

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	I.D. No. 9802012961
	)	Cr. A. No. 98-03-2348R1
ADOLPH CLAYTON,	)	
Defendant.	)	

Submitted: November 5, 2001  
Decided: November 20, 2001

UPON PETITIONER'S POSTCONVICTION MOTION.  
**GRANTED.**

**OPINION**

Maria T. Knoll, Esquire, Deputy Attorney General, Wilmington, Delaware, for the State.

Adolph Clayton, *pro se*.

ABLEMAN, JUDGE

This is the Court's decision on Defendant, Adolph Clayton's ("Defendant"), Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. Upon consideration of the Defendant's motion, the State's responses, and the record in this case, Defendant's Motion for Postconviction Relief is GRANTED.

The Delaware Supreme Court has held that in reviewing motions for postconviction relief, the Court must first determine whether a defendant's claims are procedurally barred prior to considering them on their merits.<sup>1</sup> A review of the record reveals that there are no procedural bars under Rule 61 to Defendant's claims. This is Defendant's first motion for postconviction relief, and it was filed in a timely manner. Thus, the Court will consider Defendant's motion on its merits.

Defendant raises the following two grounds in support of his motion: (1) he was denied his right to a speedy trial because the State of Delaware failed to lodge a detainer; and (2) he received ineffective assistance of counsel because neither of his lawyers filed a motion to dismiss for lack of a speedy trial. This case is complicated by the fact that, during the time frame in question,<sup>2</sup> defendant had outstanding charges in Delaware, New Jersey and Maryland. The relevant facts are as follows.

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<sup>1</sup> *Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991); *Flamer v. State*, Del. Supr., 585 A.2d 736, 747 (1990).

<sup>2</sup> The delay between the time the detainer was ordered on August 17, 1998 and the time of its lodging on November 8, 1999.

On March 2, 1998, defendant was indicted in Delaware on two counts of Trafficking in Cocaine, three counts of delivery of Cocaine, and three counts of Maintaining a Vehicle for the Keeping of Controlled Substances. On the same day, a Rule 9 warrant was issued for defendant's arrest, which was returned on April 30, 1998. The bail status sheet showed that defendant had been incarcerated in New Jersey since April 9, 1998.

Defendant posted bail on May 1, 1998, and was arraigned on May 8, 1998. Defendant rejected a plea offer made by the State on June 8, 1998, and a final case review was scheduled for July 27, 1998. When defendant failed to appear at the case review, the Court ordered a *capias* and scheduled a hearing on a motion for forfeiture of bail. At a hearing on August 17, 1998, it was determined that defendant was incarcerated at the Riverfront State Prison in Camden, New Jersey. The Court then ordered the outstanding *capias* on defendant to serve as a detainer.

While defendant was incarcerated at Riverfront State Prison, he filed the appropriate paperwork under the Uniform Agreement on Detainers (UAD)<sup>3</sup> to allow him to resolve outstanding charges in both Delaware and Maryland. Defendant was informed by New Jersey officials that Delaware had not lodged a detainer against him, but that the Maryland detainer had been lodged and was being processed.

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<sup>3</sup> See 11 Del. C. § 2540 -- § 2550.

On October 28, 1999, defendant filed with the Prothonotary a motion to dismiss the outstanding Delaware charges. Defendant asserted that a detainer had been lodged against him, and that he had taken the necessary steps to secure a disposition but without result. Upon review of the matter, the court determined that no detainer had been lodged at the time defendant filed the motion, but that one had been subsequently lodged on November 12, 1999.<sup>4</sup> The Court denied defendant's motion without prejudice, as it determined that its factual premise was faulty. The Court indicated, however, that upon transport to Delaware, defendant's motion to dismiss on the ground of his right to a speedy trial could be renewed and would be considered by the Court at that time.<sup>5</sup>

On November 29, 1999, defendant was transported to Maryland to respond to the charges against him there. On April 10, 2000, the Circuit Court of Cecil County, Maryland, sentenced defendant to four years of incarceration, to be followed by five years of probation. Defendant is currently serving that sentence.

On May 2, 2000, the Delaware Department of Justice received the certified UAD paperwork from Maryland. Defendant was transported to Delaware on June 20, 2000, and arraigned on June 27, 2000. Defendant participated in a case review on July 24, 2000, and again on September 5, 2000. On October 5, 2000, defendant

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<sup>4</sup> *State v. Clayton*, Del. Super., I.D. No. 9802012961, Del Pesco, J. (Nov. 18, 1999)(ORDER) (attached to the Court's Order is a copy of the facsimile transmittal sheet reflecting that the Delaware detainer was lodged on November 12, 1999).

<sup>5</sup> *Id.* at 2.

pled guilty to one count of Delivery of Cocaine and was sentenced (consecutive to any Level V incarceration currently serving) to three years at Level V, suspended after one year, followed by two years of Level III probation. Thus, as a factual matter, defendant's case was disposed of within 180 days of the State having received written notice of his request, as required under the UAD.<sup>6</sup> Accordingly, defendant does not have a valid claim under the terms of the UAD.

This conclusion does not end the matter, however, as defendant's speedy trial claim must be considered in the broader constitutional context. Defendant filed repeated requests for transfer to Delaware during his tenure at Riverfront, but these requests went unanswered because Delaware failed to lodge the detainer ordered by Judge Barron on August 17, 1998. Under the UAD, the "process begins when the prosecutor files a written notice of the custody request with the sending state."<sup>7</sup> Because no such notice was filed until November 12, 1999, New Jersey had no authority to respond to defendant's requests.

Defendant's allegation of ineffective assistance of counsel is based partially on the foregoing facts. Defendant asserts that both of his defense attorneys were constitutionally ineffective for failing or refusing to file a motion to dismiss the

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<sup>6</sup> Title 11 *Del. C.* § 2542(g). The Interstate Agreement on Detainers (Act), 11 *Del. C.* § 2540 et seq., requires that a defendant be brought to trial within 180 days from the time he appears in Delaware. If the defendant is not brought to trial within 180 days and no good cause has been shown within the 180-day period, the charges must be dismissed with prejudice. 11 *Del. C.* § 2542(d).

<sup>7</sup> *State v. Dippold*, Del. Super., Cr.A. No. IN87-100-388, 1992 Del. Super. LEXIS 475, Herlihy, J., \*5 (Oct. 5, 1992)(Mem. Op.)(quoting *Cooney v. Fulcomer*, 3rd Cir., 886 F.2d 41, 43 (1989)).

charges against him. Additionally, defendant asserts that because counsel did not file such a motion, he was forced to do so himself. The record in this case verifies that defendant's *pro se* motion was appropriately forwarded by the Prothonotary to counsel and that counsel took no action.

To withdraw a guilty plea on grounds of ineffective assistance of counsel, defendant must show that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, defendant would not have pled guilty.<sup>8</sup> Defendant argues that if defense counsel had filed the motion to dismiss and had pointed out the 15-month delay in lodging the detainer, he would not have had to plead guilty because the Court would have already dismissed the charges against him.

The assessment of speedy trial rights must be determined on the particular facts of each case, as there is no fixed test.<sup>9</sup> Instead, the Court is to engage in a balancing test, weighing the conduct of the prosecution against the conduct of the defendant.<sup>10</sup> The factors to be considered include the length of the delay, the reason for the delay, the defendant's assertion of his right, and any prejudice to the defendant.<sup>11</sup>

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<sup>8</sup> *Albury v. State*, Del. Supr., 551 A.2d 53, 58 (1988)(citing *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)).

<sup>9</sup> *Skinner v. State*, Del. Supr., 575 A.2d 1108, 1115 (1990)(citing *Barker v. Wingo*, 407 U.S. 514, 529-30 (1972)).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

The Sixth Amendment's speedy trial right attaches either upon arrest or indictment.<sup>12</sup> Defendant was indicted on March 2, 1998, and arrested on April 30, 1998, at which time his right to a speedy trial attached. Defendant entered a guilty plea on October 5, 2000. For speedy trial purposes, the questionable time frame is the 15 months that elapsed before the State lodged the detainer against defendant.<sup>13</sup>

Under the UAD, the State had no obligation to lodge the detainer.<sup>14</sup> Nevertheless, defendant's speedy trial right was triggered no later than April 30, 1998. As of August 17, 1998, the State was aware of his incarceration in New Jersey. On these facts, the Court finds that the 15-month delay is presumptively prejudicial, which requires further inquiry into the three other factors.<sup>15</sup>

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<sup>12</sup> *State v. Johnson*, Del. Super., 564 A.2d 364, 367 (1989)(citing *United States v. Marion*, 404 U.S. 307 (1971)(observing that “[i]t is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engages the particular protections of the speedy trial provisions of the Sixth Amendment”).

The Court also notes that the right of a defendant to a speedy trial under Article I, § 7 of the Delaware Constitution corresponds to his rights under the Sixth Amendment. *Fensterer v. State*, Del. Supr., 493 A.2d 959, 964, *rev'd on other grounds*, 474 U.S. 15 (1985).

<sup>13</sup> Certain delays caused by defendant's failure to appear, defendant's incarceration in New Jersey, and defendant's refusal of two plea offers extended by the State are attributable to defendant and are therefore not included in the speedy trial determination. *See State v. Johnson*, 564 A.2d at 367-68.

<sup>14</sup> *State v. Dippold*, 1992 Del. Super. LEXIS 475 at \*11 (citing *State v. Dorn*, Del. Super., Cr.A. No. IS-87001-8001, 1989 Del. Super. LEXIS 424, Graves, J., \*4 (Nov. 3, 1989)). Although there is no obligation under the statute to lodge a detainer, speedy trial rights are nevertheless triggered. The General Assembly may wish to consider amending the statute to avoid problems (such as those presented by the instant case) by setting forth a time frame during which a detainer must be lodged.

<sup>15</sup> *See Scott v. State*, Del. Supr., 521 A.2d 235, 239 (1987)(quoting *Barker v. Wingo*, 470 U.S. at 530).

The second factor is the reason for delay. The United States Supreme Court has made it clear that different reasons carry different weights in the speedy trial assessment:

A deliberate attempt to delay trial in order to hamper the defense should be weighed heavily against the [State]. A more neutral reason such as negligence or overcrowded courts should be weighed less heavily but nevertheless should be considered since the ultimate responsibility must rest with the [State] rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.<sup>16</sup>

In response to Defendant's motion, the State acknowledges the delay, offering that it was not deliberate. The State submits that it was "under the mistaken belief that, by the Court ordering the capias to act as a detainer, a detainer was, thereby, put into effect on August 17, 1998."<sup>17</sup> The State further acknowledges that, "[b]ased on that erroneous assumption, no further action was taken by the State."<sup>18</sup> The State also does not concede that the delay was unduly long for purposes of either the UAD or the speedy trial right. Defendant has not demonstrated or argued bad faith on the part of the State, and the Court finds nothing in the record to suggest that there was an intentional attempt to delay defendant's trial. Despite this lack of intent, the delay was nevertheless the result

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<sup>16</sup> *Barker v. Wingo*, 407 U.S. at 531.

<sup>17</sup> State's Response, dated August 24, 2001 at 2 (emphasis in original).

<sup>18</sup> *Id.*



of the State's own error, which weighs rather heavily against it in the speedy trial balancing test.

The third factor is whether or not defendant asserted his right to a speedy trial. The record shows that defendant was persistent in his assertion of this right. Prior to entering his plea on October 5, 2000, defendant, on his own and through his counsel at the time, Kathryn van Amerongen, Esquire, expressed concerns about the detainer in open court. Specifically, defendant asked the Court "why, in 1998, there was no process for [defendant] to get before [the Court] . . . ." <sup>19</sup> The Court acknowledged that a *capias* was issued on August 17, 1998 and that it was to serve as a detainer, <sup>20</sup> and acknowledged that there had been "a screwup," <sup>21</sup> but failed to further address defendant's concerns. Instead, the Court turned to defendant's sentencing. <sup>22</sup>

The final factor is prejudice, which brings this case full circle back to the UAD. The Court notes first that, while defendant was incarcerated in New Jersey, he sought to resolve charges in both Delaware and Maryland. Even if the Delaware detainer had been timely lodged against defendant, the process would no doubt have been lengthened, or complicated, by the fact that defendant had

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<sup>19</sup> Guilty Plea Transcript, dated October 5, 2000 ("Trans. at \_\_\_\_.") at 10.

<sup>20</sup> Trans. at 11.

<sup>21</sup> Trans. at 12.

<sup>22</sup> Trans. at 14.

detainers from two states. This fact, however, does not ameliorate the prejudice caused by the delay attributed to the Delaware detainer.

This Court has previously recognized that the purpose of the UAD is “to obviate difficulties in securing speedy trials of persons incarcerated in other jurisdictions and to minimize the time during which there is an inherent danger that a prisoner may forego preferred treatment or rehabilitative benefits.”<sup>23</sup> Defendant’s letters to the Court during his incarceration in New Jersey indicate that he was prevented from taking advantage of certain programs within the New Jersey prison system because the New Jersey officials were aware of the outstanding charges against him but had no detainer upon which to act. This factor, in addition to the denial of defendant’s right to a speedy trial, constitutes prejudice.

The outcome of the balancing test weighs heavily against the State. The Court therefore concludes that defendant’s constitutional right to a speedy trial was violated by the State’s inaction between August 17, 1998, and November 12, 1999. The Court further concludes that, if defense counsel had filed a motion to dismiss on this issue, in all likelihood the Court would have granted the motion. In other words, defendant has met both prongs of the test for ineffective assistance of counsel.

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<sup>23</sup> *State v. Davis*, Del. Super., Cr. A. No. IN86-05-1296-1299, 1986 Del. Super. LEXIS 1439, Stiffler, P.J., \*7 (Dec. 11, 1986)(quoting *State v. Dunlap*, 290 S.E. 2d 744, 745-46 (1982)).

Finally, the Court finds that the State's argument that defendant waived his speedy trial rights by entering his guilty plea, fails. At the time defendant entered his plea, he was not provided with a sufficient answer to his inquiry regarding his detainer. Since defendant's plea was thus *not* knowingly entered, he is not precluded from raising this constitutional claim.

The Court finds that the relief sought by Defendant's Motion for Postconviction Relief is justified. The pleas of guilty are therefore vacated and the charges are hereby dismissed.

**IT IS SO ORDERED.**

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Peggy L. Ableman, Judge

Oc: Prothonotary  
Cc: Adolph Clayton  
Maria T. Knoll, Esq., DAG