In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-20-00216-CR

EX PARTE KEVIN DALE SHEFFIELD

On Appeal from the 413th District Court of
Johnson County, Texas
Trial Court No. DC-F201900865-1, Honorable William C. Bosworth, Jr., Presiding

September 17, 2020

OPINION

Before QUINN, CJ., PARKER and DOSS, JJ.

Does Covid-19 and its impact displace the rights afforded in our United States and Texas Constitutions? That is the underlying question involved in this appeal. The constitutional right at issue here is found in the Sixth Amendment of the United States Constitution and article I, § 10 of the Texas Constitution. The former provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." U.S. CONST. amend. VI. The latter states that "[i]n all prosecutions the accused shall have a speedy public trial by an impartial jury." TEX. CONST. art. I, § 10. This appeal comes to us from an order denying Kevin Dale Sheffield's petition for writ of habeas corpus. Through that petition, he sought to either be released from jail on a

personal recognizance bond, have his bail reduced to $10,000 from $100,000, or be tried per the dictates of the aforementioned constitutional provisions. He felt himself entitled to a personal recognizance bond or a reduction in bail because he was indigent, sitting in jail, and allegedly unable to be tried due to orders issued by the governor of Texas. We reverse and remand.[1]

An order denying a petition for writ of habeas corpus is reviewed under the standard of abused discretion. *Ex parte Warren,* No.10-19-00140-CR, 2019 Tex. App. LEXIS 8800, at *1 (Tex. App.—Waco Oct. 2, 2019, no pet.) (mem. op., not designated for publication); *Ex parte Hicks*, 262 S.W.3d 387, 388 (Tex. App.—Waco 2008, no pet.). A trial court abuses its discretion by applying an erroneous legal standard or if no reasonable view of the record supports the decision under the correct law and facts viewed in the light most favorable to its decision. *Ex parte Warren,* 2019 Tex. App. LEXIS 8800, at *1.

We address Sheffield's bail/bond issues first. He based his argument upon article 17.151 of the Code of Criminal Procedure. It provides, among other things, that a "defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within . . . 90 days from the commencement of his detention if he is accused of a felony." TEX. CODE CRIM. PROC. ANN. art. 17.151, § 1(1) (West 2015). Should the accusation levied be a felony and the State not ready for trial within the expressed time period, then the trial court has

[1] Because this appeal was transferred from the Tenth Court of Appeals, we are obligated to apply its precedent when available in the event of a conflict between the precedents of that court and this Court. *See* TEX. R. APP. P. 41.3.

but two options. It may either release the accused upon personal bond or reduce bail to an amount that the record reflects an accused can make. *Ex parte Gill*, 413 S.W.3d 425, 429 (Tex. Crim. App. 2013); *Ex parte Warren*, 2019 Tex. App. LEXIS 8800, at *2. Furthermore, the burden lies with the State to prove readiness. *Ex parte Landrum*, No. 07-18-00301-CR, 2018 Tex. App. LEXIS 8571, at *2 (Tex. App.—Amarillo Oct. 19, 2018, no pet.) (mem. op., not designated for publication). That is, it must prove it was prepared to try the case within the specified period. *See Ex parte Smith*, 486 S.W.3d 62, 65 (Tex. App.—Texarkana 2016, no pet.); *accord Ex parte Jackson*, No. 03-18-00494-CR, 2019 Tex. App. LEXIS 3243, at *6 (Tex. App.—Austin Apr. 24, 2019, no pet.) (mem. op., not designated for publication) (stating the same).

Yet, the State's being prepared for trial encompasses just that and not whether trial actually could have begun. *Ex parte Jackson*, 2019 Tex. App. LEXIS 3243, at *6. Indeed, the conduct of the trial court, the tenor of its docket, or like impediments facing that court are immaterial to article 17.151. *See Santibanez v. State*, 717 S.W.2d 326, 329 (Tex. Crim. App. 1986). Finally, the requirements of that article may be satisfied by the State announcing either that it is or had been ready within the allotted time. *Ex parte Jackson*, 2019 Tex. App. LEXIS 3243, at *6; *Ex parte Ragston*, 422 S.W.3d 904, 906–907 (Tex. App.—Houston [14th] 2014, no pet.).

The record contains the transcriptions of two hearings.[2] One was held to address the petition for habeas corpus. The other was held upon Sheffield's earlier motion for

[2] The record illustrates that the State indicted appellant on three counts relating to possessing controlled substances, one count of being a felon unlawfully possessing a firearm, and one count of evading arrest. Needless to say, he was accused of a felony for purposes of article 17.151, § 1(1). See TEX. PENAL CODE ANN. § 46.04(e) (West Supp. 2019) (denominating the offense of a felon possessing a firearm as a felony of the third degree).

"release because of delay" based upon article 17.151. During the latter, the State represented that it "was, in fact, ready for trial" when the "indictment was returned in this case September 26th, 2019." To that we add Sheffield's representation appearing in his petition for habeas relief to the effect that he has been in detention since August 5, 2019. Obviously, September 26, 2019 fell within 90 days of the inception of Sheffield's incarceration on August 5, 2019. So, in announcing that it was ready to try Sheffield on September 26th, the State satisfied its burden under article 17.151 and, thereby, rendered the article inapplicable. Thus, the trial court did not err in denying Sheffield's demand for release on personal recognizance or for reduced bond under that article.

As for the matter of speedy trial, Sheffield sought one if he were not released on personal bond or his bond reduced.[3] As previously mentioned, both our federal and state constitutions provide an accused the right to a speedy trial. *Watts v. State*, No. 10-18-00033-CR, 2020 Tex. App. LEXIS 6863, at *3 (Tex. App.—Waco Aug. 26, 2020, no pet.) (mem. op., not designated for publication). Whether an accused has been denied one is reviewed under a bifurcated standard; legal questions are reviewed de novo while we defer to a trial court's factual findings if supported by the evidentiary record. *See id.* at *4 (stating that "[l]egal issues are reviewed *de novo* while factual findings are reviewed for an abuse of discretion"); *State v. Krizan-Wilson*, 354 S.W.3d 808, 815 (Tex. Crim. App. 2011) (stating that an "appellate court must review the trial court's ruling under a bifurcated standard" by giving "almost total deference to a trial court's findings of facts that are supported by the record, as well as mixed questions of law and fact that rely upon

[3] The State did not address this issue in its brief.

the credibility of a witness," while considering de novo, "pure questions of law and mixed questions that do not depend on credibility determinations").

In overruling Sheffield's request for a speedy trial, the court said:

> The problem is that the State's ready but the Court is not allowed to conduct a jury trial because the Office of Court Administration has instructed me that I'm not allowed to conduct any jury trials until they let me know. They don't think that there will be any jury trials until after August 15th, and that even then, there may not be any jury trials until next year. On top of the Office of Court Administration, the Chief Justice of the Court of Criminal Appeals and the Chief Justice of the Texas Supreme Court have instructed the courts, including me, that we are not to have live, in-person hearings unless it's absolutely necessary and there's no other way to have the hearing, and that we are not to have jury trials. We're not even to convene a Grand Jury selection hearing, so they've extended the previous Grand Jury six months so we don't have to have 140 people in here to pick a new Grand Jury. So, I would like to have a jury trial. I would be more than willing to have a jury trial, but the Court is being prevented from having any trials under direct direction and instruction from higher authority.

No other reasoning was given. Furthermore, because the reason given was based upon the trial court's apparent interpretation of applicable law and orders, we apply the de novo standard of review

It is true that our Supreme Court ordered that "[c]ourts must not conduct non-essential proceedings in person contrary to local, state, or national directives, whichever is most restrictive, regarding maximum groups size." *Third Emergency Order Regarding the Covid-19 State of Disaster*, 596 S.W.3d 266, 267 (Tex. 2020). A week earlier, it ordered that "[s]ubject only to constitutional limitations, all courts in Texas may in any case, civil or criminal[,] [and] must to avoid risk . . . [,] without a participant's consent . . . [m]odify or suspend any and all deadlines and procedures . . . for a stated period ending

no later than 30 days after the Governor's state of disaster has been lifted." *First Emergency Order Regarding the Covid-19 State of Disaster,* 596 S.W.3d 265, 265 (Tex. 2020). Most recently, it reiterated aspects of these declarations by ordering trial courts of Texas to forgo "hold[ing] a jury proceeding, including jury selection or a jury trial prior to October 1 [2020]." *Twenty-Second Emergency Order Regarding The COVID-19 State of Disaster*, Misc. Docket No. 20-9095 (Tex. Aug. 6, 2020), *available at https*://www.txcourts.gov/media/1449564/209095.pdf (last visited Sept. 10, 2020). Yet, the most recent edict was not absolute. It was accompanied by the phrase "except as authorized by this Order." *Id.* at para. 6. One such authorization provided that the Office of Court Administration "in coordination with the Regional Presiding Judges and the local administrative judges, should assist trial courts in conducting a limited number of jury proceedings prior to October 1 . . . ." *Id.* at para. 7. The Supreme Court also specified various guidelines by which those trials should be conducted, which guidelines begin with the requirement that the trial judge request permission to conduct one. *Id.* at para. 8(a).

The declaration of a state of disaster may impact the judiciary and its disposition of cases pending before it. Nonetheless, "[t]he Constitution is not suspended when the government declares" such a disaster. *In re Abbott*, 601 S.W.3d 802, 805 (Tex. 2020). Nor has anyone cited us (or have we discovered) authority permitting the "Office of Court Administration," the "[Presiding Judge] of the Texas Court of Criminal Appeals," or the "Chief Justice of the Texas Supreme Court" to unilaterally suspend the Constitution. That the Supreme Court deems this true is exemplified by its caveat in paragraph 2 of its First Emergency Order subjecting the restriction imposed therein to "constitutional limitations."

The right to a speedy trial being a part of both the United States and Texas Constitutions, it too falls within *Abbott*'s edict. It remains alive and cannot be suspended. Nevertheless, the actual trial need not occur on the accused's timetable. Circumstances related to the state of disaster may reasonably affect the date of trial, especially since the essential ingredient of the right is orderly expedition and not simply speed. *See State v. Munoz*, 991 S.W.2d 818, 821 (Tex. Crim. App. 1999) (noting that to be the essential ingredient of the right to a speedy trial). Indeed, the reason for any delay has historically played an important role in assessing whether the right has been unconstitutionally denied an accused. *See, e.g.*, *id.* (stating that "[s]ince 1972 United States Supreme Court precedent has required courts to analyze federal constitutional speedy trial claims 'on an ad hoc basis' by weighing and then balancing four factors: (1) length of the delay, (2) reason for the delay, (3) assertion of the right, and (4) prejudice to the accused"). Yet, a state of disaster alone cannot indefinitely pretermit enjoyment of the right. Through its Twenty-Second Emergency Order, our Supreme Court has implicitly recognized that and provided means for trials to proceed. Thus, denying Sheffield's motion for a speedy trial because the Office of Court Administration, the Presiding Judge of the Texas Court of Criminal Appeals, or the Chief Justice of the Texas Supreme Court purportedly told the trial court at bar to indefinitely forgo proceedings last Spring was and is an erroneous legal basis upon which to act. Additionally, one cannot reasonably dispute that this error was harmful given the accused's lack of financial means to afford bail and his continuing incarceration.

We reverse the trial court's order denying Sheffield's motion for speedy trial and remand the cause to the trial court.

Brian Quinn
Chief Justice

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