

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Clifton Newman, Circuit Court Judge

Case No. 2019-001961

The State, Respondent,

v.

Dillan Jessie Hapner, Appellant,

APPELLANT'S BEIF IN SUPPORT OF MOTION TO REINSTATE/ MOTION TO BE
RELEIEVED AS COUNSEL

STATEMENT OF ISSUE ON APPEAL

Whether the Circuit Court erred in denying appellant's right to speedy trial.

STATEMENT OF FACT

The Appellant was arrested on or around August 20, 2018 for, Hit and run, duties of driver involved in accident with death. The Appellant was denied bond on October 3, 2018 and March 7, 2019. A Motion for Speedy Trial was heard on April 4, 2019 in which the Circuit ruled that the prosecution should call the case within 90 days. The Appellant plead guilty in August or September of 2019, however, the sentencing was delayed allowing Appellant's mother to fly in from California. Appellant was sentenced on or around November 13, 2019. Appellant's Attorney filed the notice of Appeal on behalf of the appellant with the disclaimer that he was only filing the notice in his capacity as Appellant's Circuit Court Attorney. Counsel has not been hired to represent Appellant on Appeal and Appellant has expressed his intent to file a PCR Complaint against Counsel.

GROUND FOR APPEAL

Appellants is appealing the 90-day postponement of his speedy trial request, in essence denying his Constitutional Right to a speedy trial.

ARGUMENT

The trial court erred in postponing his speedy trial motion for 90 days and violating the Appellants Constitutional Rights.

AUTHORITY

Constitution

The Sixth Amendment to the United States Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. Similarly, the South Carolina Constitution provides that "Any person charged with an offense shall enjoy the right to a speedy and public trial." S.C. Const. art. I, § 14.

Case Law

The Wheeler court held, A speedy trial means a trial without unreasonable and unnecessary delay, Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966). Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness. See Doggett, 505 U.S. at 651- 52 (1992).

Once the accused has met this initial burden of prejudice, a court must look to four factors, among the totality of the circumstances, to decide whether the defendant's right to a speedy trial has been denied. Barker v. Wingo, 407 U.S. 514, 530-31 (1972); see also Langford, 400 S.C. at 441, 735 S.E.2d at 482. These factors are: (1) length of delay; (2) the reason for the delay; (3) the accused's assertion of his right to a speedy trial; and (4) whether the delay prejudiced the accused. Barker at 531-32. A speedy trial claim must be "analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." State v. Pittman, 373

S.C. 527, 549, 647 S.E.2d 144, 155 (2008) (citing Barker, 407 U.S. at 530).

LEGAL ANALYSIS

Pursuant to Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966), the appellant argues that the delay of his trial was unreasonable and unnecessary. The Appellant also argues that he was not prosecuted with ordinary promptness. Lastly, the Appellant argues that the

~~Appellant Court should decide whether his constitutional right to a speedy trial was denied by.~~

using a totality of the circumstances analysis which includes the following factors:

- (1) length of delay;
- (2) the reason for the delay;
- (3) the accused's assertion of his right to a speedy trial; and
- (4) whether the delay prejudiced the accused. Barker at 531-32.

MOTION TO BE RELIEVED AS COUNSEL

Consistent with Rule 407 of the Appellate Court Rules, and specifically, Rule 1.16(b) of the Rules of Professional Conduct, there is at least one ground which supports the permissive withdrawal of the undersigned counsel. Such grounds include:

~~a. Subpart (b)(1): Withdrawal can be accomplished without material adverse~~

effect on the interests of the client;

b. Subpart (b)(5): The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services or payment therefor and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

c. Subpart (b)(6): The representation will result in an unreasonable financial

burden on the lawyer or has been rendered unreasonably difficult by the client; and/or,

d. Subpart (b)(7): Other good cause for withdrawal exists.

Here, The Appellant has not hired Counsel to represent him on his Appeal, so the Appellant has failed substantially to fulfill an obligation to the lawyer regarding the lawyer's services or payment, which would render the representation financial unreliable on Counsel. Also, withdrawal can be accomplished without material adverse effect on the interests of the client. Lastly, the Appellant has expressed an intent to file a PCR complaint against Counsel which presents a conflict and gives rise to good cause for withdrawal.

CONCLUSION

WHEREFORE, having fully stated the basis for this Motion, to the extent that the Rules of Civil Procedure and Professional Conduct would allow, the undersigned counsel respectfully requests an Order from the Court which allows him to withdraw as Counsel and an order reinstating Appellant's Appeal.

S/ Tyrone J. Walls

Tyrone J. Walls (SC Bar No. 103573)
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Telephone: (706) 726-4234
Attorney for Appellant

Columbia, South Carolina
November 12, 2020

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the motion to be relieved as counsel and motion to reinstate in the above referenced case has been served upon **Robert Michael Dudek, Esquire**, by depositing a copy of it in the United States Mail, postage prepaid, on November 12, 2020, addressed to 1330 Lady Street, Suite 401 Columbia, SC 29201.

The undersigned hereby certifies that a true copy of the motion to be relieved as counsel and motion to reinstate in the above referenced case has been served upon **Allen McCrory Wilson, Esquire**, of the South Carolina Attorney general office, by depositing a copy of it in the United States Mail, postage prepaid, on November 12, 2020, addressed to PO Box 11549. Columbia, SC 29211

The undersigned hereby certifies that a true copy of the motion to be relieved as counsel and motion to reinstate in the above referenced case has been served upon **William M. Blich Jr, Esquire**, by depositing a copy of it in the United States Mail, postage prepaid, on November 12, 2020, addressed to PO Box 11549 Columbia, SC 29211

The undersigned hereby certifies that a true copy of the motion to be relieved as counsel and motion to reinstate in the above referenced case has been served upon **Dillan Hapner #00382763**, by depositing a copy of it in the United States Mail, postage prepaid, on November 12, 2020, addressed to Allendale Correctional Institution P.O. Box 1151 Fairfax, SC 29827

November 12, 2020
Columbia, SC

Respectfully Submitted,

S/ Tyrone J. walls

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