial on January 22, 2015. Thus, the third factor weighs in Appellee's favor. *See Ellis*, 2003 OK

⁴ Events resulting in delay include: (1) delay by the State in issuing a bench warrant for Appellee's arrest; (2) delay by the government in locating Appellee once the warrant issued; (3) delay by the trial court following the filing of Appellee's motion for speedy trial on January 22, 2015; and (4) delay by the State in complying with the trial court's February 24, 2015 order directing the State to writ Appellee back within 45 days.

CR 18, ¶ 45, 76 P.3d at 1139 (“the defendant’s assertion of his right, weighs in [defendant’s] favor.”).

This brings us to the final factor to be considered—prejudice. As previously recognized by this Court, *Barker v. Wingo* sets forth three types of prejudice: “oppressive pretrial incarceration; anxiety and concern of the accused; and impairment of the defense.” *Ellis*, 2003 OK CR 18, ¶ 58, 76 P.3d at 1141. Counsel for Appellee on appeal concedes Appellee failed to demonstrate any prejudice. (Appellee Br. 6). Nonetheless, citing *Ellis*, 2003 OK CR 18, ¶ 58, 76 P.3d at 1140-01, counsel asserts that a demonstration of prejudice is not required for a speedy trial claim nor is prejudice restricted to a finding of detriment to the accused’s defense. Notwithstanding this contention, this Court is unable to find Appellee suffered any form of prejudice as a result of delay. Due to two unrelated criminal cases arising out of Canadian County, Appellee was legally incarcerated while the present case was pending in Cleveland County District Court. Under the circumstances presented here, Appellee’s incarceration effectively broke the nexus between the delay that transpired and prejudice. *See Henderson*, 1987 OK CR 205, ¶ 14, 743 P.2d at 1095 (“incarceration broke the nexus between delay and prejudice”). The delay did not impact Appellee’s liberty. Nor did the delay disrupt Appellee’s employment, impact his financial resources, or limit his associations. *See id.*

Having addressed each of the four speedy trial factors, we find the first and third speedy trial factors weigh in Appellee’s favor. As to the second factor, we find the reasons for delay are not decisively for Appellee or for the State. In

other words, our analysis of this factor results in a draw or a tie. While the delay caused by government neglect or negligence weighs slightly in Appellee's favor, this delay only accounted for approximately half of the total delay. The other half of the delay was due to Appellee's unresolved criminal matters in Canadian County and his desire to postpone this case so that he could ultimately enter a favorable community sentencing plea. Finally, the fourth and final factor—prejudice—weighs in the State's favor.

In light of the above analysis, we find the record evidence does not support the Magistrate's finding of a speedy trial violation. It is clear from the May 1, 2015 hearing transcript that the Magistrate was frustrated by the State's failure to timely comply with the court's February 24, 2015 order directing the State to writ Appellee back within 45 days. This delay, however, played only a minor part in the overall delay outlined above with regard to the second speedy trial factor. When all four factors are reviewed de novo and balanced with the relevant circumstances of this case, Appellee's right to a speedy trial simply cannot be found to have been violated. Appellee suffered no deprivation of liberty nor did he suffer any form of prejudice as a result of delay.

DECISION

The May 1, 2015 ruling of the Magistrate sustaining Appellee's motion to dismiss for lack of speedy trial is **REVERSED** and this case is **REMANDED** to the District Court for further proceedings not inconsistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title

22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY
THE HONORABLE STEVEN STICE, SPECIAL JUDGE

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OPINION BY: HUDSON, J.
SMITH, P.J.: CONCUR
LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: DISSENT

LEWIS, J., dissenting:

I would affirm the decision of the trial court. The majority opinion attributes most of the delay to the Appellee. I disagree with this finding.