IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

GLENN R. GREER,
Appellant.

No. 2 CA-CR 2018-0080
Filed April 13, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201503228
The Honorable Lawrence M. Wharton, Judge Pro Tempore

AFFIRMED AS CORRECTED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Glenn Greer was convicted of conspiracy to commit first-degree murder, assisting a criminal street gang, knowingly supplying a firearm to another person to be used in the commission of a felony, and possessing a firearm while a prohibited possessor. The trial court sentenced him to consecutive and concurrent prison terms, the longest of which is life without the possibility of release on any basis for twenty-five years. On appeal, Greer argues the court violated his right to an impartial jury by denying his motions for a mistrial and for a new trial. Greer also argues the court violated his right to a speedy trial "when it failed to dismiss his case for a violation of the time limits" as he "was not brought to trial within the 270-day time frame for a complex case" and "was held more than 26 months pre-trial." Last, Greer argues that we should correct the sentencing minute entry because it conflicts with the court's oral pronouncement at the sentencing hearing. For the reasons stated below, we affirm Greer's convictions and sentences as corrected.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences in the light most favorable to affirming Greer's convictions. *See State v. Duffy*, 247 Ariz. 537, ¶ 2 (App. 2019). In 2014, Greer was incarcerated in the Arizona Department of Corrections (ADOC) and was on "probate status" with the Arizona Aryan Brotherhood (AAB) gang. Before his release, Greer's status "was revoked," but he maintained contact with the AAB. That same year, an AAB member, David Bounds, while incarcerated, wanted to kill a prosecution witness in his upcoming first-degree murder trial. He recruited Eric Olson, an AAB member who had been released from prison, to kill the witness, and directed another inmate Larry Wilson, upon his release, to assist Olson and "make sure that [the] murder took place." Bounds also told Wilson that Greer would be "in place" and "could line [Wilson] up with any guns or anything that [he] needed." Unbeknownst to Bounds, Wilson was cooperating as an informant with the Correctional Intelligence Task Force with ADOC.

¶3 After his release in May 2015, Wilson met with Greer, who had also been released, to obtain a firearm to kill the witness. Wilson was also to determine Greer's "mindset" regarding "[w]hether or not he wanted to regain his status within the [AAB] organization" as a "patch member" by participating in the homicide. After the meeting, Wilson gave the firearm he had obtained from Greer to law enforcement.

¶4 A grand jury indicted Greer for conspiracy to commit first-degree murder, assisting in a criminal street gang, knowingly supplying a firearm to another person with knowledge that the firearm would be used in the commission of a felony, and possessing a firearm while a prohibited possessor. Greer was convicted as charged and sentenced as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Denial of Right to Impartial Jury

¶5 Greer argues "[t]he trial court violated [his] Sixth and Fourteenth Amendment rights to an impartial jury by denying his motion for a mistrial" and his motion for a new trial. "We review the denial of a motion for mistrial and a denial of a motion for new trial for an abuse of discretion," *State v. Mills*, 196 Ariz. 269, ¶ 6 (App. 1999), including motions made on constitutional grounds, *see State v. Lehr*, 277 Ariz. 140, ¶ 43 (2011) (reviewing denial of motions based on Sixth Amendment right to a fair and impartial jury).

¶6 During voir dire, conducted in Greer's presence, prospective jurors were asked to state their names, residences, employment, and details about their family. Later, a gang specialist with the Correctional Intelligence Task Force testified that AAB members gather information to "target" and kill people on behalf of the AAB. The next morning, two jurors submitted notes to the trial court, one anonymously and the other signed by Juror 13, expressing concerns about juror safety. One of the notes explained there had been conversations among some of the jurors regarding their safety.

¶7 The trial court determined that going forward, jurors would be identified by number instead of name and that the voir dire transcripts would be sealed. The court also reviewed the notes Greer had made during voir dire, confirmed he had not removed them from the courtroom, and notified the jury of the precautions it had taken as it questioned the jurors individually outside of Greer's presence. Nine of the jurors revealed there had been discussions about safety concerns, yet each juror assured the court

that they could be fair and impartial or were otherwise unconcerned. Specifically, Juror 13 expressed satisfaction with the court's measures, and further stated, "[a]s long as everything is wiped and sealed, that's fine."

¶8 Greer moved for a mistrial arguing that the jurors had violated the trial court's admonition to not discuss the case and "[t]his whole jury panel has been polluted." Greer claimed, "The[jurors'] interpretation of fair and impartial at this point is get the case over, we[wi]ll get this guy, and we[wi]ll convict him and send him off, and we[wi]ll cross our fingers and hope that he does[not] send his friends after us." The court denied the motion stating that "all 14 [jurors] said that they could be fair and impartial" and "any discussions that may have been had had absolutely nothing to do with the issue that bear[s] on their ultimate role as jurors." Greer renewed his motion the next day of trial, arguing the state "developed in great length" through testimony "what the Aryan Brotherhood could and would do to you" and "[the court] simply can[not] remove that taint." Greer further maintained that the jury must have thought, "We convict him on all these things. Based on what we[ha]ve heard, he[is] going to go away for a long, long time, and we [will not] have to worry about him" and therefore they were "tainted." The court again denied the motion.

¶9 When trial resumed, the evidence presented by the state included testimony regarding Greer's violent history and that he had sent a note to AAB members warning of Wilson's cooperation with ADOC. At the trial's conclusion, two alternate jurors were chosen, Juror 5 and Juror 12, and only the twelve remaining jurors participated in deliberations. The author of one of the notes—Juror 13—and potentially the author of the anonymous note participated in deliberations.

¶10 Following his conviction, Greer filed a motion for a new trial, arguing he "was denied due process and denied a fair trial." Specifically, Greer claimed that "Jurors discussing being afraid of the defendant and whether their personal safety was in jeopardy prior to deliberations is juror misconduct, and as a result, a new trial is warranted."[1] The trial court denied the motion.

[1]Greer also argued in his motion for a new trial that the trial court erred by not distributing the anonymous note and a redacted version of the signed note to him. Greer does not argue this issue on appeal, and we consider it waived. *See State v. West*, 238 Ariz. 482, n.6 (App. 2015) ("Failure

Motion for a Mistrial

¶11 On appeal, Greer argues the trial court erred by denying his motion for a mistrial because the jurors "discuss[ed] their fears" and in turn "discuss[ed] the testimony," and the court "did[not] make a sufficient inquiry into whether the jurors could really be fair and impartial," which "deprive[d] . . . [him] of his Sixth and Fourteenth Amendment right to a fair trial before an unbiased and impartial jury." Quoting *Arizona v. Washington*, 434 U.S. 497, 513 (1973), he further argues the court erred in not granting a mistrial because its protective "measures [would] 'not necessarily remove the risk of bias.'"

¶12 "A declaration of a mistrial . . . is the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new trial granted." *State v. Moody*, 208 Ariz. 424, ¶ 126 (2004) (quoting *State v. Dann (Dann I),* 205 Ariz. 557, ¶ 43 (2003)). A trial court is in the best position to assess the responses of the jurors when questioned about impartiality and misconduct. *See Stafford v. Burns*, 241 Ariz. 474, ¶ 22 (App. 2017) ("[T]he trial court is in the best position to determine the effect, if any, of a juror's misconduct . . . ."); *State v. Blackman*, 201 Ariz. 527, ¶ 13 (App. 2002) ("Because the trial court has the opportunity to observe prospective jurors first hand, the trial judge is in a better position than are appellate judges to assess whether prospective jurors should be allowed to sit."); *see also State v. Burns*, 237 Ariz. 1, ¶ 110 (2015) ("A trial court has broad discretion in selecting methods to detect and protect against potential juror bias."). Additionally, not every violation of the admonition to not discuss the case automatically disqualifies a juror or jury. *See State v. Trostle*, 191 Ariz. 4, 13-14 (1997); *see also State v. Arvallo*, 232 Ariz. 200, ¶ 8 (App. 2013) (explaining that juror who expresses opinion about defendant's guilt or innocence prior to close of evidence before "trial is completed may nevertheless continue to hear the case as long as that juror keeps an open mind and retains a willingness to alter the opinion after hearing all of the evidence"); *see also State v. Dann (Dann III)*, 220 Ariz. 351, ¶ 115 (2009) (stating that when jury conducts premature deliberations without evidence of external influence "there is no reason to doubt that the jury based its ultimate decision only on evidence formally presented at trial" (quoting *United States v. Gianakos*, 415 F.3d 912, 921-22 (8th Cir. 2005))). Absent evidence to the contrary, we presume jurors are impartial. *See State v. Payne*, 233 Ariz. 484, ¶ 100 (2013). Further, a new

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to argue a claim on appeal constitutes waiver of that claim." (quoting *State v. Bolton*, 182 Ariz. 290, 298 (1995))).

trial for juror misconduct is only warranted if a defendant "shows actual prejudice or if prejudice may be fairly presumed from the facts." *State v. Cruz*, 218 Ariz. 149, ¶ 68 (2008) (quoting *State v. Miller*, 178 Ariz. 555, 558 (1994)).

¶13 Greer relies on *United States v. Blitch*, 622 F.3d 658 (7th Cir. 2010), to support his argument that the trial court's actions were insufficient to protect his right to a fair and impartial jury. But the court here took measures not taken by the trial court in *Blitch*. It sealed the voir dire transcript, reviewed Greer's notes, spoke individually with the jurors, and questioned each juror regarding their ability to be fair and impartial. Based on these precautions, *Blitch* is not instructive. Moreover, contrary to Greer's argument, it does not appear the jurors violated the court's admonition by discussing evidence in the case; instead, it appears they discussed their safety concerns. *See Trostle*, 191 Ariz. at 13. And the court took extensive steps to satisfy the concerns of the jury, as discussed above. *See Burns*, 237 Ariz. 1, ¶ 110. Because the court was in the best position to assess whether jurors could be fair and impartial, *see Blackman*, 201 Ariz. 527, ¶ 13, we cannot say the court abused its discretion by denying the motion for a mistrial, *see Lehr*, 277 Ariz. 140, ¶ 43.

Motion for a New Trial

¶14 Greer argues his right to a fair and impartial jury, pursuant to the Sixth and Fourteenth Amendments, were "violated by a combination of factors" when the trial court denied his motion for a new trial. In addition to the issues raised in his motion for a mistrial, Greer argues that—after assuring the court they could be impartial—the jurors heard more testimony and evidence, such as Greer's propensity for violence and that he was still in contact with AAB members, which "grew" "the seed of fear." Greer reasons, "It is not enough that all of the jurors agreed with the court that they could be fair and impartial on Day 3, there are situations where that answer is not enough." Greer also contends that "the court did[not] consider what effect the additional information had on juror fears and their ability to be fair and impartial" or that "Juror #13 deliberated and that more than likely the anonymous juror deliberated as well."

¶15 In support of his argument that the trial court's actions were insufficient, Greer relies on *State v. Rojas*, 247 Ariz. 399 (App. 2019). In *Rojas*, we concluded the trial court did not abuse its discretion in granting a new trial when jurors learned that a recording made of them had been disclosed on social media, violating Rule 122, Ariz. R. Sup. Ct., and "evidence support[ed] the trial court's decision that it could not beyond a reasonable

doubt conclude that the extraneous information the jury received did not contribute to the verdict." *Id.* ¶¶ 21-22.

¶16 Here, unlike *Rojas*, nothing in the record suggests that any personal information about the jurors had left the courtroom. As discussed above, the trial court took measures to ensure this did not occur and there was no violation of the rules designed to protect jurors. Greer's reliance on *Rojas* is misplaced.

¶17 In sum, the trial court took extensive steps to address the jurors' safety concerns by sealing the voir dire transcripts, reviewing Greer's notes, referring to the jurors by number, and individually questioning each juror to ensure the jury was impartial and fair. *See Burns,* 237 Ariz. 1, ¶¶ 110-11. We defer to the court's determination of the jury's ability to fairly and impartially decide the case. *See Blackman*, 201 Ariz. 527, ¶ 13. Accordingly, we conclude the court did not abuse its discretion by denying the motion for a new trial. *See Mills*, 196 Ariz. 269, ¶ 6.

Speedy Trial

¶18 Greer argues his right to a speedy trial was violated because he was not brought to trial within the time limits set forth in Rule 8.2(a)(3)(C), Ariz. R. Crim. P., and the Sixth Amendment. We review a trial court's Rule 8 rulings and factual determinations for an abuse of discretion, *see State v. Parker*, 231 Ariz. 391, ¶ 8 (2013); *State v. Hunter*, 227 Ariz. 542, ¶ 4 (App. 2011), and its rulings in regard to the right to a speedy trial originating from the Sixth Amendment de novo, *Parker*, 231 Ariz. 391, ¶ 8. We will first consider the issue under Rule 8, as the right to a speedy trial under the rule "is more strict than that provided by the United States Constitution." *State v. Wassenaar*, 215 Ariz. 565, ¶ 18 (App. 2007).

¶19 A defendant in a case that has been designated complex must be tried within 270 days. Ariz. R. Crim. P. 8.2(a)(3)(C). This time is subject to excludable periods, including "those caused by or on behalf of the defendant" and "a time extension for disclosure under Rule 15.6." Ariz. R. Crim. P. 8.4(a)(1), (3). Defendants must notify trial courts of an impending speedy trial deadline to preserve their Rule 8 objections. *State v. Vasko*, 193 Ariz. 142, ¶ 25 (App. 1998) ("Indeed, a [Rule 8] speedy trial error is waived on appeal if defendant has not timely objected in the trial court."); *see State v. Swensrud*, 168 Ariz. 21, 23 (1991) (concluding counsel waived Rule 8 violation by objecting after deadline). A counsel's actions bind their clients, and counsel may waive certain of defendant's rights, even if done without defendant's knowledge or consent. *See State v. Kelly*, 123 Ariz. 24, 25 (1979)

("[A] delay sought on behalf of the defendant by his counsel will be binding on the defendant and have the effect of waiving the defendant's right to a speedy trial even though done without the knowledge or consent of the defendant."); *State v. Killian*, 118 Ariz. 408, 411 (App. 1978) ("Rule 8.2 does not grant the appellant any 'fundamental right' which cannot be waived by his counsel."); *State v. Adair*, 106 Ariz. 58, 60-61 (1970) ("[N]ormally[,] acts of counsel to seek delays on behalf of his client are binding on the defendant."); *cf. State v. Medina*, 232 Ariz. 391, ¶¶ 31-35 (2013) (affirming trial court's acceptance of stipulation regarding juror dismissal over defendant's objection); *State v. Corrales*, 138 Ariz. 583, 595 (1983) ("It is well established that a defendant may be bound by his counsel's trial strategy decision to waive even constitutional rights.").

¶20 In this case, Greer was arraigned on November 6, 2015. Between May and June 2016, he filed three motions for new counsel, all of which were granted. His fourth and final trial attorney was appointed on June 14, 2016. Six days later, Greer moved to designate this case as complex and to appoint an investigator. The trial court granted both motions.

¶21 In October 2016, Greer moved for a ruling on a motion for disclosure, filed through a previous attorney, and requested additional disclosure and oral argument. Greer then requested the hearing be continued to the following month. During the November 18 hearing, Greer's counsel declared that "all time [since June 14] has been waived."

¶22 At a hearing in March 2017, the trial court set a trial date for October 24,[2] and Greer's counsel later confirmed that both he and Greer agreed with that trial date. Greer also moved for additional disclosure or dismissal based on claimed *Brady*[3] and *Giglio*[4] violations, "additional investigator hours," a *Daubert*[5] hearing, and a motion to sever count four.

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[2]The transcripts of the March hearing are not a part of the record. Accordingly, we presume it supports the trial court's determination. *See State ex rel. Brnovich v. Miller*, 245 Ariz. 323, ¶ 9 (App. 2018) ("When a party fails to include necessary items, we assume they would support the court's findings and conclusions." (quoting *Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995))).

[3]*Brady v. Maryland*, 373 U.S. 83 (1963).

[4]*Giglio v. United States*, 405 U.S. 150 (1972).

[5]*Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

On June 20, 2017, the court held a hearing on Greer's pending motions and set a status conference for August. About a week later, Greer filed a pro se motion for change of counsel, which the court denied.

¶23 On October 5, 2017, Greer's attorney moved to continue the October 24 trial date because of his trial schedule relating to an unrelated older case and his health. The trial court granted the continuance, over Greer's objection, and ordered "[c]ounsel to determine what the Rule 8 trial date is." Both parties stipulated that the "last day" for Rule 8 was February 23, 2018. Greer later filed a pro se motion to dismiss based on Rule 8 and his constitutional speedy trial rights. He maintained that as of December 4, 2017, 358 non-excludable days had passed. The court directed Greer "to file all motions through his attorney," and his counsel later re-filed the same pro se motion with a cover sheet. On the first day of trial, January 9, 2018, the court stated, "Based on the arguments and the representations that have been made on the record up to this point including the stipulations, maybe more specifically the stipulation, the Court is denying Mr. Greer's motion to dismiss for Rule 8 purposes."

¶24 As we understand Greer's argument, any minute entry or continuance that does not expressly state that the time is being waived or the period is excluded, demonstrates the time should be included in the Rule 8 calculation. Specifically, Greer argues four time periods between 2016 and 2017 are not excludable under Rule 8.4.[6] He also argues the Rule 8 stipulation was done without his consent or authorization and therefore cannot waive his speedy trial rights.[7] We disagree. *See* Ariz. R. Crim. P. 8.4(a); *Kelly*, 123 Ariz. at 25.

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[6] Both parties agree that the following time periods are not excludable and therefore must be included in the Rule 8 time calculation: January 25, 2016 to March 21, 2016, January 23, 2017 to March 6, 2017, and October 13, 2017 to January 9, 2018. To the extent there are other periods, not mentioned here or in our discussion above, that should be included in the Rule 8 calculation, they are waived by Greer's failure to raise them on appeal. *See West*, 238 Ariz. 482, n.6 (explaining arguments not briefed are generally waived).

[7] To the extent Greer is attempting to argue his counsel was ineffective, we do not address claims of ineffective assistance of counsel during direct appeal. *See State v. Allen*, 223 Ariz. 125, ¶ 21 (2009) ("[T]o the extent a defendant claims that his lawyer failed to obtain the client's informed consent to a stipulation . . . such claim[] require[s] evidence

¶25 In 2016, the periods between May 23 and August 1, and October 24 and November 18 are excludable. *See* Ariz. R. Crim. P. 8.4(a). First, the delay between May 23 and August 1 arose from Greer's requests for new counsel and the continuances that accompanied them. Second, the delay between October 24 and November 18 related to Greer's request for a hearing regarding disclosure. Finally, at the November 18 hearing, Greer's counsel stated, "I'll tell the court, since I've been on the case[, which was June 14,] all time has been waived." Greer was present and did not contradict his counsel or object to the statement. The time during these delays was caused by Greer and extensions for disclosure and is therefore excluded under Rule 8.4(a)(1) and (3). *See State v. Henry*, 176 Ariz. 569, 578 (1993).

¶26 Additionally, as noted above, in March 2017 the trial court set trial for October 24. Although it is unclear how the trial date was determined, Greer agreed "for trial on th[at] date." *See Miller*, 245 Ariz. 323, ¶ 9 (appellate courts assume items missing from record would support court's findings and conclusions). Accordingly, the time from March 6 to October 13 is excluded, as it was on behalf of or agreed to by Greer. *See* Ariz. R. Crim. P. 8.4(a)(1); *Henry*, 176 Ariz. at 578. Notably, on June 28, Greer filed a pro se motion for new counsel. Accordingly, the time between June 28 to August 14 would have been excluded in any event, *see* Ariz. R. Crim. P. 8.4(a)(1); *Hunter*, 227 Ariz. 542, ¶¶ 4-10, leaving only eight days during the contested period of June 20 to August 14 and forty-six days in the period of August 28 to October 13. This would result in 239 non-excluded days between arraignment and trial, well within the Rule 8 limitations. *See* Ariz. R. Crim. P. 8.2(a)(3)(C).

¶27 Even assuming Greer's Rule 8 time calculations were correct, we conclude that he waived the Rule 8 time limits. *See Swensrud*, 168 Ariz. at 23; *Vasko*, 193 Ariz. 142, ¶ 25. First, Greer did not object until after his claimed deadline, *see Vasko*, 193 Ariz. 142, ¶ 25, and, second, on October 18, 2017, the parties stipulated that Rule 8 required Greer be tried by February 23, 2018, *see Killian*, 118 Ariz. at 411. Despite Greer's contentions

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outside the record for resolution and therefore must be raised in a Rule 32 proceeding."); *State ex rel. Thomas v. Rayes*, 214 Ariz. 411, ¶ 20 (2007) ("We therefore hold . . . that a defendant may bring ineffective assistance of counsel claims *only* in a Rule 32 post-conviction proceeding—not before trial, at trial, or on direct review."). Accordingly, we will not address the merits of any claims of ineffective assistance of counsel.

to the contrary, he is bound by the stipulation.[8] *See Kelly*, 123 Ariz. at 25. Accordingly, Greer waived Rule 8 time limits, and the trial court did not err in its Rule 8 ruling. *See Vasko*, 193 Ariz. 142, ¶ 25.

Sixth Amendment

¶28 The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." However, it does not give a specific time within which a trial must be held. *Henry*, 176 Ariz. at 578. Under the Sixth Amendment, we consider four factors to determine whether delay violates the right to a speedy trial: (1) the length of delay; (2) the reason for the delay; (3) whether the defendant demanded a speedy trial; and (4) whether the defendant suffered any prejudice from the delay. *Barker v. Wingo*, 407 U.S. 514, 530-32 (1972); *see Parker*, 321 Ariz. 391, ¶ 9. "In weighing these factors, the length of the delay is the least important, while the prejudice to defendant is the most significant." *State v. Spreitz*, 190 Ariz. 129, 139-40 (1997). Prejudice is assessed "in light of the interests that the speedy trial right protects against: (1) 'oppressive pretrial incarceration,' (2) 'anxiety and concern of the accused,' and (3) 'the possibility that the defense will be impaired' by diminishing memories and loss of exculpatory evidence." *Parker*, 231 Ariz. 391, ¶ 16 (quoting *Barker*, 407 U.S. at 532); *see Wassenaar*, 215 Ariz. 565, ¶ 20 (no prejudice when appellant did not argue "delay caused him to be subject to prolonged confinement" or "that he was unable to fully investigate his case, . . . could not adequately prepare for trial, . . . was unable to locate evidence or witnesses, . . . lost the opportunity to present any evidence or testimony or . . . otherwise could not present his entire defense as intended").

¶29 As to factors one and two, Greer contends the delay of twenty-six months between arraignment and trial was largely due to disclosure issues, "the prosecutor's unwillingness to provide information, and changes in the potential witnesses." We recognize such a delay is significant. *See Doggett v. United States*, 505 U.S. 647, n.1 (1992) (noting that "postaccusation delay [is] 'presumptively prejudicial' . . . as it approaches one year"); *Snow v. Superior Court*, 183 Ariz. 320, 325 (App. 1995) (applying *Doggett*'s presumptively prejudicial standard to nineteen-month delay). But, as described above, Greer agreed to and requested various

[8]Greer does not provide any legal citations as to why he should not be bound by the stipulation. *See* Ariz. R. Crim. P. 31.10(a)(7)(A) (requiring parties to include "citations of legal authorities" in their argument).

continuances, due to requests for disclosure and new counsel. Additionally, the delay from October 24, 2017 to January 9, 2018 was at Greer's request, based on his counsel's trial schedule and health. These delays may be attributed to Greer. *See Parker*, 321 Ariz. 391, ¶¶ 13-14 (attributing delays caused by defense counsel's retirement against defendant and not state). Accordingly, factor two weighs against him.

¶30 Turning to factor three, Greer argues he asserted his speedy trial right in November 2016, which the state concedes. However, the state asserts that he did not do so "promptly." *See State v. Schaaf*, 169 Ariz. 323, 327 (1991) ("Generally, the right to a speedy trial is waived unless asserted promptly."); *see also Parker*, 231 Ariz. 391, ¶ 15 (delay in asserting right that exceeded more than two years weighed against defendant). We disagree with the state, as Greer asserted his right approximately fourteen months before he was tried. *See id.* (specifying that once defendant asserted speedy trial right, trial commenced within a year); *Henry*, 176 Ariz. at 579 (considering that defendant did not assert speedy trial rights until fourteen months after indictment and three months before trial when finding no constitutional violation). Accordingly, this factor weighs in Greer's favor.

¶31 As to factor four, the last and most important factor, *see Spreitz*, 190 Ariz. at 139-40, Greer argues that he was prejudiced because in September 2016, officers from county and federal gang task forces "seized documents from [his holding] cell including legal mail, attorney-client letters, pleadings, legal notes, and [his] paperwork including the names and contact information for potential witnesses." He also asserts the searches and seizures of legal papers continued through his incarceration, along with monitoring and recording of legal calls and confiscation of legal mail. Additionally, Greer's attorney received letters alleging he was sending contraband to Greer, and he expressed concerns to the trial court that this was an effort to "set [him] up." Greer contends "[t]hese events hindered [his] ability to prepare his defense in this case and chilled his ability to meaningfully communicate with his counsel."[9]

[9]As we understand his argument, Greer also contends that he was prejudiced by the effect his incarceration had on his daughter. The state argues Greer's motion to modify his release conditions demonstrates that his daughter's "problems, while significant," began before Greer's arrest. The impact on Greer's daughter is not of the kind protected by the speedy trial clause; therefore, we will not consider it. *See Parker*, 231 Ariz. 391, ¶ 16 (quoting *Barker*, 407 U.S. at 532).

¶32 It appears the trial court addressed these issues to Greer's satisfaction. The state offered to provide new disclosure to Greer's attorney. And there was no claim that the delay prevented Greer from calling witnesses, fully investigating his case, or that witnesses could not accurately recall events. Greer could communicate with his legal team in person without issue. There is no indication that Greer's counsel did not have the complete disclosure or the ability to investigate Greer's case. Greer, therefore, has not demonstrated the delay caused him prejudice. *See Wassenaar*, 215 Ariz. 565, ¶ 20. Based on an examination of the four factors, we cannot say that Greer's Sixth Amendment right to a speedy trial was violated. *See Parker*, 231 Ariz. 391, ¶ 8.

Sentencing Minute Entry

¶33 As a final matter, Greer argues, and the state concedes, the trial court's sentencing minute entry conflicts with the trial court's oral pronouncement at sentencing. We agree and correct it here. *State v. Ovante*, 231 Ariz. 180, ¶ 38 (2013).

¶34 At sentencing, the court stated that the sentences for counts two and three would be the "presumptive terms of 11 and a quarter concurrent with one another consecutive to Count 1" and that counts two, three, and four would be concurrent with one another and consecutive to count one.[10] The minute entry states that the sentences for counts two and three are "11.75 years (presumptive)" and that "[t]he sentences for Count 3 and Count 4 are to be served concurrent with the sentence imposed in Counts 1 and 2."

¶35 The parties agree that the trial court intended to impose the presumptive sentence of 11.25 years for counts two and three. We need not remand this matter to the court for clarification because the court made its intentions clear at the sentencing hearing. *See State v. Solis*, 236 Ariz. 285, ¶ 15 (App. 2014). Moreover, when there is conflict between the oral pronouncement and the sentencing minute entry, the oral pronouncement generally controls. *Id.*; *see also Ovante*, 231 Ariz. 180, ¶ 38. We therefore correct the sentencing minute entry to reflect that the sentences for counts two and three are 11.25 years and that counts two, three, and four are

[10]Greer only argues, "The sentencing minute entry mistakenly has 11.75 years as the sentence for both Counts 2 and 3." However, as there appear to be two conflicts between the sentencing minute entry and the oral pronouncement, we will correct both conflicts. *See Ovante*, 231 Ariz. 180, ¶ 38.

concurrent with one another and consecutive to count one. *See Solis*, 236 Ariz. 285, ¶¶ 15-17.

Disposition

¶36 For the reasons stated above, we affirm Greer's convictions and sentences, correcting the sentencing minute entry as provided herein.