

DA 22-0455

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 245N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

KEITH STACY LEONARD,

Defendant and Appellant.

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APPEAL FROM: District Court of the Twenty-First Judicial District,  
In and For the County of Ravalli, Cause No. DC-21-29  
Honorable Jennifer B. Lint, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Joshua James Thornton, Assistant  
Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Bjorn Boyer, Assistant  
Attorney General, Helena, Montana

William E. Fulbright, Ravalli County Attorney, Angela Wetzsteon,  
Deputy County Attorney, Hamilton, Montana

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Submitted on Briefs: October 18, 2023

Decided:

Filed:



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Clerk

Justice Beth Baker delivered the Opinion of the Court.

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

¶2 Keith Stacy Leonard appeals the order of the Twenty-First Judicial District Court, Ravalli County, denying his motion to dismiss for lack of speedy trial. We agree with the District Court that Leonard was not prejudiced by the delay and the balance of factors does not demonstrate a speedy trial violation. We therefore affirm.

¶3 Leonard was arrested for Driving Under the Influence (DUI) on January 22, 2021. On February 4, Ravalli County charged Leonard by Information with DUI, a felony in violation of § 61-8-401, MCA, and Driving While License Suspended or Revoked, a misdemeanor in violation of § 61-5-212, MCA. Leonard posted bail on February 5; his conditions of release included pretrial supervision and alcohol monitoring.

¶4 Leonard appeared before the District Court and pleaded not guilty. At Leonard's initial appearance, the court scheduled an omnibus hearing in early March and ordered a settlement conference to be held before the end of April. Neither party reported to the District Court on the settlement conference.

¶5 In early May, with no indication whether the settlement conference was held, the District Court ordered a status hearing for May 20. Leonard did not appear for the status

hearing but was represented by his public defender, Sarah Busch. Both parties agreed to a two-day jury trial. The next day, the District Court issued a jury trial preparation order for trial to commence on August 16, 2021. It also ordered status hearings in June and July.

¶6 At the June status hearing, Leonard appeared with counsel Busch and confirmed that the matter will proceed to trial. At the July status hearing, Leonard again confirmed trial and requested an additional pretrial status hearing, which was set for July 22.

¶7 At the July 22 status hearing, Leonard requested a continuance of the August 16 trial due to ongoing plea negotiations with the State and because Busch was leaving the Office of the State Public Defender. During the hearing, the District Court vacated the August trial date and requested a speedy trial waiver from Busch, who agreed to provide it to the court.

¶8 Five days later, the Office of the State Public Defender assigned Leonard new counsel, John Boyd. At the end of August, the court set a status hearing for September 2. At the hearing, Boyd stated that he was unaware of the District Court's request for a speedy trial waiver but would discuss the matter with Leonard. The State requested a trial date be set. The court responded, "we're setting trials in January, so we'll issue a new jury trial prep order."

¶9 In early December, the court ordered another status hearing for December 16 and required that Leonard personally appear. Leonard failed to appear for the December 16 hearing; Boyd stated that Leonard was ill. The State acknowledged it received "nondescript" doctor's notes. It also advised that Leonard had not been reporting to pretrial

supervision since mid-October or complying with monitoring conditions. After agreeing to issue a warrant for Leonard's arrest, the District Court advised the parties that it could reset the trial to February 7, 2022. The State said it was not available on that date but could try the case later that week. Boyd responded that he preferred to wait for Leonard to be picked up on the warrant before resetting the trial date.

¶10 The Court issued an arrest warrant on December 20 for Leonard's failure to appear at the December 16 hearing. The next day, Boyd requested that the warrant be quashed and that Leonard be removed from pretrial monitoring, providing medical documentation of Leonard's illness, diagnosed in late October. On December 22, the District Court quashed the warrant and set a status hearing for January 6, 2022.

¶11 At the January 6 hearing, the parties agreed that the case needed to be reset for trial. The court ordered Leonard to reinitiate alcohol monitoring with pretrial services and warned him that the court would issue a warrant if he failed to test. Four days after the hearing, the court issued a new jury trial preparation order, setting trial to begin on March 28, 2022.

¶12 On January 26, the State filed a motion to revoke Leonard's bail, citing his failure to report for testing on one occasion and his failure to provide a urine sample when he reported for testing on another occasion. The court issued an arrest warrant that day. The next day, Leonard appeared in court and addressed the warrant. The State requested that Leonard be taken into custody. Boyd proposed sending Leonard to pretrial services for a urinalysis and then having him appear back in court. The court agreed and sent Leonard

downstairs to the pretrial services office for the test. Leonard's sample was positive for alcohol and THC. The court ordered Leonard's arrest on the warrant; he remained in custody until sentencing.

¶13 In early March, Leonard filed a motion waiving his right to a jury trial and requesting a bench trial for the same date as the already-scheduled trial. Both parties agree that they indicated to the court that they wished to keep the March 28 trial date. Nevertheless, on March 7 the court issued a new trial preparation order setting the bench trial for April 11, 2022.

¶14 On April 11, prior to the bench trial commencing, Leonard orally moved to dismiss for lack of speedy trial and entered guilty pleas. The District Court reserved ruling on the motion and directed Boyd to file a written motion; it accepted Leonard's guilty plea to both counts. After receiving Leonard's written motion and the State's response, the District Court denied Leonard's motion. The court found the majority of the delay to be institutional, with a 111-day delay "attributable to the Defendant's own request for a continuance and his subsequent failure to appear"; that Leonard responded to delays by "assert[ing] his right to speedy trial but then subsequently neglect[ing] to participate in pretrial proceedings"; and that Leonard made a "false statement that he ha[d] been in compliance with [alcohol] monitoring[.]" It sentenced Leonard to the Department of Corrections for a five-year term and credited 146 days served towards his sentence. Leonard timely appealed.

¶15 We review the factual findings underlying a district court’s speedy trial ruling for clear error. *State v. Hesse*, 2022 MT 212, ¶ 6, 410 Mont. 373, 519 P.3d 462. We review a district court’s conclusions of law about a speedy trial violation de novo. *Hesse*, ¶ 6 (citation omitted).

¶16 A criminal defendant’s fundamental right to a speedy trial is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article II, Section 24, of the Montana Constitution. *Hesse*, ¶ 9 (citation omitted). Montana courts use the four-factor balancing test set forth in *State v. Ariegwe*, 2007 MT 204, 338 Mont. 442, 167 P.3d 815, to determine if a criminal defendant’s right to a speedy trial has been violated. The four factors include: (1) the length of delay; (2) the reasons for delay, (3) the accused’s responses to the delay, and (4) prejudice to the accused from the delay. *Ariegwe*, ¶ 34.

***Factor One: Length of Delay***

¶17 The threshold inquiry to trigger further speedy trial analysis is whether the interval between the accusation and the scheduled trial date is at least 200 days. *State v. Burnett*, 2022 MT 10, ¶ 18, 407 Mont. 189, 502 P.3d 703 (citing *Ariegwe*, ¶ 107). Delay in bringing a defendant to trial is measured from the date of formal accusation to the date of trial or entry of a guilty plea. *Ariegwe*, ¶¶ 43, 113. From Leonard’s arrest on January 22, 2021, to his guilty plea on April 11, 2022, there were 444 days of total delay.

¶18 Courts next consider the extent to which the delay, regardless of fault, stretches beyond the 200-day trigger date. *Ariegwe*, ¶ 107. The further the delay stretches beyond the trigger date, the stronger the presumption is under Factor Four that the accused has

been prejudiced and the heavier the State’s burden is under Factor Two to provide valid justifications for the delay. *Burnett*, ¶ 19 (internal quotations and citation omitted). Here, the District Court appropriately determined that the delay stretched over 200 days beyond the 200-day trigger date, and it recognized that “the State must make a highly persuasive showing that the defendant was not prejudiced by the delay.”

***Factor Two: Reasons for Delay***

¶19 Courts then identify and attribute each period of delay to the appropriate party; weight is assigned to each period of delay based on the reason behind the delay. *Ariegwe*, ¶ 108. Delays that are not caused or affirmatively waived by the defendant are attributable to the State by default. *Ariegwe*, ¶ 108. “Institutional delays, such as overcrowded court dockets, weigh less heavily against the State than do deliberate or negligent delays.” *Hesse*, ¶ 12 (citing *Ariegwe*, ¶ 108).

¶20 The District Court attributed the following days of delay to each party:

- 1) February 9, 2021, to July 22, 2021: 163 days of institutional delay;
- 2) July 22, 2021, to September 22, 2021: 62 days of delay to defendant;
- 3) September 22, 2021, to December 16, 2021: 85 days of institutional delay;
- 4) December 16, 2021, to February 7, 2022: 53 days of institutional delay;
- 5) February 7, 2022, to March 28, 2022: 49 days of delay to defendant.

¶21 Leonard contends, and the State agrees, that the District Court incorrectly calculated the date the first period of delay began. The District Court calculated the first period of delay from when the State filed its Information on February 9, 2021. The speedy trial clock

begins to run at the earliest of the arrest, filing of indictment or information, or filing of a complaint. *Ariegwe*, ¶ 42 (citation omitted). We agree that the first period of delay began with Leonard's arrest on January 22, 2021.

¶22 Leonard further alleges that the first period of institutional delay should have ended at the time the District Court first set his trial to commence on August 16. The State contends that this first period of institutional delay ended on July 22, when Leonard filed a motion to continue the August 16 trial. Actions are considered delay if they postpone the trial date. *Ariegwe*, ¶ 63. We conclude that the District Court correctly attributed the delay to Leonard on July 22, when he requested a continuance of his trial.

¶23 Leonard next contends that the District Court incorrectly attributed sixty-two days of delay to him for the period between July 22 (the date of Leonard's motion to continue the August 16 trial) and September 2 (the subsequent status hearing). The State notes that the District Court mistakenly calculated the delay as running to September 22, 2021, for a total of sixty-two days. However, the September status hearing was on September 2, which was only forty-two days after the July 22 continuance. We agree—the second period of delay was forty-two days, which is attributed to Leonard due to his request to continue the first trial setting.

¶24 The District Court found that the third period of delay from Leonard's status hearing following the first trial continuance to the status hearing on December 16, 2021, was institutional delay due to the court not setting a new trial date as requested by the State. As noted by the District Court, although this delay is attributable to the State, it was caused by



circumstances largely beyond the control of the prosecution and thus “weighs less heavily against the State than delay caused by bad faith, negligence, or lack of diligence.” *Burnett*, ¶ 22 (citation omitted).

¶25 The majority of the parties’ disagreement falls between December 16, 2021—Leonard’s failure to appear—and March 28, 2022—the second trial setting. Although not discussed in its order, the court presumably attributed to the State the delay between December 16, 2021, to February 7, 2022—the court’s proposed date for the trial. It attributed forty-nine days of delay from February 7, 2022, to March 28, 2022, to Leonard. Leonard asserts that the delay between December 16 to December 22—when the District Court quashed the warrant for Leonard’s arrest—were attributable to him, but the delay between December 22, 2021, to March 28, 2022, were attributable to the State.

¶26 It is up to the State to move the case toward prosecution; a defendant is under no obligation to ensure diligent prosecution of the case against him. *Ariegwe*, ¶ 64 (citations omitted). We hold that the delay from December 16 to 22, 2021, was attributable to Leonard for his failure to appear, which delayed setting a new trial date; the delay between December 22, 2021, to February 7, 2022, was attributable to the State as institutional delay up to the next available trial setting; and the delay from February 7 to March 28, 2022, was attributable to Leonard for postponing the first available trial setting.

¶27 The District Court did not address the final period of delay from March 28, the second trial setting, to April 11, 2022, the third trial setting and date of Leonard’s guilty

plea. Both Leonard and the State agree that this final period of institutional delay weighs in neither party's favor.

***Factor Three: Accused's Responses to the Delay***

¶28 Courts next evaluate the accused's responses to the delay to determine whether the accused "actually wanted a speedy trial, which in turn informs the inquiry into whether there has been a deprivation of the right." *Ariegwe*, ¶ 110. Although Leonard refused to waive his right to speedy trial, Leonard requested that one trial date be vacated and failed to appear at the December 2021 hearing, at which time his counsel asked the trial court not to set a trial date. Overall, Leonard's actions do not indicate persistence in pursuing a speedy trial. The District Court correctly determined that this factor weighs against Leonard.

***Factor 4: Prejudice to the Accused from the Delay***

¶29 For the final factor, courts assess whether a defendant was prejudiced by the delay in light of three interests: (i) preventing oppressive pretrial incarceration, (ii) minimizing anxiety and concern caused by the presence of unresolved criminal charges, and (iii) limiting the possibility that the accused's ability to present an effective defense will be impaired. *Ariegwe*, ¶ 111. Leonard contends that the 88 days he was held in custody prior to his guilty plea rise to the level of prejudicial pretrial incarceration. He further alleges that his pretrial monitoring conditions constituted an impairment on his liberty and added anxiety due to his financial hardships and illness.

¶30 Courts examine whether pretrial incarceration was oppressive considering all the circumstances of the incarceration, including the duration of incarceration, the complexity of the charged offense, any misconduct by the accused directly related to his incarceration, and the conditions of incarceration. *Burnett*, ¶ 33 (citation omitted).

¶31 First, we agree with the District Court that the eight days Leonard initially spent in jail before he bonded out fails to rise to the level of oppressive pretrial incarceration. We have previously found incarceration durations of eight days (*State v. Steigelman*, 2013 MT 153, ¶ 22, 370 Mont. 352, 302 P.3d 396) and nine days (*Burnett*, ¶ 34) insufficient under this interest. The remainder of Leonard’s pretrial incarceration was due to his failure to comply with his conditions of release regarding alcohol monitoring.

¶32 Second, while Leonard’s pretrial alcohol monitoring disrupted his life and caused anxiety prior to trial, the District Court found that Leonard’s misstatement to the court on the extent of his compliance with monitoring undermined his claim of prejudice. Leonard compares his case to our decision in *State v. Zimmerman*, where we determined that nine months of pretrial alcohol monitoring was an impairment of the defendant’s liberty that supported a claim of prejudice. 2014 MT 173, ¶ 31, 375 Mont. 374, 328 P.3d 1132. But here, the State presented uncontested evidence that the Defendant was not compliant with pretrial monitoring.

¶33 Finally, we have held, “The impairment of the accused’s defense from a speedy trial violation constitutes the most important factor in our prejudice analysis.” *Steigelman*, ¶ 29.

Leonard makes no argument on appeal that the delay impaired his ability to present an effective defense.

¶34 We have observed that, though a length of delay greater than 200 days entitles an accused “to some presumption of prejudice, such presumed prejudice will not weigh heavily in a defendant’s favor except in the rare case of government bad faith or other egregious conduct.” *State v. Llamas*, 2017 MT 155, ¶ 22, 388 Mont. 53, 402 P.3d 611 (internal quotations and citation omitted). The record does not reflect bad faith or egregious conduct by the State. Rather, the State was diligent in its requests that a new trial date be set at the status hearings in September and December 2021. Leonard has not provided evidence that the delay caused him prejudice. This factor thus weighs in favor of the State.

### ***Balancing the Factors***

¶35 Finally, we determine whether the accused has been deprived of the right to speedy trial by balancing the four factors. *Ariegwe*, ¶ 112. No one factor is dispositive; the factors are related and must be assessed together with other relevant circumstances. *Ariegwe*, ¶ 112. The significance of each factor varies from case to case. *Burnett*, ¶ 17 (citing *Ariegwe*, ¶ 105). Although the District Court erred in its calculation of the total length of delay and in its attribution of certain periods of delay, those discrepancies are not material. The court correctly determined that Leonard was not prejudiced by the delay, which was primarily institutional. Our review of the record leads us to agree, on balance, that Leonard was not denied his right to a speedy trial.

¶36 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 case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's application of the *Ariegwe* factors was correct. It did not err when it held that Leonard had not suffered a violation of his speedy trial rights. We affirm.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH  
/S/ LAURIE McKINNON  
/S/ INGRID GUSTAFSON  
/S/ JAMES JEREMIAH SHEA