

IN THE UTAH COURT OF APPEALS

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Lee Roy Wood,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20050221-CA	
v.)		
)	F I L E D	
State of Utah,)	(November 10, 2005)	
)		
Respondent and Appellee.)	<table border="1"><tr><td>2005 UT App 483</td></tr></table>	2005 UT App 483
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Eighth District, Vernal Department, 030800480
The Honorable A. Lynn Payne

Attorneys: Lee Roy Wood, Gunnison, Appellant Pro Se
Mark L. Shurtleff and Erin Riley, Salt Lake City, for
Appellee

Before Judges Bench, Greenwood, and McHugh.

PER CURIAM:

Lee Roy Wood appeals from the district court's dismissal of his petition for post-conviction relief. We affirm.

Wood asserts that he is entitled to post-conviction relief because he was not brought to trial within 120 days after he filed a demand under Utah Code section 77-29-1 (2003).¹ It is well settled "that by pleading guilty, the defendant is deemed to have admitted all of the essential elements of the crime charged and thereby waives all nonjurisdictional defects, including alleged pre-plea constitutional violations." State v. Parsons, 781 P.2d 1275, 1278 (Utah 1989); see also State v. Beck, 584 P.2d 870, 872 (Utah 1978) (concluding that by pleading guilty

¹It is unclear whether Wood is substantively challenging this failure to be brought to trial within 120 days or if he argues that his trial counsel was ineffective for failing to file a motion to dismiss based upon this theory. A review of the post-conviction proceedings indicates that Wood's petition for post-conviction relief alleged a substantive challenge; however, the district court reviewed the argument in the context of an ineffective assistance of counsel claim. Out of an abundance of caution and fairness, this court will examine both arguments.

defendant waived constitutional error regarding probable cause and search and seizure principles). The right to a speedy trial is nonjurisdictional. See, e.g., United States v. Coffin, 76 F.3d 494, 496 (2d Cir. 1996) ("Because a defendant's right to a speedy trial is nonjurisdictional, a knowing and voluntary guilty plea waives a speedy trial claim unless the defendant specifically reserves the right to appeal."). Accordingly, by pleading guilty, Wood waived any rights and protections he may have been afforded under Utah Code section 77-29-1.

To the extent Wood argues that his trial counsel was ineffective, his argument is equally unavailing. In order to prove that counsel was ineffective, a defendant must demonstrate "(1) that counsel's performance was objectively deficient, and (2) a reasonable probability exists that but for the deficient conduct defendant would have obtained a more favorable outcome at trial." State v. Clark, 2004 UT 25, ¶6, 89 P.3d 162. Wood fails to demonstrate that his counsels' performance was objectively deficient.

First, Wood's counsel made a tactical choice not to pursue trial within 120 days. See State v. Bloomfield, 2003 UT App 3, ¶30, 63 P.3d 110 ("[W]e give trial counsel wide latitude in making tactical decisions and will not question such decisions unless there is no reasonable basis supporting them." (citations and quotations omitted)). In his memorandum to the district court, Wood stated that after requesting that his counsel file a motion to dismiss because the 120-day period had passed, his counsel "said that they could not do Petitioner's case in 120 days." Because of the extensive issues involved in the case due to the possibility of capital punishment, Wood's counsel apparently felt that they would provide him with ineffective assistance if they attempted to try the case within the 120-day period. Thus, Wood's counsel made a tactical choice not to pursue trial within 120 days. Because this case involved the possibility of capital punishment and numerous sub-issues including Wood's competency, we cannot conclude that these tactics were unreasonable.

Second, Wood's right to a 120-day disposition was not violated. In response to Wood's petition for post-conviction relief, the district court went through a lengthy analysis of the time line from the date prison officials allegedly received Wood's notice for a 120 day disposition until the date Wood entered his unconditional guilty plea, totaling 426 days.² The

²The district court assumed as true Wood's allegation that he filed his request for a 120-day disposition on July 20, 2001, (continued...)

district court then determined that all but 139 of those days were directly attributable to Wood and his counsel; accordingly, good cause existed for those delays. See State v. Jensen, 818 P.2d 551, 552 (Utah Ct. App. 1991). In regard to the other delays, the district court found that good cause existed to go beyond the 120 days for three reasons: (1) neither the court nor the prosecution knew that Wood filed his notice for 120-day disposition with the prison; (2) there was a delay in appointing Wood counsel because this was a capital case requiring two qualified attorneys to be appointed; and (3) capital cases need extensive investigation and preparation. Under the circumstances, we cannot conclude that the district court abused its discretion in concluding these three factors constituted good cause for any delays not directly attributable to Wood. See State v. Peterson, 810 P.2d 421, 424-25 (Utah 1991) (concluding appellate courts review findings of good cause under abuse of discretion standard unless district court misapplies the law). Therefore, Wood's counsel could not have been ineffective because good cause existed for exceeding the 120 days.

Affirmed.

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge

Carolyn B. McHugh, Judge

²(...continued)
and that the proper prison official received the request on that same date. Wood claims that prison officials did not file the request with the trial court.