

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 18 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRY LEE FRANKLIN,

Defendant - Appellant.

No. 11-50505

D.C. No. 2:07-cr-00967-PSG-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Argued and Submitted October 12, 2012
Pasadena, California

Before: PREGERSON and W. FLETCHER, Circuit Judges, and PIERSOL, Senior
District Judge.**

Terry Franklin appeals the district court's denial of his motion to dismiss for
post-indictment delay, the district court's denial of his suppression motion, and his

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Lawrence L. Piersol, Senior District Judge for the U.S.
District Court for the District of South Dakota, sitting by designation.

conviction under 18 U.S.C. § 1546(a). We affirm the district court on all three matters.

Franklin's motion to dismiss was based on the Sixth Amendment right to a speedy trial. In this case, the length and reasons for delay do not excuse Franklin from showing actual, non-speculative prejudice. *See United States v. Beamon*, 992 F.2d 1009, 1014 (9th Cir. 1993) (“[W]e must consider the amount of delay in relation to particularized prejudice.”). Franklin cannot show that his trial's delay caused him such prejudice. As a result, the delay between Franklin's indictment, arrest, and trial did not violate his Sixth Amendment speedy-trial rights. We affirm the district court's denial of Franklin's motion to dismiss.

We also affirm the district court's denial of Franklin's suppression motion. We find that the circumstances created reasonable suspicion for an “investigatory stop,” or *Terry* stop, of Franklin. *See Hiibel v. Sixth Judicial Dist. Court of Nev.*, 542 U.S. 177, 185 (2004). The accompanying frisk was appropriate under the circumstances.

Finally, for the reasons enumerated by the district court, we affirm Franklin's conviction under 18 U.S.C. § 1546(a). *United States v. Franklin*, CR 07-967 PSG, 2011 WL 3424448 (C.D. Cal. Aug. 5, 2011).

AFFIRM.