

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-2240**
VERSUS * **COURT OF APPEAL**
PATRICK RUFFIN * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 365-580, SECTION "A"
Honorable Charles L. Elloie, Judge
* * * * *
Judge Terri F. Love
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(Court composed of Judge Miriam G. Waltzer, Judge Terri F. Love, Judge David S. Gorbaty)

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REVERSED AND

REMANDED

The State of Louisiana appeals the trial court's granting of a motion to quash the bill of information against the defendant.

Patrick Ruffin was convicted of two counts of armed robbery on April 12, 1994; he was sentenced as a third-felony offender to serve sixty-six and two-thirds years at hard labor without benefit of parole, probation or suspension of sentence on each count and with the sentences to run concurrently. He appealed, and this court set aside both convictions and sentences and remanded the case for a new trial. State v. Ruffin, 97-0612 (La. App. 4 Cir. 5/19/99), 738 So. 2d 624.

The facts of the case are not at issue. The state argues the trial court erred in granting the motion to quash.

On July 10, 2000, the defendant filed a pro se motion to quash the bill of information based on La. C.Cr.P. art. 582 which gives the trial court one year from the granting of a new trial to the commencement of the trial. The defendant points out that he was granted a new trial on May 19, 1999, and as of June 19, 2000, trial had not begun.

The trial court granted the motion to quash based on the fact that the one-year period allowed under La. C.Cr.P. art. 582 had elapsed. The state

avers, however, that the delay was caused by the defense attorney's failure to appear at four hearings and the defendant's not being brought to court from parish prison on one occasion. However the record does not support the state's argument.

The record provides the following information concerning the hearings:

On June 21, 1999, the state filed a set sheet with the Clerk of Court's Office having the defendant's case listed on the calendar in Section "A" for a status hearing to pick a new trial date.

On July 19, 1999, the defendant and his attorney, Yvonne Hughes, appeared in court, and all parties agreed to continue the matter until August 5, 1999.

The minute entry for August 5th states: "THE STATUS HEARING IS CONTINUED BY THE COURT AND RESET FOR A STATUS HEARING FOR 8/24/99." The docket master simply states: "STATUS HEARING RESET FOR 8/24/99." The transcript of the hearing lists under appearances only the names of two assistant district attorneys. The court reporter provided a certificate stating the case was not called in open court to be heard.

On August 24th the minute entry states: "DEFENDANT NOT

BROUGHT FROM JAIL. THE STATUS HEARING IS CONTINUED BY THE COURT FOR THE STATE AND RESET FOR A STATUS HEARING FOR 9/02/9.” The docket master reflects only that the defendant was not brought from jail and a new date was set for a hearing.

The September 2nd minute entry and docket master state “CONTINUED WITHOUT DATE.” The transcript of the hearing lists under appearances only the names of two assistant district attorneys. After a very short exchange with one of the attorneys concerning the history of the case, the trial court said, “lets continue without date.”

At the hearing on the motion to quash, a new defense attorney argued that there were no continuances or interruptions in the more than thirteen-month period between May 19, 1999 (the day this court ordered a new trial), and July 10, 2000 (the date of the filing of the motion to quash), that could be attributed to the defense. The state objected when the trial court granted the motion.

The trial court accepted the defendant’s dates in granting the motion to quash. However, those dates are incorrect. This court granted the new trial on May 19, 1999, and under La. C.Cr.P. art. 922 (A) that judgment became final after fourteen days when the time for applying for a rehearing expired. Thus, on June 3rd the decision was final and the clock began

running. Furthermore, the state and the defense agreed to a continuance on July 19, 1999.

La. C.Cr.P. art. 582 provides, in pertinent part, “When a defendant obtains a new trial . . . the state must commence the second trial within one year from the date the new trial is granted . . . or within the period established by Article 578, whichever is longer.” (La. C.Cr.P. art. 578 provides that trial must commence within two years from the date of institution of prosecution in non-capital cases). La. C.Cr.P. art. 580 provides that the period of limitation is suspended when a defendant files a motion to quash or other preliminary plea, “but in no case shall the State have less than one year after the ruling to commence the trial.” A motion for continuance filed by defendant or a joint motion for a continuance is a preliminary plea under La. C.Cr.P. art. 580 which suspends the running of the prescriptive period. State v. Fabacher, 362 So.2d 555 (La. 1978); State v. Parker, 99-1446 (La. App. 4 Cir. 3/22/00), 757 So. 2d 893, writ denied, 2000-1141 (La. 6/2/00), 763 So. 2d 602.

When the only continuance on the record was granted on July 19, 1999, the state had one year in which to try Ruffin. The defendant filed a motion to quash on July 10, 2000, nine days less than the one-year period.

Accordingly, because the trial court erred in granting the defendant’s

motion to quash, we reverse the decision and remand the case to the trial court.

REVERSED AND

REMANDED