

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Edgefield County
Honorable Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2020-001230

THE STATE,

Respondent,

vs.

STEVEN LOUIS BARNES,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err by finding the trial judge correctly refused to dismiss the indictment based on a violation of Barnes's state and federal constitutional rights to a speedy trial?

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err by correctly affirming the trial judge's proper ruling declining to dismiss Barnes's murder indictment based on an alleged violation of Barnes's speedy trial rights when the approximately forty-four-month span of time between the end of Barnes's successful appeal of his earlier convictions and Barnes's subsequent retrial for his sixteen-year-old victim's murder was not excessively or unreasonably lengthy, was only partially attributable to the State, did not result from any intentional willfulness or unreasonable neglect on the part of the State, and did not cause any meaningful prejudice to Barnes, who was serving a life sentence for crimes he committed in Georgia during the time period leading up to his most-recent trial?

STATEMENT OF THE CASE

Procedural History

In January of 2002, Petitioner Steven Louis Barnes was arrested following a multi-state investigation into a brutal series of events that ended with the execution of a sixteen-year-old boy in a clearing in the woods. Subsequent to his arrest, Barnes was tried for and convicted of murder and kidnapping during a capital jury trial conducted in November of 2010 in the Edgefield County Court of General Sessions, was sentenced to death, and successfully appealed his convictions. Following that lengthy appeal, the solicitor withdrew the death penalty notice and served timely notice on Barnes indicating the State would seek a sentence of life without parole upon conviction pursuant to Section 17-25-45 of the South Carolina Code of Laws. On October 4, 2017, the Edgefield County Grand Jury re-indicted Barnes for murder. On October 9, 2017, a jury trial was commenced on the murder charge in the Edgefield County Court of General Sessions with the Honorable Diane Schafer Goodstein, circuit court judge, presiding. At

the conclusion of the five-day trial, the jury convicted Barnes as indicted, and the trial judge sentenced Barnes to life without parole. Barnes then timely filed a notice of appeal.

On appeal, the Court of Appeals issued a published opinion unanimously affirming Barnes's conviction. State v. Barnes, 431 S.C. 66, 864 S.E.2d 389 (Ct. App. 2020). Thereafter, Barnes petitioned the Court of Appeals for rehearing, and the petition was denied. Barnes then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

In September of 2001, Barnes—with the assistance of a gang of young minions—kidnapped, tortured, and executed Samuel Sturrup (“Victim”), who was only sixteen years old at the time. (R. p. 181; p. 265; pp. 274-275; pp. 277-279; pp. 293-296; pp. 300-301; pp. 308-314; p. 316; p. 339; pp. 398-399; p. 402; pp. 424-425; p. 435; pp. 440-443; p. 446; p. 449; p. 457; p. 468; p. 520; pp. 527-529; p. 531; pp. 534-539; pp. 545-546; pp. 549-552). The apparent justification for those brutal acts was Barnes believed Victim had stolen money from him. (R. pp. 277-278; pp. 330-331; p. 462). However, Barnes's money had actually been shredded by his dogs. (R. p. 565). Upon discovering that fact, Barnes responded in a callous manner that suggested he was unconcerned and untroubled by what he had done. (R. p. 566).

Following the killing, Victim's disappearance was a mystery to all but those involved until some of Victim's remains were discovered in Edgefield County a few months later. (R. pp. 185-191; pp. 197-198; pp. 201-202; p. 204; p. 212; p. 215; pp. 235-236; pp. 610-620). In response to that ghastly discovery, law enforcement agencies in both South Carolina and Georgia jointly investigated the murder, and that investigation culminated in the arrests of Barnes and his confederates in Georgia over an eight-day span of time in January of 2002. (R. p. 240; p. 496; p. 509). After that, an arrest warrant was issued in South Carolina on January 25, 2002, and the

Governor of South Carolina requested Barnes's extradition to the state a little over a month later so he could face trial for Victim's murder. (R. pp. 773-775). Thereafter, a hearing was held in Georgia on April 17, 2002, and Barnes waived extradition at that time. (R. p. 776). A few days after that, a formal order was issued authorizing his extradition to South Carolina. (R. p. 776). However, Barnes remained in Georgia for the time being, was ultimately tried and convicted of numerous charges there in December of 2003, and received an aggregate sentence of life in prison in that state. (R. p. 697; p. 779; p. 850; p. 864).

Subsequently, through a document postmarked February 12, 2005, the solicitor in Edgefield County received a request for the disposition of the charges Barnes had pending there pursuant to the Interstate Agreement on Detainers Act ("the IAD Act"). (R. p. 778). In response, the solicitor arranged for Barnes, who was still imprisoned in Georgia, to be brought to South Carolina, and Barnes was extradited to the state on May 18, 2005. (R. p. 778).

After Barnes was extradited, the Honorable William P. Keesley, circuit court judge, conducted a hearing in response to Barnes's IAD Act filing. (R. pp. 779-781). Following the hearing, Judge Keesley issued an order on May 27, 2005, acknowledging the case would likely be tried as a capital case based on the solicitor's representations and finding good cause existed to continue Barnes's trial beyond the deadlines established by the IAD Act. (R. pp. 779-781).

Shortly thereafter, on June 5, 2005, an attorney was appointed to represent Barnes in South Carolina. (R. p. 782). Subsequently, on August 10, 2005, the Edgefield County Grand Jury formally indicted Barnes for kidnapping. (R. pp. 783-784). A different attorney was then appointed to replace Barnes's earlier counsel on September 1, 2005. (R. pp. 785-786). Following the new attorney's appointment as counsel, Barnes—while represented by counsel—filed an improper pro se "Motion to Dismiss Pursuant to the Agreement of Detainers § 17-11-10,

Article V,(c)” on September 8, 2005, with the Edgefield County Clerk of Court, but that improper filing was never acted upon. (R. pp. 790-797). Around the same time, Barnes personally submitted a motion seeking self-representation along with a number of letters that purportedly had been sent to his counsel and contained demands of counsel regarding his speedy trial rights. (R. pp. 787-789; pp. 799-802; pp. 804-808).

Thereafter, on November 1, 2005, the Honorable J. Cordell Maddox, Jr., circuit court judge, was vested with exclusive jurisdiction over Barnes’s case. (R. p. 803). A little over a month later, the Edgefield County Grand Jury formally indicted Barnes for murder. (R. pp. 809-810). Shortly after that, the solicitor provided written notice to Barnes through his counsel on December 13, 2005, indicating the State would be seeking the death penalty in his case. (R. p. 811). On that same date, Judge Maddox conducted a hearing in the Edgefield County Court of General Sessions with all parties present, including Barnes and his counsel. (R. p. 812). Following the hearing, Judge Maddox issued an order confirming Barnes was properly arraigned and had no objections or additional requests at that time. (R. p. 812).

A short time later, Judge Maddox issued an order that was filed on February 16, 2006, appointing an additional attorney for Barnes as required by South Carolina law. (R. pp. 813-814). A few months after that, Judge Maddox conducted a hearing on May 16, 2006, in regard to the scheduling of the case for trial with all parties present, including Barnes and both his attorneys. (R. p. 815). On that same date, Judge Maddox issued an order confirming he discussed potential trial dates with the parties and determined Barnes’s case could not be brought to trial in 2006 “[b]ased upon the court schedule as well as that of the attorneys[.]” (R. p. 815). As a result, Judge Maddox indicated Barnes’s trial would be scheduled for January or February of 2007. (R. p. 815).

Subsequent to that, a trial date was not scheduled until Judge Maddox issued an order dated April 17, 2008, setting Barnes's trial for the weeks of June 16, 2008, and June 23, 2008, and directing a jury to be drawn on the morning of May 19, 2008. (R. pp. 96-97; p. 816). Thereafter, just days before the jury was to be drawn, Barnes's counsel moved for a continuance in light of the fact the defense was still not yet ready to proceed forward with the death penalty trial. (R. p. 817). In response, Judge Maddox issued an order finding good cause had been shown for a continuance, and Barnes's case was continued beyond the scheduled trial dates until such a time as it could be set for trial. (R. p. 817). A few weeks after that, Judge Maddox issued an order at Barnes's counsel's request directing the Georgia Department of Corrections to permit Barnes's investigator to interview incarcerated witnesses pertinent to the case. (R. pp. 818-819).

Subsequently, on January 25, 2010, an order was issued appointing the Honorable R. Knox McMahon, circuit court judge, to preside over Barnes's case going forward because the defense had retained the services of an expert whose involvement necessitated Judge Maddox's recusal. (R. p. 97; p. 820). Following the appointment of the new judge, a capital jury trial was commenced on November 8, 2010, in the Edgefield County of General Sessions with Judge McMahon presiding.¹ (R. p. 821). At the outset of trial, defense counsel moved for the case to be dismissed due to an alleged violation of the IAD Act. (R. pp. 822-823). However, the trial judge denied defense counsel's motion, and the trial proceeded forward. (R. p. 827).

Subsequently, at the conclusion of the multi-week trial, the jury convicted Barnes as indicted and, following a sentencing hearing, recommended a sentence of death, which was imposed by the trial judge. (R. p. 853). Barnes then timely filed and perfected an appeal. (R. p. 853).

¹ As was later acknowledged by defense counsel, the solicitor did not seek any continuances on behalf of the State prior to Barnes's first trial for Victim's murder and, instead, engaged in repeated efforts to have the case brought to trial. (R. pp. 95-97). Perhaps tellingly, Barnes has now elected *not* to make the same acknowledgement. (Pet. for Cert. pp. 1-24).

Thereafter, following briefing and oral argument, the Supreme Court issued a divided opinion in which it reversed Barnes's convictions and remanded for a new trial due to an error regarding Barnes's attempt to waive his right to counsel. State v. Barnes, Op. No. 27322 (S.C. Sup. Ct. filed Oct. 16, 2013). After the Supreme Court issued its decision, the State filed a petition for rehearing, and the petition was denied. (R. p. 853). However, the Supreme Court issued a substituted opinion in which it again reversed Barnes's convictions and remanded for a new trial. State v. Barnes, 407 S.C. 27, 30, 753 S.E.2d 545, 547 (2014). On January 31, 2014, the remittitur was issued. (R. p. 854).

After remittitur was issued, Barnes sought the appointment of counsel, and a hearing on the matter was held on April 23, 2014, in Lexington County Court of General Sessions with Judge Keesley presiding. Appellate Records for State v. Steven Louis Barnes, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=56950>. Following the hearing, Judge Keesley issued an order on June 3, 2014, declining to rule on the matter in light of the order appointing Judge McMahon to preside over Barnes's case. Id. The Honorable Diane Schafer Goodstein, circuit court judge, was then appointed to preside over Barnes's case going forward. Id. Shortly after that, Barnes filed a pro se notice of appeal in an attempt to appeal Judge Keesley's order. Id.

Thereafter, on June 20, 2014, the Supreme Court issued an order dismissing Barnes's pro se appeal as an improper interlocutory appeal. Id. Following the issuance of that order, Barnes filed a pro se motion to reinstate, a pro se petition for an extraordinary writ, and a pro se petition for original jurisdiction. Id. However, on August 25, 2014, the Supreme Court issued an order denying Barnes's pro se filings and directing Judge Goodstein to conduct a hearing on Barnes's

request for appointment of counsel. Id. Furthermore, on that same date, the Supreme Court issued another remittitur. Id.

Following the issuance of the second remittitur, a hearing on the matter of appointment of counsel was held on September 11, 2014, in Edgefield County Court of General Sessions with Judge Goodstein presiding. (R. p. 854). During the hearing, Judge Goodstein appointed counsel to represent Barnes and denied the State's request to reinstate his earlier convictions due to the appointment of counsel.² (R. p. 854).

In light of Judge Goodstein's rulings, the State filed a Petition for Writ of Certiorari Due to Exceptional Circumstances in the Supreme Court on September 17, 2014, and the petition was *granted* on November 20, 2014. (R. p. 854). Thereafter, following briefing and oral argument, the Supreme Court issued a *divided* opinion in which it affirmed Judge Goodstein's order appointing counsel to Barnes. State v. Barnes, 413 S.C. 1, 2, 774 S.E.2d 454, 455 (2015). The State then petitioned for rehearing, and the petition was denied. (R. p. 854). Subsequently, on August 10, 2015, the Supreme Court again issued a remittitur. (R. p. 854).

Following the issuance of the third remittitur, a pre-trial hearing was held on July 7, 2017.³ (R. p. 1). During that hearing, the solicitor withdrew the death penalty notice and served timely notice on Barnes indicating the State would seek a mandatory sentence of life without parole based on Barnes's prior convictions. (R. pp. 3-7). Furthermore, during the same hearing, Judge Goodstein scheduled Barnes's trial to begin on October 9, 2017. (R. p. 16). However,

² At that time, the solicitor was prepared for trial. (R. p. 137).

³ Prior to that point, one of Barnes's defense counsel obtained an order of protection in a case unrelated to Barnes's that remained in place from July of 2015 until December 16, 2016, which prevented any advancement of Barnes's case for a period of approximately seventeen months. (R. pp. 72-73; pp. 136-138; p. 147). Shortly after that, a newly-elected solicitor with no prior involvement in Barnes's case took office in Edgefield County's circuit on January 11, 2017. (R. p. 73; p. 82; pp. 85-86).

Judge Goodstein noted it would be necessary for her to communicate with the Supreme Court to ensure she would still be presiding over the case. (R. p. 21).

Thereafter, as the scheduled trial date neared, defense counsel submitted a motion in August of 2017 seeking for the case to be dismissed based on an alleged violation of Barnes's state and federal constitutional rights to a speedy trial. (R. p. 16; p. 38; p. 139; pp. 704-724). In support of that motion, defense counsel discussed the various actions undertaken in Barnes's case from the point of his 2002 arrest until his scheduled retrial and maintained the State was responsible for eight years and seven months of delays during that time period. (R. pp. 714-717). Furthermore, defense counsel appeared to suggest the reasons for the delays were not satisfactory, alleged Barnes repeatedly asserted his speedy trial rights through his IAD Act claim and various pro se filings, and argued Barnes suffered "enormous" prejudice as a result of the delays due to potential discrepancies in the testimony of the witnesses and the "severe" conditions of his confinement while awaiting trial.⁴ (R. pp. 717-723). For those reasons, defense counsel contended Barnes's speedy trial rights were violated and his case should be dismissed based on the roughly eight-year delay before his original trial and the roughly fifteen-year delay before his scheduled retrial. (R. pp. 723-724).

At the outset of Barnes's trial, the trial judge conducted a hearing on the speedy trial dismissal motion. (R. pp. 38-39). In support of the motion, defense counsel reasserted his claims regarding the delays prior to Barnes's most-recent trial and maintained the entire period from Barnes's arrest to retrial was pertinent to the speedy trial analysis. (R. pp. 44-49; pp. 60-

⁴ Notwithstanding the fact Barnes was serving a life sentence for crimes he committed in Georgia at the time he was being confined in South Carolina prior to the retrial, the specific conditions of Barnes's pre-trial confinement were the direct result of his own commission of numerous disruptive, violent, and vexing acts at the various facilities where he was held prior to the retrial. (R. pp. 76-78; p. 697; p. 779; pp. 828-833; p. 850; p. 864).

62). However, defense counsel conceded the speedy trial issue had not previously been addressed by a circuit court judge, was not raised at Barnes's first trial, and was not raised on appeal following the conclusion of that trial. (R. p. 101). Furthermore, defense counsel conceded the various pro se filings submitted by Barnes while he was represented by counsel did not have to be considered as valid assertions of his rights due to the prohibition on hybrid representation in South Carolina. (R. pp. 60-62). Nevertheless, defense counsel inconsistently argued those pro se filings somehow could and should be considered as proper speedy trial assertions. (R. pp. 60-62). In rebuttal, the solicitor argued the only relevant time frame for the speedy trial analysis in Barnes's case was the time period from the issuance of remittitur following the reversal of his capital murder conviction to the date of his most-recent trial, which the solicitor acknowledged was sufficiently lengthy such that consideration of the relevant speedy trial factors was warranted. (R. pp. 63-64; pp. 69-70; pp. 753-756; p. 769). The solicitor then discussed the various periods of delay involved in the case, noted the State made repeated attempts to get Barnes's case scheduled for trial and did nothing to intentionally delay the case, pointed out Barnes was responsible for a number of the delays, and asserted Barnes suffered no meaningful prejudice as a result of any of the delays.⁵ (R. pp. 71-78; p. 86; pp. 756-769).

After considering the arguments of counsel, the trial judge found no speedy trial violation occurred in Barnes's case. (R. p. 139; pp. 164-165; p. 867). In support of that conclusion, the trial judge determined the relevant time period for the speedy trial analysis in Barnes's case began with the issuance of remittitur in January of 2014 after his original convictions were

⁵ Notably, supporting the solicitor's assertions, defense counsel candidly acknowledged he engaged in regular meetings with the solicitor prior to Barnes's most-recent trial, characterized those meetings as "very substantive," and noted the solicitor gave Barnes's case "full attention" during the time period leading up to the scheduling of the retrial. (R. p. 81; p. 83). Moreover, defense counsel further acknowledged he never suggested to the solicitor Barnes's case needed to be scheduled for trial during their discussions leading up to the retrial. (R. p. 83).

reversed, reviewed the various delays that were incurred from that point in time going forward, and found delays totaling approximately two years and three months were attributable to the State. (R. pp. 131-139; pp. 145-159; pp. 857-858). However, the trial judge concluded the reasons for the delays were largely neutral, determined the delays were not deliberately caused by the State, found Barnes only validly raised a speedy trial claim for the first time in August of 2017, and held the prejudicial effects of the delays were largely minimal while Barnes received a benefit from the delays through the withdrawal of the death penalty notice.⁶ (R. pp. 132-139; pp. 145-159; pp. 858-863). Following that ruling, the trial judge proceeded with an analysis of the entire time period involved in Barnes's case in the event it proved to be necessary and concluded no speedy trial violation occurred even if the delays involved in that time period were considered due to the fact the earlier delays were largely attributable to continuances requested by the defense coupled with the fact some time was legitimately needed for investigation and preparation prior to the original death penalty trial. (R. p. 159; pp. 162-165; pp. 863-867). Accordingly, for all those reasons, the trial judge declined to impose the extreme sanction of dismissal in Barnes's case. (R. pp. 164-165; p. 867).

After that, the trial proceeded forward, and Barnes was ultimately convicted as indicted. (R. p. 139; pp. 144-145; pp. 164-165; p. 691; p. 702; pp. 850-867). Following his conviction, Barnes again appealed while—in part—challenging the trial judge's decision to deny the speedy trial dismissal motion. (Final App. Br. p. 1; pp. 4-17). However, on appeal, the Court of Appeals unanimously affirmed the trial judge's speedy trial ruling. State v. Barnes, 431 S.C. 66, 90-91, 864 S.E.2d 389, 401-402 (Ct. App. 2020).

⁶ In finding the reasons for the delays was largely neutral, the trial judge noted she regularly engaged in status conferences with the parties in an effort to get Barnes's case scheduled for trial that proved to be productive and beneficial to Barnes. (R. p. 82; p. 84; p. 860).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a ruling on a speedy trial motion on appeal, the appellate court reviews the trial judge's ruling under an abuse of discretion standard. State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371-372 (2016); see State v. Reaves, 414 S.C. 118, 132, 777 S.E.2d 213, 220 (2015) (“[A] trial court’s decision as to whether to dismiss an indictment based on speedy trial grounds is reviewed for an abuse of discretion.”). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge’s ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

The Court of Appeals correctly affirmed the trial judge’s proper ruling declining to dismiss Barnes’s murder indictment based on an alleged violation of Barnes’s speedy trial rights because the approximately forty-four-month span of time between the end of Barnes’s successful appeal of his earlier convictions and Barnes’s subsequent retrial for his sixteen-year-old victim’s murder was not excessively or unreasonably lengthy, was only partially attributable to the State, did not result from any intentional willfulness or unreasonable neglect on the part of the State, and did not cause any meaningful prejudice to Barnes, who was serving a life sentence for crimes he committed in Georgia during the time period leading up to his most-recent trial.

Barnes contends the Court of Appeals erred by affirming the trial judge’s ruling declining to dismiss his murder indictment based on an alleged violation of his constitutional speedy trial rights. In support of that contention, Barnes maintains the decision of the Court of Appeals was erroneous because the trial judge improperly failed to consider as part of her speedy trial analysis

the entire time period between his arrest in connection to his sixteen-year-old victim's murder and his eventual retrial that occurred roughly forty-four months after his convictions from his earlier trial in connection to the same murder were reversed on appeal. Then, relying on the "extraordinary" fifteen-year period of delay he contends the trial judge should have considered, Barnes maintains his murder indictment should have been dismissed because the delays involved were allegedly largely attributable to the State, he purportedly validly asserted his speedy trial rights at various points prior to his original trial's commencement, and he suffered presumptive—but otherwise unspecified—prejudice as a result of the delays.⁷ To the contrary and just as the Court of Appeals recognized, the trial judge correctly limited her speedy trial analysis to the delays that occurred between the point when remittitur was issued at the conclusion of Barnes's appeal of his original convictions and the date of Barnes's retrial for his victim's murder as those were the only delays pertinent to the analysis. Furthermore, the trial judge in no way abused her discretion by failing to dismiss Barnes's case based on an alleged speedy trial violation because the roughly forty-four-month period of delay at issue was not excessively or unreasonably lengthy, was only partially attributable to the State, was not the result of any willfulness or unreasonable neglect on the part of the State, and did not result in any actual or meaningful prejudice to Barnes, who was serving a life sentence for crimes he committed in Georgia during the time period he was awaiting retrial. Under such circumstances, Barnes's speedy trial rights were not violated, the trial judge correctly declined to impose the extreme sanction of dismissal in Barnes's case, and the Court of Appeals correctly affirmed the trial judge's proper ruling on appeal. Barnes's petition for a writ of certiorari should be denied.

⁷ At present, Barnes currently attributes delays of six years and six months to the State. (Pet. for Cert. p. 11; p. 13; p. 21; p. 23). However, prior to now, Barnes inconsistently attributed delays of eight years and seven months to the State during trial and seven years and two months to the State on appeal. (R. p. 40; p. 717; Final App. Br. p. 10; p. 12; p. 15; p. 17).

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally-guaranteed right to a speedy trial. See U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]”); S.C. Const. art. I, § 14 (“Any person charged with an offense shall enjoy the right to a speedy and public trial[.]”). That right is designed to protect against anxiety stemming from public accusation of a crime and to limit the possibility of a lengthy pre-trial delay impairing an accused’s defense. State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012). However, the right to a speedy trial is chiefly designed to prevent undue pre-trial impairment of liberty. United States v. Loud Hawk, 474 U.S. 302, 312 (1986). Critically though, the criminal trial process is designed to move deliberately due to the many procedural safeguards involved, and, thus, the essential guarantee provided by the right to a speedy trial is the orderly expedition of a charge as opposed to mere speedy expedition. United States v. Ewell, 383 U.S. 116, 120 (1966); see Beavers v. Haubert, 198 U.S. 77, 87 (1905) (“The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.”).

In order to trigger a speedy trial analysis, a criminal defendant’s trial must have been delayed for a period of time that is presumptively prejudicial, which is necessarily dependent on the particular circumstances of each case. Langford, 400 S.C. at 442, 735 S.E.2d at 482. Notably, “a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case.” Id. In South Carolina, a delay of over two years has previously been found to be sufficient to trigger a speedy trial analysis. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain

circumstances—be presumptively prejudicial. See Doggett v. United States, 505 U.S. 647, 652, n.1 (1992) (“Depending on the nature of the charges, the lower courts have generally found postaccusation delay ‘presumptively prejudicial’ at least as it approaches one year.”). However, even where a delay that is presumptively prejudicial exists, a speedy trial determination “is *not based on the passage of a specific period of time*” and delay alone is not singularly dispositive. State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (emphasis added).

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant’s speedy trial rights have been violated is necessarily dependent on the specific circumstances of the case. State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). When attempting to answer that question, several factors should be considered. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Specifically, a court analyzing a speedy trial claim should consider: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) whether any prejudice was suffered by the defendant as a result of the delay. Barker v. Wingo, 407 U.S. 514, 530 (1972). Notably though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, “they are related factors and must be considered together with such other circumstances as may be relevant.” Id. “In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process.” Id.

In the case sub judice, the date of Barnes’s retrial for Victim’s murder occurred on a date roughly fifteen years and eight months after his arrest in connection to the crime. However, because Barnes’s retrial was preceded by an earlier trial that Barnes had already received along with an appeal in which no speedy trial issues were raised or addressed, the relevant delays for purposes of the speedy trial analysis in Barnes’s case involved a period of roughly forty-four

months that began with the issuance of remittitur following Barnes’s successful appeal of his earlier convictions and ended with the start of his retrial for Victim’s murder. See Levin v. State, 816 S.E.2d 170, 177 (Ga. Ct. App. 2018) (“Where . . . there has been an appeal or a dismissal of the charges and a subsequent re-indictment, the court measures the delay from the filing of the remittitur in the trial court.”); Icgoren v. State, 653 A.2d 972, 978 (Md. Ct. Spec. App. 1995) (“[I]n construing a party’s right to a speedy trial under the Sixth Amendment of the Federal Constitution . . . , we are *generally*, absent extraordinary circumstances not present here, only concerned with the period between the receipt of an appellate mandate, if the next prior conviction is reversed, and the subsequent retrial, or the period between the declaration of a mistrial and the commencement of the retrial.”); Duplantis v. State, 708 So. 2d 1327, 1334 (Miss. 1998) (“[T]he speedy trial clock begins to run for purposes of determining a violation of a defendant’s right to speedy retrial on the date this Court reverses his first conviction.”); State v. Kula, 579 N.W.2d 541, 547 (Neb. 1998) (concluding a speedy trial analysis conducted in regard to a retrial following an appellate grant of a new trial should only involve an examination of the time period between the appellate decision and the retrial *unless* the error necessitating the grant of the new trial was the result of misconduct purposefully designed to delay the proceedings or deny the defendant a right to a speedy trial); see also State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (“[A] party cannot acquiesce to an issue at trial and then complain on appeal.”); cf. Brewington v. State, 705 S.E.2d 660, 662 (Ga. 2011) (“While typically the time for speedy trial attaches at the date of arrest (or date of indictment/accusation if earlier), in this case appellants Brewington and Gary Brown were actually tried. Although they moved for dismissal on speedy trial grounds prior to their November 2009 trial, they did not appeal the denial of that motion prior to being tried. Therefore, as to these two defendants, the

relevant time frame for purposes of the instant motion to dismiss on constitutional speedy trial grounds is from the date of the mistrial, November 25, 2009, through the date the motion was denied on March 16, 2010.”). Nonetheless, as the pertinent delays involved in Barnes’s case totaled over three years, those delays—just as the solicitor acknowledged during the retrial—were sufficiently lengthy such that consideration of the relevant speedy trial factors was necessary. See Barker, 407 U.S. at 530 (“Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.”); see also State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (recognizing delay—although not dispositive—may be sufficient to trigger review of the relevant speedy trial factors).

Turning to the first of the relevant factors, the delays involved in Barnes’s case were unquestionably lengthy. Cf. Brazell, 325 S.C. at 76, 480 S.E.2d at 70 (characterizing a delay of three years and five months as “lengthy”). However, a substantial amount of the delays that occurred prior to Barnes’s retrial were not attributable to the State. Specifically, following the issuance of remittitur in January of 2014, Barnes sought the appointment of counsel from a trial judge without jurisdiction over his case and then promptly attempted to pursue an improper interlocutory appeal of the trial judge’s non-merits-based order, which directly resulted in over four months of delays that extended from April of 2014 until August of 2014 and that were in no way attributable to the State. See State v. Dukes, 256 S.C. 218, 223, 182 S.E.2d 286, 288 (1971) (“The delay must be attributable to the State before the appellants can complain.”); see also State v. Miller, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986) (“In South Carolina, a criminal defendant may not appeal until sentence has been imposed.”). Beyond those delays, one of Barnes’s defense counsel was unable to work on Barnes’s case due to an order of protection that was in place from July of 2015 until December of 2016, which resulted in roughly seventeen

additional months of delay that were not caused by the State in any way. See Waites, 270 S.C. at 108, 240 S.E.2d at 653 (considering Waites’s counsel’s actions delaying the trial when assessing whether a speedy trial violation occurred). Accordingly, when those delays are subtracted from the approximately forty-four-month period from the original issuance of remittitur to Barnes’s retrial, the State could only truly be held responsible for delays totaling a little less than twenty-three months in Barnes’s case, which was not an exceptionally lengthy period of time for a murder case to be brought to trial in a county with a limited number of terms of court. See Langford, 400 S.C. at 444, 735 S.E.2d at 483 (“[T]he State moved with reasonable haste given the few General Sessions terms scheduled for Edgefield County during that time.”); see also United States v. Gregory, 322 F.3d 1157, 1162 (9th Cir. 2003) (holding an twenty-two-month period of delay “was not excessively long” for speedy trial purposes).

Turning to the second of the relevant factors, the delays incurred that were attributable to the State were incurred for legitimate reasons and did not result from any willful, intentional, or improper attempts to delay the retrial. See State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State’s prosecution). Specifically, some of the delays that occurred following the issuance of remittitur in January of 2014 were associated with the process of determining which trial judge would preside over Barnes’s case, which was a largely neutral reason for delay. See Jakupovic v. State, 696 S.E.2d 247, 250 (Ga. 2010) (explaining delays associated with changing judge assignments weigh minimally against the State). Similarly, the delays between September of 2014 and August of 2015 were incurred by the State’s filing of an appeal in the Supreme Court’s original jurisdiction, which was a legitimate reason for delay that was extended due to the Supreme Court’s decision to *grant* the State’s

petition before ultimately rejecting the State’s arguments in a *divided* opinion. See Loud Hawk, 474 U.S. at 315 (“Given the important public interests in appellate review, it hardly need be said that an interlocutory appeal by the Government ordinarily is a valid reason that justifies delay. In assessing the purpose and reasonableness of such an appeal, courts may consider several factors. These include the strength of the Government’s position on the appealed issue, the importance of the issue in the posture of the case, and—in some cases—the seriousness of the crime.”). Furthermore, the delays between January of 2017 and July of 2017 were incurred based on the need for a newly-elected solicitor to become familiar with Barnes’s case and the expansive record that had been developed in it up to that point, which was a largely neutral reason for delay.⁸ See Pittman, 373 S.C. at 549, 647 S.E.2d at 155 (“A valid reason presented by the State may justify an appropriate delay.”); see also Kennedy, 339 S.C. at 250-251, 528 S.E.2d at 704-705 (finding the complexity of the case, which required substantial time to investigate and prepare, constituted a legitimate reason for the delay in bringing the case to trial). Thereafter, the delays between July of 2017, which was the time period during which Barnes’s retrial was scheduled, and the date of retrial were related to the availability of a suitable term of court for the trial, which was a neutral reason for delays. Cf. State v. Chapman, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) (“A portion of the delay was caused by the normal condition of the docket.”). Thus, as all the delays attributable to the State were incurred for reasonable and legitimate purposes as opposed to for the improper purpose of delay, the non-willful reasons for the delays involved in Barnes’s case did not establish his speedy trial rights were violated. See Wheeler v.

⁸ Significantly, the solicitor had been prepared to go forward with Barnes’s retrial prior to the issuance of the order of protection for one of Barnes’s defense counsel. (R. p. 137). However, by the time the order of protection expired over a year later, a new solicitor had been elected, and no members of the prosecution team that had previously been involved in Barnes’s case were still involved with it. (R. p. 94).

State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966) (“A speedy trial does not mean an immediate one; it does not imply undue haste, for the state, too, is entitled to reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay.”).

Turning to the third of the relevant factors, Barnes did not raise any claims related to his speedy trial rights until roughly forty-two months after the appeal of his original convictions had ended and until after his retrial had already been scheduled.⁹ Cf. Waites, 270 S.C. at 109, 240 S.E.2d at 653 (“We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial.”); see also Langford, 400 S.C. at 440, 735 S.E.2d at 481 (recognizing delay is not an uncommon defense tactic). In fact, Barnes never actually sought a speedy trial and, instead, waited until just two months before his scheduled retrial was set to begin to seek *dismissal*, which was a requested remedy consistent with a desire to avoid the prospect of trial entirely as opposed to a genuine desire for an actual speedy trial. See United States v. Frye, 489 F.3d 201, 212 (5th Cir. 2007) (“A motion for dismissal is not evidence that the defendant wants

⁹ In seeking a grant of certiorari, Barnes contends he properly asserted his constitutional speedy trial rights years before he filed his speedy trial dismissal motion in August of 2017 through his submission of an IAD Act claim and various pro se filings. (Pet. for Cert. pp. 14-16). Importantly though, Barnes’s IAD Act claim did not constitute an assertion of his constitutional speedy trial rights since an IAD Act claim is based on distinct statutory—as opposed to constitutional—provisions. See State v. Nickerson, 322 P.3d 421, 423 (Mont. 2014) (“The constitutional right to a speedy trial is distinct from the right to a speedy trial under the IAD.”); see also State v. Allen, 269 S.C. 233, 237-238, 237 S.E.2d 64, 67-68 (1977) (analyzing a constitutional speedy trial claim separately and distinctly from an IAD Act claim); State v. Tucker, 376 S.C. 412, 416, 656 S.E.2d 403, 405 (Ct. App. 2008) (recognizing “the rights created by the IAD are statutory in nature and do not rise to the level of constitutionally guaranteed rights”). Moreover, to the extent Barnes submitted various pro se filings that might have referenced his speedy trial rights, those filings were submitted while he was represented by counsel and, thus, were legal nullities as opposed to valid assertions of his constitutional rights that could properly be considered at trial and on appeal. See State v. Stuckey, 333 S.C. 56, 58, 508 S.E.2d 564, 564-565 (1998) (holding substantive pro se filings submitted by a criminal defendant who is represented by counsel should not be accepted and cannot properly be considered by the court).

to be tried promptly.”); see also Barker, 407 U.S. at 535 (“[T]he record strongly suggests that while he hoped to take advantage of the delay in which he had acquiesced, and thereby obtain a dismissal of the charges, he definitely did not want to be tried.”). Accordingly, Barnes’s failure to timely seek a speedy retrial in his case greatly weakened his claim of a violation of his speedy trial rights. See Barker, 407 U.S. at 531-532 (“The defendant’s assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that *failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.*” (emphasis added)). Moreover, the fact Barnes’s scheduled retrial was conducted shortly after he first filed his speedy trial dismissal motion helped ensure his speedy trial rights were not violated since he actually received a trial almost immediately after he asserted his rights. See Robinson, 335 S.C. at 626-627, 518 S.E.2d at 272 (recognizing in a case involving a five-year delay Robinson’s speedy trial rights were not violated when he was tried within one year of first formally moving to dismiss his case).

Finally, turning to the fourth of the relevant factors, Barnes did not suffer any meaningful prejudice as a result of the delays associated with his case and, instead, actually received a benefit from the delays in the form of the State’s withdrawal of the death penalty notice. See Barker, 407 U.S. at 532 (“Prejudice . . . should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.”); see also United States v. James, 712 F. App’x 154, 163 (3rd Cir. 2017) (recognizing prejudice resulting from delays can be offset for speedy trial purposes by a defendant’s receipt of a benefit as a result of the same delays); Pittman, 373 S.C. at 553, 647 S.E.2d at 157 (concluding

Pittman’s speedy trial rights were not violated where he “received some benefits as a result of the delay”). Additionally, Barnes did not suffer any actual prejudice, such as the loss of a witness or some evidence helpful to the defense, due to the delays involved in his case, and, thus, his defense was not impaired by any delays.¹⁰ See Ewell, 383 U.S. at 122 (rejecting a claim of prejudice as insubstantial, speculative, and premature where the defendants “mention no specific evidence which has actually disappeared or has been lost” and “no witnesses who are known to have disappeared”); cf. Langford, 400 S.C. at 446, 735 S.E.2d at 484 (“[H]e cannot point to any evidence of anxiety caused by the stigma of being accused of these crimes.”). Moreover, to the extent the delays could have had any impact on the memories of the witnesses who testified during the retrial, that impact would have affected the State equally if not more so in light of the fact the State had the burden of proving Barnes’s guilt beyond a reasonable doubt. See Ewell, 383 U.S. at 122-123 (“[I]t should be recalled that the problem of delay is the Government’s too, for it still carries the burden of proving the charges beyond a reasonable doubt.”); cf. Smith, 307 S.C. at 381, 415 S.E.2d at 412 (“His argument that he was prejudiced because his witnesses’ memories faded also lacks merit because the same disadvantage hampered the State.”). Furthermore, because Barnes was serving a life sentence imposed for crimes he committed in Georgia throughout the entire period of time he was awaiting his retrial, Barnes was *not* incarcerated for any period of time in South Carolina during which he would not have otherwise been incarcerated. See State v. Monroe, 262 S.C. 346, 350, 204 S.E.2d 433, 435 (1974) (“During the period of delay, he was fully occupied serving time under valid sentences for which he received full credit.”); see also Loud Hawk, 474 U.S. at 312 (instructing “impairment of

¹⁰ On certiorari, Barnes has not even attempted to identify any actual prejudice suffered as a result of the delays involved in his case and, instead, has elected to rely solely on a presumption of prejudice in seeking reversal of the trial judge’s speedy trial ruling. (Pet. for Cert. pp. 16-18).

liberty” is the most important concern for speedy trial purposes). Accordingly, the absence of any actual prejudice resulting from the delays leading up to Barnes’s retrial strongly demonstrated Barnes’s speedy trial rights were not violated by the delays. See State v. Cooper, 386 S.C. 210, 218, 687 S.E.2d 62, 66 (Ct. App. 2009) (characterizing prejudice to the defendant as the most important factor in an analysis of whether a speedy trial violation occurred); see also Loud Hawk, 474 U.S. at 315 (recognizing the “possibility of prejudice” is generally not alone sufficient to support a claim of a speedy trial violation); see generally United States v. Marion, 404 U.S. 307, 324-325 (1971) (“[N]o one suggests that every delay-caused detriment to a defendant’s case should abort a criminal prosecution.”).

Because the relevant circumstances in Barnes’s case do not suggest the forty-four-month period of delays—of which less than twenty-three months could properly be attributed to the State—between the end of Barnes’s appeal of his original convictions and his retrial for Victim’s brutal murder was the result of any unreasonable or willful actions on the part of the State or resulted in any meaningful prejudice to Barnes, Barnes’s speedy trial rights were not violated and the extreme sanction of a dismissal of Barnes’s murder indictment was wholly unwarranted.¹¹ See Loud Hawk, 474 U.S. at 317 (“We cannot hold, on the facts before us, that

¹¹ Even assuming the time period from Barnes’s arrest in January of 2002 to the end of his first appeal in January of 2014 could somehow properly be considered as part of the speedy trial analysis, the delays associated with that particular period of time also did not violate Barnes’s speedy trial rights due to the fact they were not excessive, were not willful or purposeful, were incurred for legitimate reasons, were not incurred following any valid constitutional speedy trial right assertions, and did not result in any meaningful prejudice to Barnes. See Barker, 407 U.S. at 530 (instructing the pertinent factors to be considered as part of a speedy trial analysis are the length of the delay, the reasons for the delay, whether any assertions of a defendant’s speedy trial rights were made, and whether any prejudice resulted from the delay). Specifically, looking to the circumstances associated with the earlier delays, the delays incurred between January of 2002 and December of 2003 were largely attributed to the fact Barnes was being prosecuted at that time for crimes he committed in Georgia, which constituted a legitimate reason for the delays that could not be held against to the State. See Hunsberger, 418 S.C. at 345-346, 794 S.E.2d at

the delays asserted by respondents weigh sufficiently in support of their speedy trial claim to violate the Speedy Trial Clause. They do not justify the severe remedy of dismissing the indictment.”); see also Doggett, 505 U.S. at 657 (“[O]ur toleration of such negligence varies inversely with its protractedness[.]”); cf. Cooper, 386 S.C. at 217-218, 687 S.E.2d at 66-67 (affirming the denial of Cooper’s speedy trial motion where the delay in bringing the case to trial

373 (“[W]hen a defendant violates the laws of multiple sovereigns, one jurisdiction must necessarily wait at the ‘prosecutorial turnstile.’ ” (citation omitted)). Likewise, a number of the delays were associated with continuances granted at defense counsel’s request, time granted for investigative purposes at defense counsel’s request, and the longer period of time need for preparations in a defense penalty case, which constituted legitimate reasons for delay that were almost entirely attributable to the defense. See Vermont v. Brillon, 556 U.S. 81, 92-93 (2009) (recognizing delays caused by defense counsel’s continuance requests are attributable to the defendant and not the State when conducting a speedy trial analysis). Additionally, a number of the delays were associated with the changing judge assignments in Barnes’s case, which constituted a largely neutral reason for delay. See Jakupovic, 696 S.E.2d at 250 (instructing delays associated with changing judge assignments only weigh minimally in a speedy trial analysis). Furthermore and highly significantly, none of the delays resulted from the lack of preparedness on the part of the solicitor as the solicitor consistently expressed a readiness to proceed forward with Barnes’s original trial prior to its commencement, which strongly demonstrated none of the delays were willfully incurred for the purpose of intentional delay. See Pollard v. United States, 352 U.S. 354, 361 (1957) (recognizing the constitutional right to speedy trial is designed to guard against “purposeful or oppressive” delay); cf. Hunsberger, 418 S.C. at 344, 794 S.E.2d at 372 (identifying the fact the solicitor declined the trial judge’s invitation to conduct Hunsberger’s trial during a special term of court as significant to the speedy trial analysis). Finally, the delays between the date of Barnes’s trial in November of 2010 and the end of the subsequent appeal in January of 2014 were simply not relevant to any speedy trial analysis as Barnes had already received a trial by that point in time. See United States v. Bizzard, 674 F.2d 1382, 1386 (11th Cir. 1982) (“The time between a conviction and a reversal which requires retrial is clearly not counted for speedy trial purposes.”). Accordingly, even if the broader time frame Barnes contends should have been considered could have properly been considered as part of the speedy trial analysis in his case, the trial judge nonetheless did not abuse her broad discretion by declining to impose the extreme sanction of dismissal since no speedy trial violation actually occurred no matter which time span was considered. Cf. Pittman, 373 S.C. at 552, 647 S.E.2d at 156-157 (“The record does not reflect any intentional or malicious delays by the prosecution, nor does the record reflect any negligent prosecutorial behavior in connection with this case. Additionally, the delays attributable to the defense were also reasonable in light of the circumstances of this case. Although it took a long time for the case to come to trial, any delay was the result of the complexities of this case. The justifications for the delay offered by both parties in this case weigh in favor of a finding that Barnes was not deprived of his right to a speedy trial.”).

was at least forty-four months). Accordingly, the trial judge did not abuse her broad discretion by failing to dismiss Barnes's case, and the Court of Appeals correctly affirmed that proper ruling on appeal. See Langford, 400 S.C. at 442, 735 S.E.2d at 482 ("A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion."); Brazell, 325 S.C. at 76, 480 S.E.2d at 70-71 ("Although the delay was lengthy and the justification was unsatisfactory, Brazell's right to a speedy trial was not denied when one balances the Barker factors. The long delay was negated by the lack of prejudice to the defense. There is no evidence that the delay was willful or intentional."); cf. State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years). Barnes's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be denied.

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