

Cite as 2011 Ark. 56

SUPREME COURT OF ARKANSAS

No. CR 11-56

JOHNNY RAY MURRIA, JR.
Petitioner

v.

HON. LARRY CHANDLER, CIRCUIT
JUDGE
Respondent

Opinion Delivered February 9, 2011

PRO SE PETITION FOR WRIT OF
PROHIBITION [COLUMBIA COUNTY
CIRCUIT COURT, CR 2008-170]

PETITION FOR WRIT OF
PROHIBITION TREATED AS
PETITION FOR WRIT OF
CERTIORARI AND DENIED
WITHOUT PREJUDICE.

PER CURIAM

In 2008, petitioner Johnny Ray Murria, Jr., was charged with delivery of a controlled substance (crack cocaine) in Columbia County Circuit Court. On September 16, 2009, petitioner filed a pro se motion in that court to dismiss the charge. The motion sought to dismiss the charge on the premise of a violation of the speedy-trial requirement under Arkansas Rule of Criminal Procedure 28.1 (2010). The trial court later denied the motion, and a trial date of February 9, 2011, has been set. Petitioner filed the motion now pending in this court for writ of prohibition to halt the proceedings against him and require dismissal of the charge.¹ We treat the petition as one for writ of certiorari and deny relief.²

¹Our docket reflects the individual judge as the respondent to this petition. Prohibition lies to the circuit court and not to the individual judge. *Conner v. Simes*, 355 Ark. 422, 139 S.W.3d 476 (2003). We will treat the petition as one against the circuit court. *See id.*

² The respondent would have us dismiss the petition on the basis that petitioner is represented by counsel. At the time that the motion to dismiss was filed, petitioner's public

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Rule 28.1, as applicable to petitioner's motion, provides that interlocutory review of the denial of a motion for dismissal under the rule is only, where appropriate, by petition for writ of certiorari.³ Ark. R. Crim. P. 28.1(d). We therefore treat the petition for writ of prohibition as one for writ of certiorari. *See Patsy Simmons Ltd. P'ship v. Finch*, 2010 Ark. 451, ___ S.W.3d ___.

A writ of certiorari is an extraordinary writ which will be granted only when there is a lack of jurisdiction, an act in excess of jurisdiction on the face of the record, or when the proceedings are erroneous on the face of the record. *Sturd v. Circuit Court of Lonoke County*, 2010 Ark. 371, ___ S.W.3d ___. The writ is appropriate only where it is apparent from the record that there has been a plain, manifest, clear, and gross abuse of discretion, and there is no other adequate remedy. *Id.* Certiorari is not to be used to look beyond the face of the record to ascertain the actual merits of a controversy, to control discretion, to review a finding upon facts, or review the exercise of a court's discretionary authority. *Id.* We limit our review of the trial court's ruling on petitioner's claim of a speedy-trial violation accordingly.

Petitioner alleged in his motion that he was to be brought to trial within twelve months from the date that he was charged in accord with Rule 28.1 and that the time had passed. Arkansas Rule of Criminal Procedure 28.2(a) (2010) instead provides that the time period

defender counsel had been relieved, and petitioner had not yet retained new counsel. Petitioner did hire a new attorney who has now made an appearance on his behalf. Because it is not clear, however, that counsel was retained to represent petitioner regarding the previously-filed motion, we will assume that petitioner is not represented by counsel as to the motion to dismiss.

³ Rule 28.1 previously provided for review through writ of prohibition. Ark. R. Crim. P. 28.1(d) (2009).

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commences to run on the date of arrest. The record here reflects that petitioner was arrested on August 1, 2008. On the date that petitioner filed his motion, September 16, 2009, the time exceeding the twelve-month period stood at forty-six days, for a total elapsed time of 411 days. Under Rule 28.1, however, the period allowed is extended for periods of necessary delay authorized under Arkansas Rule of Criminal Procedure 28.3 (2010). In this case, the docket and the court's order denying the motion reflect a number of such excluded periods.

As the respondent notes, the date that the motion was filed tolls the speedy-trial period for purposes of the court's calculation. *Gondolfi v. Clinger*, 352 Ark. 156, 98 S.W.3d 812 (2003); *see also Swartz v. Piazza*, 354 Ark. 334, 123 S.W.3d 877 (2003). The trial court, nevertheless, extended its calculation through November 4, 2010, when the elapsed time since petitioner's arrest would have totaled 825 days. Under either calculation, the speedy-trial period had not been exceeded. The total of the excluded periods noted in the record through September 16, 2009, was 279 days, and the total through November 4, 2010, was 525 days. The elapsed time of the speedy-trial period for the two calculations, from the date of petitioner's arrest and reflecting the excluded periods, was 132 days and 300 days, respectively.⁴ The twelve-month period had not expired under either calculation.

Thus, on the face of the record, there was no error, and the court was not without jurisdiction over petitioner on the charge. From our review of the record, we cannot say that there has been any error or a plain, manifest, clear, and gross abuse of discretion. Petitioner

⁴ The docket further reflects an agreed speedy-trial excluded period from November 4, 2010 until the scheduled trial date of February 9, 2011.

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points to no specific error in the calculations, alleging only generally that there was a speedy-trial violation. He has failed to carry his burden to show that he is entitled to the writ. The party seeking to proceed by petition for writ of certiorari bears a very heavy burden. *Simpson v. Pulaski County Circuit Court*, 320 Ark. 468, 899 S.W.2d 50 (1995) (per curiam).

We do not look beyond the face of the record to ascertain the actual merits of the issue. Accordingly, we deny the petition for writ of certiorari.

Petition for writ of prohibition treated as petition for writ of certiorari and denied without prejudice.