

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 1049

STATE OF LOUISIANA

VERSUS

JEFFERY DAVID PEYRONEL

Judgment Rendered: December 23, 2009

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case Numbers 349521-1 and 349522

The Honorable August J. Hand, Judge Presiding

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Walter P. Reed
District Attorney
Covington, LA

Counsel for Appellee
State of Louisiana

Kathryn W. Landry
Attorney for the State
Baton Rouge, LA

Katherine M. Franks
Abita Springs, LA

Counsel for Defendant/Appellant
Jeffery David Peyronel

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BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.



GUIDRY, J.

The defendant, Jeffery David Peyronel, was charged in two separate bills of information with theft of goods valued at less than one hundred dollars and aggravated flight from an officer, violations of La. R.S. 14:67.10 and La. R.S. 14:108.1. The trial court denied the defendant's motions to quash the bills of information, and the defendant sought supervisory review in this court. State v. Peyronel, 2008-2622 (La. App. 1st Cir. 4/3/09)(unpublished). While the defendant's writ application (seeking review of the denial of the motion to quash) was pending, he pled guilty, withdrawing his previous not guilty pleas and reserving the right to appeal the trial court's ruling on the motions to quash the bills of information pursuant to State v. Crosby, 338 So.2d 584 (La. 1976). The trial court sentenced the defendant to six months imprisonment on the theft of goods conviction. The aggravated flight from an officer conviction was enhanced pursuant to La. R.S. 15:529.1, and the defendant was sentenced to four years imprisonment at hard labor as a second felony habitual offender. This court denied the defendant's writ application as moot. Thereafter, counsel filed a motion requesting that the defendant's writ application be incorporated into this appeal. Subsequently, this court granted in part and denied in part the motion, ruling to treat the previous writ application as a supplemental pro se brief. State v. Peyronel, 2009-1049 (La. App. 1st Cir. 9/14/09) (unpublished). The defendant's appeal challenges the trial court's rulings on the motions to quash the bills of information urging violations of the defendant's speedy-trial rights.¹ For the following reasons, we affirm the convictions, habitual offender adjudication, and sentences.

¹ The misdemeanor theft conviction is nonappealable. However, in the interest of judicial economy, we have consolidated both convictions and sentences for review. State v. Stampley, 457 So.2d 1238, 1239 n.2 (La. App. 1st Cir. 1984).

STATEMENT OF FACTS

As the defendant entered guilty pleas to the instant offenses and stipulated to the existence of a factual basis for the offenses, the facts of the offenses were not developed. Further, the facts of the offenses are not pertinent to the issue raised on appeal.

COUNSELED/PRO SE ASSIGNMENTS OF ERROR

The first counseled assignment of error argues that, as a tenet of the plea bargain, the defendant is entitled to a *nunc pro tunc* review of the trial court's denial of his pro se motion to quash as raised in the defendant's writ application. The second counseled assignment of error adopts the argument raised in the writ application. As previously stated, the writ application will be treated as a pro se brief. Thus, the issues raised in the defendant's writ application will be reviewed herein.

In his application, the defendant argues that the trial court committed prejudicial error in denying his motion to quash. The defendant argues that the State was required to institute prosecution on or before June 20, 2004, and failed to do so. The defendant notes that he was charged by bill of information on June 20, 2002, in both cases. The defendant further notes that a premature motion to quash both bills of information was filed on March 31, 2008. The defendant contends that a motion to withdraw the premature motion to quash was granted at an April 23, 2008 hearing. On August 25, 2008, the defendant filed a second motion to quash both bills of information. On October 13, 2008, the trial court denied the motion to quash, finding that there was a lack of evidence that the defendant's initial motion to quash was withdrawn. The defendant's application prays that the ruling denying the August motion to quash be vacated and that said motion be granted.

Louisiana Code of Criminal Procedure article 578(2) provides that trial of non-capital felonies must be held within two years from the date of the institution of the prosecution. Louisiana Code of Criminal Procedure article 578(3) provides that trial of misdemeanor cases must be held within one year from the date of the institution of the prosecution. "Institution of prosecution" includes the finding of an indictment or, as in this case, the filing of a bill of information or affidavit, which is designed to serve as the basis of a trial. La. C. Cr. P. art. 934(7); State v. Cotton, 2001-1781, p. 4 (La. App. 1st Cir. 5/10/02), 818 So.2d 968, 971, writ denied, 2002-1476 (La. 12/13/02), 831 So.2d 982. A motion to quash is the proper vehicle to assert that the time limitation for the commencement of trial has expired. La. C. Cr. P. art. 532(7). Upon expiration of this time limitation, the court shall, on motion of the defendant, dismiss the indictment, and there shall be no further prosecution against the defendant for that criminal conduct. La. C. Cr. P. art. 581. When a defendant has brought an apparently meritorious motion to quash based on prescription, the State bears a heavy burden to demonstrate either an interruption or a suspension of time such that prescription will not have tolled. State v. Rome, 93-1221 (La. 1/14/94), 630 So.2d 1284, 1286; see State v. Guidry, 395 So.2d 764, 765 (La. 1981); State v. Haney, 442 So.2d 696, 697-98 (La. App. 1st Cir. 1983). Furthermore, a trial judge's denial of a motion to quash should not be reversed in the absence of an abuse of discretion. See State v. Love, 00-3347, p.12 (La. 5/23/03), 847 So. 2d 1198, 1208.

Louisiana Code of Criminal Procedure article 579 states:

A. The period of limitation established by Article 578 shall be interrupted if:

(1) The defendant at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state; or

(2) The defendant cannot be tried because of insanity or because his presence for trial cannot be obtained by legal process, or for any other cause beyond the control of the state; or

(3) The defendant fails to appear at any proceeding pursuant to actual notice, proof of which appears of record.

B. The periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists.

Louisiana Code of Criminal Procedure article 580, concerning the suspension of the time limitation, states that when a defendant files a motion to quash or other preliminary plea, the running of the periods of limitation established by Article 578 shall be suspended until the ruling of the court thereon; but in no case shall the State have less than one year after the ruling to commence the trial. The prescriptive period is merely suspended until the trial court rules on the filing of preliminary pleas; the relevant period is not counted, and the running of the time limit resumes when the court rules on the motions. A preliminary plea is any pleading or motion filed by the defense that has the effect of delaying trial, including properly filed motions to quash, motions to suppress, or motions for a continuance, as well as applications for discovery and bills of particulars. State v. Brooks, 2002-0792, p. 6 (La. 2/14/03), 838 So.2d 778, 782 (*per curiam*).

Under the federal and state constitutions, every person is guaranteed the right to a speedy trial. U.S. Const. amend. VI; La. Const. art. I, § 16; State ex rel. Miller v. Craft, 337 So.2d 1191, 1193 (La. 1976); State v. Wilson, 95-0613, p. 3 (La. App. 1st Cir. 4/4/96), 672 So.2d 716, 718. The right to a speedy trial attaches from the time the defendant becomes an accused by arrest or actual restraint or by formal bill of information or indictment. State v. Bodley, 394 So.2d 584, 594 (La. 1981). In determining whether this constitutional right has been violated, no fixed time period is determinative. Wilson, 95-0613 at p. 3, 672 So.2d at 718. The constitutional right to a speedy trial is imposed upon the states by the Due Process

Clause of the Fourteenth Amendment. See Klopfer v. North Carolina, 386 U.S. 213, 222-23, 87 S.Ct. 988, 993, 18 L.Ed.2d 1 (1967); State v. Batiste, 2005-1571, pp. 6-7 (La. 10/17/06), 939 So.2d 1245, 1250. The underlying purpose of this constitutional right is to protect a defendant's interest in preventing pretrial incarceration, limiting possible impairment of his defense, and minimizing his anxiety and concern. Barker v. Wingo, 407 U.S. 514, 532, 92 S.Ct. 2182, 2193, 33 L.Ed.2d 101 (1972). The Supreme Court has set forth the following four factors for courts to consider in determining whether a defendant's right to a speedy trial has been violated: (1) the length of the delay; (2) the reasons for the delay; (3) the accused's assertion of his right to speedy trial; and (4) the prejudice to the accused resulting from the delay. Barker, 407 U.S. at 530-32, 92 S.Ct. at 2192-93; see also State v. Reaves, 376 So.2d 136, 138 (La. 1979) (adopting the Barker factors). The specific circumstances of a case will determine the weight to be ascribed to the length of and reason for the delay because "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." Reaves, 376 So.2d at 138 (quoting Barker, 407 U.S. at 531, 92 S.Ct. at 2192).

In the instant case, the defendant is charged with a misdemeanor in case number 349,521 (theft of goods valued at less than one hundred dollars) and a non-capital felony in case number 349,522 (aggravated flight from an officer). Commencement of trial in case number 349,521 was required within one year from the date of the institution of the prosecution and within two years in case number 349,522. As to both cases, the defendant filed a motion for speedy trial on September 17, 2002. More than six years elapsed from the filing date of the original charging instruments in both cases (June 20, 2002) to the date of the guilty pleas (March 4, 2009). Thus, the State had the burden of showing an interruption or suspension of the prescriptive period. A suspension of the prescriptive time

period began when the defendant filed motions to suppress his confession and identification as to both cases on January 6, 2004. The record does not reflect a ruling on said motions.

Moreover, the running of the period of limitation established by Article 578 was interrupted when the defendant failed to appear for attachment/arraignment and an attachment was issued on December 18, 2002. The record reflects that the defendant appeared on October 28, 2003, was held on attachment for the instant offenses, and bond was set. However, the defendant failed to appear for felony jury trial and attachment was reissued on February 11, 2004. The record reflects that the defendant was sentenced into custody on July 24, 2006; thus, arguably the cause for the interruption ended on that date. The defendant filed a motion to quash on March 31, 2008, but withdrew said motion prior to a ruling on April 23, 2008. Although the defendant seems to argue that the motion had no effect because it was withdrawn, pursuant to La. C. Cr. P. art. 580, the motion suspended the prescriptive period. The State had no less than one year following the defendant's withdrawal of the motion to commence trial. The defendant entered guilty pleas on March 4, 2009, before such time elapsed. Considering the interruptions and suspensions reflected in the record, the statutory time limitations set forth in La. C. Cr. P. art. 578 did not expire prior to the commencement of trial.

Moreover the reasons for the delay of trial cannot be placed solely upon the State. The defendant filed four motions to suppress and a motion for a bill of particulars. The record does not reveal an intentional delay on the State's part for the purpose of gaining a tactical advantage. Although the defendant generally asserts that he has been prejudiced by the delay due to the dimming of the memories of defense witnesses and the loss or difficulty in locating physical evidence, the defendant has not provided any specificity in this regard.

It is evident that, after reviewing the Barker factors, the State's action did not deny the defendant his right to a speedy trial, or otherwise cause specific prejudice to his defense. Much of the delay in the commencement of trial can be attributed to the defendant's pretrial motions and failure to appear. We find the trial court did not abuse its discretion in denying this motion to quash the bills of information. The State did not violate any of the time constraints imposed by statutory law, and the defendant's constitutional right to a speedy trial was not violated. The assignments of error lack merit.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED