

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
State of South Carolina,)
)
Appellant,)
)
v.)
)
Timothy Jermaine Miller,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2022-CP-21-02619

ORDER OF DISMISSAL

RECEIVED

Jul 06 2023

SC Court of Appeals

This matter came before the Court on May 18, 2023, on an appeal from the Florence Magistrate Court of the dismissal of the charge of Driving Under the Influence, 1st Offense. The Appellant was represented by Kevin Hope, assistant solicitor from the 12th Circuit Solicitor’s Office. Respondent was represented by J. Taylor Bell of The Jeffcoat Firm. Magistrate Tommy G. Mourounas also appeared by way of a requested order from the Appellant. After hearing from all parties, the Court makes the following findings of fact and conclusions of law.

Procedural History and Facts

1. Respondent was arrested on or about April 30, 2018, for Driving under the Influence, 1st Offense involving a simple single-car motor vehicle collision. On May 30, 2018, Respondent timely and promptly demanded a jury trial.
2. On July 22, 2022, Respondent by way of written motion filed a request for speedy trial and demanded the case be tried within 30 days. The demand specifically provided that the Respondent would move to dismiss the case if the case was not called for trial within 30 days. The motion further asserted that Respondent’s right to speedy trial had been violated in that the State of South Carolina had not brought the case to trial in more than 4 years since his initial arrest and demand for a jury trial on May 30, 2018.
3. Respondent’s case not having been tried or scheduled for trial, on September 12, 2022, Respondent by way of written motion filed a motion to dismiss for violation of Respondent’s right to a speedy trial provided for by the 6th and 14th Amendments to the U.S. Constitution and the S.C. Constitution Art. I, § 14.

4. Again, Respondent's case not having been tried or scheduled for a trial or a hearing, on October 6, 2022, Respondent by way of written motion filed a motion for a hearing on the motion to dismiss for violation of right to speedy trial. Again, Respondent asserted that his right to a speedy trial was being violated and demanded this case be scheduled for a hearing.
5. Eventually, the Florence County Magistrate Court scheduled a hearing in this matter for November 28, 2022. At the hearing held on November 28, 2022, the Honorable Tommy G. Mourounas heard arguments from all both parties. Judge Mourounas considered all factors in *Barker v. Wingo*, 407 US 514 (1972) as described in South Carolina caselaw from *State v. Langford* and *State v. Hunsberger* – (1) Length of Delay, (2) Reason for Delay, (3) Accused Assertion of the Right to Speedy Trial, and (4) Prejudiced to the Accused. Judge Mourounas granted Respondent's motion to dismiss, finding the Respondent's right to a speedy trial had been violated.
6. On December 6, 2023, Appellant filed this appeal arguing that the Magistrate Court's dismissal of the Respondent's case was an abuse of discretion which unfairly punished the State for the Magistrate Court's inaction.

Analysis

The right to a speedy trial in South Carolina is provided for by the 6th and 14th Amendments to the U.S. and the S.C. Constitution Art. I, § 14. Appellant's main contention with the Magistrate Court's dismissal of the Respondent's case is that it is not the State's fault, but the Court's fault. At the May 18, 2023 motion hearing before this Court, the Appellant did not argue that Appellant's Speedy Trial rights were not violated. In fact, Appellant acknowledged that the Respondent's right to a speedy trial was violated, but that the Court backlog was not the State's fault. Appellant asserted at the May 18, 2023 motion hearing, that there are approximately 1,000 pending Driving Under the Influence, 1st Offense cases in the Magistrate Courts awaiting trial in Florence County at this time, which Appellant is responsible for prosecuting.

“A simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case.” *Langford*, 400 S.C. 421, 443 (2012). The four-year delay in this case triggers the speedy trial analysis. In the instant case, Respondent was arrested on April 30, 2018 and demanded a jury trial on May 30, 2018. The State only now, more than four years later, shows interest in prosecuting this case, and only after

Respondent filed the at issue motion to dismiss and places blame on the Magistrate Court for not scheduling the case for trial.

Turning to the reason for the delay in this case requires analysis of the State's justifications which the State bears the burden of showing. This case involves a single-car motor vehicle collision with no injuries where the driver was charged with Driving Under the Influence, 1st Offense. This is not a complex case which would have required the cooperation of any difficult witnesses or other parties which might cause difficulties in prosecution, rather this is a straightforward simple case to bring to trial which the State did not attempt to try for more than four years. A Driving Under the Influence, 1st offense summary level offense typically takes one day to try. This fact weighs heavily against the State.

While it may very well be the Magistrate Court's fault for not scheduling the case, this is not the Respondent's fault, but rather the responsibility of the State. The South Carolina Supreme Court stated in *State v. Langford* that "negligence and overcrowded dockets weigh less heavily against the State but are ultimately its responsibility." *State v. Hunsburger*, 418 S.C. 335, 346 (2016). There was no assertion by the Appellant that there were any missing witnesses and no assertion by the Appellant that the Respondent caused the delay. Here, the reasons for the delay weigh against the State.

The Respondent was prejudiced in this case. "Excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or identify. This is so because time's erosion of exculpatory evidence and testimony can rarely be shown. When the government persistently fails to try an accused and the delay is excessive, the accused need not show actual prejudice in order to prevail in his speedy trial claim." *Hunsbuger* at 351. A four-year delay in bringing this case to trial would result in inaccurate recollection of the incident by witnesses in this case. This fact weighs against the State.

Of additional consideration in this matter, when pressed by the Court, Appellant was unable articulate any reasonable rationale that the State has in resurrecting this specific case over moving forward and using the State's resources to resolve the more than 1,000 other pending Driving Under the Influence, 1st Offense cases pending in Florence County Magistrate Court.

Based on the above, it is ordered that it was not an abuse of discretion for the Magistrate Court to grant the Respondent's motion to dismiss. As a matter of equity, the appeal is dismissed.

IT IS SO ORDERED.

June ____, 2023

The Honorable Michael G. Nettles
Circuit Court Judge



Florence Common Pleas

Case Caption: South Carolina State Of VS Timothy Jermaine Miller

Case Number: 2022CP2102619

Type: Order/Dismissal

So Ordered

s/ The Honorable Michael G. Nettles #2140