IN THE
TENTH COURT OF APPEALS

No. 10-18-00033-CR

ROBERT L. WATTS,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 12th District Court
Walker County, Texas
Trial Court No. 27046

MEMORANDUM OPINION

Appellant Robert L. Watts appeals his conviction for murder in two issues. Watts asserts that the trial court erred in denying his pretrial motion to dismiss for lack of speedy trial, which alleged violations of his rights to a speedy trial and due process. We affirm.

Background

The underlying facts are not disputed. Raymond Zeltner died on April 29, 1985. Watts was initially indicted on October 31, 1989 in Walker County in Cause Number

15,749 for the capital murder of Zeltner by shooting him with a firearm in the course of committing robbery. At the time the indictment was returned, Watts was already incarcerated in the Texas Department of Criminal Justice serving a life sentence for an aggravated sexual assault committed on August 23, 1984 in Harris County. The judgment in the Harris County conviction was entered on July 2, 1986. A detainer was filed with TDCJ by the Walker County Criminal District Attorney's Office on November 14, 1989.

The State announced ready in the capital murder case on November 2, 1989. Watts filed a notice of intent to raise the insanity defense on June 27, 1990, and he was found incompetent to stand trial on September 5, 1990. Rather than being sent to a mental health facility until he regained competency, Watts was sent back to TDCJ to serve out his aggravated sexual assault sentence.

The State dismissed the capital murder indictment on April 7, 1995. The docket entry of dismissal includes the notation, "State dismisses with option to reopen at a future date if the defendant becomes competent." The detainer was cancelled on October 22, 2014.

On November 25, 2014, Watts was indicted in the present case for the murder of Zeltner. Watts again filed a notice of intent to raise an insanity defense on February 3, 2015. Watts then filed a motion to dismiss on July 14, 2017 asserting that he was denied a speedy trial and denied due process. After a hearing, the trial court denied Watts's motion. Watts entered into a plea bargain for a fifty-year sentence that preserved his

right to appeal the trial court's denial of his motion to dismiss.[1] Watts then pled guilty and was sentenced to a fifty-year term of incarceration. Watts's sentence was ordered to run concurrently, and he was given credit for the time he served in custody from November 14, 1989 to December 18, 2017. Watts never requested a speedy trial.

Issues

Watts asserts that the delay in bringing him to trial is presumptively prejudicial and worked actual, material, and substantial prejudice to his ability to fairly assert his insanity defense. Watts contends that the prejudice is of such an extent that his guarantees of a speedy trial and due process have been violated under the United States Constitution, the Texas Constitution, and the Code of Criminal Procedure.

Discussion

The Sixth Amendment to the United States Constitution guarantees that an "accused shall enjoy the right to a speedy . . . trial." U.S. CONST. amend VI. This right was made applicable to the states by the Due Process Clause of the Fourteenth Amendment. U.S. CONST. amend. XIV; *see also Klopfer v. North Carolina*, 386 U.S. 213, 223-26, 87 S.Ct. 988, 993-95, 18 L.Ed.2d 1 (1967). The Texas Constitution likewise provides the accused the right to a speedy trial. TEX. CONST. art. 1, § 10. A defendant who is incarcerated on another charge is entitled to the same speedy trial rights as a defendant who is incarcerated or out on bail. *See Smith v. Hooey*, 393 U.S. 374, 379, 89 S.Ct. 575, 577, 21 L.Ed.2d 607 (1969); *see also Chapman v. Evans*, 744 S.W.2d 133, 136-37 (Tex. Crim. App.

[1] Nothing in the record reflects that Watts is now competent, although the trial court made a finding that he was competent in the judgment.

1988). The Court of Criminal Appeals has traditionally analyzed the denial of a speedy trial under state law using the factors outlined in federal law. *See Harris v. State*, 827 S.W.2d 949, 956 (Tex. Crim. App. 1992); *see also State v. Wei*, 447 S.W.3d 549, 553 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd). Watts makes no argument that his rights under state law differ from those under federal law.

We review a trial court's decision on a speedy trial claim under a bifurcated standard. *State v. Krizan-Wilson*, 354 S.W.3d 808, 815 (Tex. Crim. App. 2011). Legal issues are reviewed *de novo* while factual findings are reviewed for an abuse of discretion. *Id*. If a violation of a defendant's right to a speedy trial is established, the only possible remedy is dismissal of the prosecution. *See Betterman v. Montana*, --- U.S. ----, 136 S.Ct. 1609, 1615, 194 L.Ed.2d 723 (2016) (citing *Strunk v. United States*, 412 U.S. 434, 440, 93 S.Ct. 2260, 37 L.Ed.2d 56 (1973)); *Dragoo v. State*, 96 S.W.3d 308, 313 (Tex. Crim. App. 2003); *Porter v. State*, 540 S.W.3d 178, 181 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd).

Typically, a speedy trial claim is evaluated through the balancing test outlined in *Barker v. Wingo*, 407 U.S. 514, 530-32, 92 S.Ct. 2182, 2191-93, 33 L.Ed.2d 101 (1972). The factors relevant under *Barker* are the length of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Id*. Before conducting the foregoing analysis, however, we must first determine whether Watts's speedy trial rights have been implicated.

Watts alleges that the unexcused delay in this case is nineteen years—the period between the dismissal of the first indictment for capital murder on April 7, 1995 and the filing of the second indictment for murder on November 25, 2014.

The *Barker* factors contemplate situations where arrest and charging occur in close succession. *Brown v. State*, 163 S.W.3d 818, 821-22 (Tex. App.—Dallas 2005, pet. ref'd). "However, when charges are initially dismissed, and no formal charges are pending, the Supreme Court has made clear that the Speedy Trial Clause provides no protection." *Id*. at 822 (citing *United States v. MacDonald*, 456 U.S. 1, 8, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982) ("[o]nce charges are dismissed, the speedy trial guarantee is no longer applicable.")). *See also United States v. Loud Hawk*, 474 U.S. 302, 310-11, 106 S.Ct. 648, 653-54, 88 L.Ed.2d 640 (1986) (quoting *United States v. Marion*, 404 U.S. 307, 320, 92 S.Ct. 455, 463, 20 L.Ed.2d 468 (1971) ("The Court has found that when no indictment is outstanding, only the '*actual* restraints imposed by arrest and holding to answer a criminal charge . . . engage the particular protections of the speedy trial provision of the Sixth Amendment.'"). Any delay that occurs before charges are filed or after charges are dismissed must be scrutinized under the Due Process Clause rather than the Speedy Trial Clause. *MacDonald*, 456 U.S. at 6-10, 102 S.Ct. at 1501-02; *see also Griffith v. State*, 976 S.W.2d 686, 692 (Tex. App.—Tyler 1997, pet. ref'd).

Watts relies on *Branscum v. State*, 750 S.W.2d 892 (Tex. App.—Amarillo 1988, no pet.). However, the *Branscum* court begins its analysis with the *Barker* factors without considering whether the Sixth Amendment applied during the fourteen-year period when charges were not pending against the defendant.

Watts appears to argue that he should be considered in "constructive custody" during the period between the dismissal of the first indictment and the return of the second indictment because there was a detainer lodged against him with TDCJ

authorities that was never lifted after the capital murder indictment was dismissed. Watts cites cases that hold that defendants are entitled to credit for time served under the code of criminal procedure when a detainer has been filed against them. *See Hannington v. State*, 832 S.W.2d 355, 356 (Tex. Crim. App. 1992) ("The existence of a detainer is merely one means of establishing incarceration on a particular case."); and *Ex parte Jasper*, 538 S.W.2d 782, 784 (Tex. Crim. App. 1976) ("Once the Texas detainer was filed against the petitioners in Louisiana, the petitioners were in 'constructive custody' of the State of Texas. . . ."). These cases do not, however, involve a speedy trial claim. The custody requirement for Speedy Trial purposes requires the actual restraints imposed by arrest. *See Dickerson v. Guste*, 932 F.2d 1142, 1144 (5th Cir.), *cert. denied,* 502 U.S. 875, 112 S.Ct. 214, 116 L.Ed.2d 172 (1991).

"The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." *McDonald*, 456 U.S. at 8, 102 S.Ct. at 1501. A "detainer" is "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency, or that the agency be advised when the prisoner's release is imminent." *Fex v. Michigan*, 507 U.S. 43, 44, 113 S.Ct. 1085, 1087, 122 L.Ed.2d 406 (1993). "[A] detainer merely puts the officials of the institution in which the prisoner is incarcerated on notice that the prisoner is wanted in another jurisdiction for trial upon his release from prison." *United States v. Mauro*, 436 U.S. 340, 358, 98 S.Ct. 1834, 1846, 56 L.Ed.2d 329 (1978). A

detainer is not, however, an "*actual* restraint[ ] imposed by arrest. . . ." *Marion*, 404 U.S. at 320, 92 S.Ct. at 463; *see also Dickerson*, 932 F.2d at 1144. Watts has suffered no separate arrest or incarceration as a result of the murder charges. Watts was already incarcerated on the aggravated rape charge when the first capital murder indictment was returned against him, and he was still in custody on that charge when he entered his plea of guilty to murder.

After a *de novo* review, we conclude that the trial court did not err in denying Watts's motion to dismiss for lack of a speedy trial. We overrule Watts's first issue.

Watts next argues that the trial court erred in denying his motion to dismiss the indictment against him because he was denied due process because of the delay in his prosecution. While the Sixth Amendment protects criminal defendants from delays occurring between arrest or indictment and trial, the Due Process Clause provides protection against delays occurring between the alleged offense and arrest or indictment. *Brown*, 163 S.W.3d at 822; *see also MacDonald*, 456 U.S. at 8, 102 S.Ct. at 1502 ("The Sixth Amendment right to a speedy trial is . . . not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitation."). To establish a violation of Due Process due to pre-trial delay, the defendant must show that the delay caused substantial prejudice to his right to a fair trial and that the delay was an intentional device on the part of the State to gain a tactical advantage or for some other bad-faith purpose. *Krizan-Wilson*, 354 S.W.3d at 817; *see also Saul v. State*, 510 S.W.3d 672, 686 (Tex. App.—El Paso 2016, pet. ref'd). Bad faith may not be inferred solely from the existence of delay and

prejudice. *Saul*, 510 S.W.3d at 686. This analysis applies to Due Process claims under both the United States Constitution and the Texas Constitution. *Id*. at 687-88.

Even assuming Watts has shown that the delay in his prosecution has caused substantial prejudice, there is nothing in the record to reflect that the delay was intentional on the part of the State to gain a tactical advantage or for some other bad-faith purpose. Watts's second issue is overruled.

Conclusion

Having overruled both issues raised by Watts, we affirm the judgment of the trial court.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill
Affirmed
Opinion delivered and filed August 26, 2020
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