FILED

04/24/2018

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 16-0679

DA 16-0679

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 100N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RONALD FERMIN MASCARENA,

Defendant and Appellant.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DC 14-409
Honorable Ingrid G. Gustafson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Alexander H. Pyle, Assistant Appellate Defender Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Tammy A. Hinderman, Assistant Attorney General, Helena, Montana

Scott D. Twito, Yellowstone County Attorney, Juli M. Pierce, Deputy County Attorney, Billings, Montana

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Submitted on Briefs: March 14, 2018

Decided: April 24, 2018

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in the Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Ronald Fermin Mascarena appeals the District Court's denial of his motion to dismiss for lack of a speedy trial, an issue he preserved for appeal when entering a guilty plea to one count of Criminal Possession of Dangerous Drugs, a felony.

¶3 Mascarena was arrested on May 15, 2014, on illegal drug charges, and his trial was originally set for September 22, 2014. The State filed two motions to continue the trial for additional time to obtain the results of substance testing from the State Crime Lab, resulting in the trial being set for February 2, 2015, or 264 days after Mascarena's arrest. Mascarena filed a motion to dismiss for lack of speedy trial, requiring the trial to be continued for disposition of the motion and, ultimately, upon denial of the motion, the trial was set for April 20, 2015, or 341 days after Mascarena's arrest.

¶4 Applying the *Ariegwe*[1] factors, the District Court first concluded the length of the delay for the analysis was 264 days, because the subsequent delay was attributed to Mascarena's speedy trial motion. This is 64 days beyond the speedy trial triggering period

[1] *State v. Ariegwe*, 2007 MT 204, 338 Mont. 442, 167 P.3d 815.

of 200 days, requiring a full analysis.[2] Assessing the reason for the delay, which was related to the processing of evidence by the State Crime Lab, the District Court cited testimony provided about the operation of the Crime Lab, finding that "[t]he absence of a fully staffed lab combined with the increased complexity of cases and samples to be tested in general created a backlog of samples to be tested." The District Court noted that staffing in the Crime Lab had been increased and processing times were being significantly reduced. The District Court found that the County Attorney had maintained communication with the Crime Lab over the status of the testing, and, under these circumstances, it would have been "unreasonable" for the County Attorney to have outsourced the testing. The District Court deemed the entirety of the delay to be institutional, which weighed less heavily against the State, and concluded that it "was not caused by a lack of diligence or negligence by the County Attorney," further noting that the evidence had been forwarded to the Crime Lab "almost immediately."

¶5 Crediting Mascarena with expressing a desire for a speedy trial in response to the delay, the District Court turned to the issue of prejudice. Mascarena was incarcerated during the entire 264-day period, and on lock-down for significant periods during that

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[2] The State traces the origins of the 200-day threshold to our 1988 decision in *State v. Wombolt*, 231 Mont. 400, 753 P.2d 330 (1988), and notes our reaffirmance of this threshold in *Ariegwe*. Citing a 40% increase in annual district court filings since *Ariegwe*, an even larger increase in annual felony criminal filings, and the lack of a commensurate increase in the number of judges and courts to resolve these cases, the State asks the Court to "adopt the majority view and conclude that additional inquiry into the causes and consequences of pretrial delay is only necessary when that delay is at or beyond a year." The State's argument may be worthy of further consideration, but we decline to take up the issue in this case.

time.[3] However, the District Court found Mascarena had not fared well on his own recognizance and had broken jail rules while detained, noting that the conditions of his detention were "disagreeable rather than oppressive." The District Court did not find significant anxiety and concern had been demonstrated, and that Mascarena had not "shown affirmative proof that the delay has impaired his ability to present an effective defense." Balancing the *Ariegwe* factors, the District Court reasoned that Mascarena's incarceration during the delay was the factor that weighed most heavily against the State, but that a weighing of all of the factors balanced in favor of the State, and denied the motion.

¶6 A speedy trial violation presents a question of constitutional law that we review *de novo* to determine whether the court correctly interpreted and applied the law. *State v. Velasquez*, 2016 MT 216, ¶ 6, 384 Mont. 447, 377 P.3d 1235 (citation omitted). We review the court's underlying factual findings for clear error. *Velasquez*, ¶ 6 (citation omitted).

¶7 Mascarena argues that we should reverse the District Court and dismiss the charges against him, citing *Velasquez* and *State v. Mayes*, 2016 MT 305, 385 Mont. 411, 384 P.3d 102, cases in which this Court concluded that delays in evidence processing by the Crime Lab culminated in violations of the Defendants' rights to speedy trial. However, those cases are factually distinguishable. We concluded, in both cases, that the State was not diligent, citing its delay in the submission of evidence to the Crime Lab, *Mayes*, ¶ 11, its

[3] Mascarena was released from custody shortly after he filed his motion to dismiss, but was returned to jail less than two weeks later for violating conditions of his release. He then requested appointment of new counsel, independent testing of the substances, and trial continuances, ultimately entering a plea on February 16, 2016.

"failure to even inquire" about possible alternative testing, and "dilatory inaction." *Velasquez*, ¶ 20. Here, in contrast, the District Court found that the evidence had been submitted to the Crime Lab "almost immediately" and that the County Attorney had maintained communication with the Lab. It concluded that alternate testing would not have been reasonable and the State had not failed to exercise diligence. Further, Velasquez demonstrated his defense had been impaired by the delay. *Velasquez*, ¶ 49. Here, the court concluded that Mascarena had not shown proof that his defense has been impaired.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the District Court's findings of fact were not clearly erroneous, and its conclusions of law were correct.

¶9 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR