

**SUPREME COURT OF ARKANSAS**

No. CR12-576

TONY JAMES ROBINSON  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered FEBRUARY 14, 2013

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
SEVENTH DIVISION  
[NO. CR2010-4482]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED.**CLIFF HOOFFMAN, Associate Justice**

Appellant Tony James Robinson entered a conditional plea of guilty to one count of commercial burglary, reserving in writing his right to appeal the denial of his motion to dismiss for a speedy-trial violation.<sup>1</sup> He was sentenced to seven years' imprisonment. On appeal, Robinson argues that the circuit court erred by denying his motion to dismiss because the State allegedly intentionally delayed the start of his twelve-month speedy-trial period by refusing to serve the arrest warrants issued for him when they knew he was incarcerated in the Arkansas Department of Correction (ADC). Because this appeal involves the interpretation of our rules of criminal procedure, we granted Robinson's motion to transfer the appeal from the Arkansas Court of Appeals under Ark. Sup. Ct. R. 1-2(d) (2012). We affirm.

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<sup>1</sup>See Ark. R. Crim. P. 24.3(b) (2012).

On December 3, 2010, Robinson was arrested in connection with the July 18, 2009 burglary of the Big Red Fina Valero Gas Station on Fair Park Boulevard in Little Rock. The felony criminal information was filed on December 30, 2010, and Robinson was charged with commercial burglary, first-degree criminal mischief, theft of property, and possession of instruments of a crime. On June 3, 2011, the case was continued on Robinson's motion, and speedy-trial time was tolled from that date through September 29, 2011, the date he filed his motion to dismiss on speedy-trial grounds.

In his motion to dismiss, Robinson argued that the State had intentionally delayed the start of his twelve-month speedy-trial period by not promptly arresting him when it was aware that he was incarcerated on an unrelated charge. Robinson asserted in his motion that on July 18, 2009, shortly after the burglary, he was developed as a suspect by police and was apprehended. After giving a false identity to police, he was arrested for committing the offense of obstruction of governmental operations and also for an outstanding warrant for a parole violation. On March 24, 2010, police were informed that a CODIS (Combined DNA Index System) hit had confirmed that a convicted offender in the database, Tony Robinson, matched a blood sample taken from the crime scene. Based on this information, arrest warrants were issued for Robinson on May 12, 2010, in connection with the burglary. On June 3, 2010, a search-and-seizure warrant was served on Robinson at the Grimes Unit of the ADC, where he was incarcerated, in order to obtain a DNA swab to compare it to the samples collected from the scene of the burglary. The outstanding arrest warrants were not served, however, until December 3, 2010, when Robinson was released and transported from

the ADC to the Little Rock Police Department.

Robinson argues that the State's seven-month delay in serving him with the arrest warrants did not comply with Ark. R. Crim. P. 29.1(a), which requires the prosecuting attorney to promptly seek the presence of a prisoner for trial, and that this delay violated his rights to a speedy trial. Robinson further contended that the circuit court should interpret "date of arrest," which commences the running of the speedy-trial period under Ark. R. Crim. P. 28.2(a), to mean the date on which the State has enough evidence to arrest the defendant in cases where law-enforcement officials are aware that the defendant is incarcerated. Thus, he argued that his speedy-trial period began to run in this case on either March 24, 2010, when the police were informed that DNA from the crime scene matched Robinson's DNA on file, or on May 12, 2010, when the arrest warrants were issued.

At the hearing on the motion to dismiss, Detective Jordan Neuffer testified that he was assigned to investigate the commercial burglary. He stated that when police receive a CODIS hit, they usually obtain a confirmatory swab to compare the results. Neuffer testified that he did that in this case on June 3, 2010. When questioned as to why he did not serve the arrest warrants on Robinson at that time, Neuffer testified that it was his understanding from his supervisors that he could not serve the commercial-burglary warrants while Robinson was incarcerated in another jurisdiction and that he believed that he was following standard operating procedures. He stated that he instead placed a detainer on Robinson so that the police would be notified when Robinson was released.

At the conclusion of the hearing, the circuit court disagreed with Robinson's suggested

interpretation of the phrase “date of arrest,” and an order denying his motion to dismiss on speedy-trial grounds was entered on December 6, 2011. Robinson entered a conditional guilty plea, reserving in writing his right to appeal the denial of his motion to dismiss, and filed a timely notice of appeal.

Under Ark. R. Crim. P. 28.1 (2012), a defendant is entitled to have criminal charges dismissed with an absolute bar to prosecution if he is not brought to trial within twelve months from the time provided in Rule 28.2, excluding such periods of necessary delay authorized in Rule 28.3. Rule 28.2(a) provides that the speedy-trial period “shall commence running from the date of arrest or service of summons.”

On appeal, as he did in his motion to dismiss, Robinson argues that the State’s seven-month delay in serving his arrest warrants while aware that he was incarcerated violated his speedy-trial rights and is contrary to the requirement in Ark. R. Crim. P. 29.1(a) that a prosecuting attorney must “promptly” seek to obtain the presence of a prisoner for trial if he has information that a person charged with a crime is imprisoned in a penal institution in this state. In order to reconcile the provisions in Rules 28.2(a) and 29.1(a), Robinson contends that this court should interpret the phrase “date of arrest” in Rule 28.2 to mean the date on which the State has issued arrest warrants where the defendant is incarcerated in this state and the prosecuting attorney or law enforcement is aware of the incarceration. Robinson admits that he has narrowed his argument on appeal in order to provide a bright-line rule, by contending that the “date of arrest” should be the date that arrest warrants are issued instead of also when the State has developed enough evidence to arrest the defendant.

When we construe a court rule, our review is de novo, and we use the same means and canons of construction that we use to interpret statutes. *Kesai v. Almond*, 2011 Ark. 207, 382 S.W.3d 669. The first rule of construction is to construe the statute or rule just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* When the language is plain and unambiguous, there is no need to resort to rules of statutory construction. *Id.*

Using these rules of construction, we agree with the State that Robinson’s argument has no merit. Arkansas Rule of Criminal Procedure 29.1(a) applies only to an imprisoned person who has been “charged” with a crime. In this case, the commercial-burglary charges had not yet been filed against Robinson at the time the prosecutor learned of his incarceration on other charges, and Rule 29.1(a) is therefore inapplicable. Further, the plain language of Ark. R. Crim. P. 28.2(a) states that the speedy-trial period begins to run on the “date of arrest or service of summons,” not when an arrest warrant has been issued. *See Watson v. State*, 358 Ark. 212, 188 S.W.3d 921 (2004) (under a prior version of Ark. R. Crim. P. 28.2, we rejected the defendant’s argument that the speedy-trial period began to run on the date the affidavit for probable cause to obtain an arrest warrant was filed, instead of on the date of arrest or the date that charges were filed as required under the rule).

While Robinson cites *United States v. Louzon*, 392 F. Supp. 1220, 1226–27 (E.D. Mich. 1975), for the proposition that the police department’s policy of intentionally delaying the service of arrest warrants on defendants who are incarcerated on other charges is “highly suspect,” he admits that he is not arguing on appeal a violation of his constitutional rights, as

such an argument was not raised below and would not be preserved for appellate review. Under the plain language in Ark. R. Crim. P. 28.2(a), Robinson's speedy-trial time began to run on December 3, 2010, the date that he was arrested on the commercial-burglary charges, and therefore, his twelve-month speedy-trial period had not yet expired at the time he filed his motion to dismiss on June 13, 2011. We hold that the circuit court properly denied Robinson's motion to dismiss, and we affirm.

Affirmed.

*William R. Simpson, Jr.*, Public Defender, by: *Gina Reynolds* and *Thomas Kendrick*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for appellee.