

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 131034-U

NO. 4-13-1034

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

May 29, 2014

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

JAMES P. WALSH,

Defendant-Appellant.

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Appeal from

Circuit Court of

Sangamon County

No. 11TR35126

Honorable

Rudolph M. Braud,

Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.

Justices Pope and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court found the trial court did not err in denying defendant's motion to dismiss based on an alleged speedy-trial violation.

¶ 2 In July 2013, a jury found defendant, James Walsh, guilty of the offense of duty upon damaging an unattended vehicle. The trial court imposed a fine and costs.

¶ 3 In his *pro se* appeal, defendant argues he was denied his statutory right to a speedy trial. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On November 8, 2011, defendant was issued a traffic citation, which was amended to duty upon damaging an unattended vehicle. 625 ILCS 5/11-404(a) (West 2010).

The record reflects that between December 6, 2011, and September 10, 2012, defendant made three motions for continuance, a request for jury trial on the day the bench trial was scheduled,

and a motion to dismiss. The trial court set defendant's jury trial for December 12, 2012. On December 6, 2012, Judge John Childress recused himself because of a "non-remedial conflict," cancelled the jury trial, and referred the case to the chief judge for reassignment.

¶ 6 On December 19, 2012, defendant, acting *pro se*, filed a discovery request and a "formal written demand for jury trial and speedy trial." In the latter document, defendant stated, "I formally demand, by my own written hand, a speedy trial by jury in accord with all State and Federal laws and Court opinions. Additionally, I request that this demand be officially included in the record." No proof of service was attached to the speedy-trial document. On December 20, 2012, defendant filed a proof of service, stating he hand-delivered two documents—a discovery request and a letter to Judge Leslie Graves—on December 18, 2012. On December 24, 2012, Judge Graves reassigned the case to Judge Rudolph Braud.

¶ 7 On July 9, 2013, defendant filed a *pro se* motion to dismiss, arguing his statutory right to a speedy trial had been violated. On July 12, 2013, Judge Braud conducted a hearing on the motion to dismiss and denied it. On July 17, 2013, a jury found defendant guilty, and the trial court imposed a fine and costs of \$924.

¶ 8 In August 2013, defendant filed a *pro se* posttrial motion, arguing the trial court erred in denying his motion to dismiss on speedy-trial grounds and seeking to reduce the amount of the fine and costs. In September 2013, the court denied the motions. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues the trial court erred in denying his motion to dismiss, claiming he was denied his statutory right to a speedy trial. We disagree.

¶ 11 Initially, we note the State claims defendant has made assertions in his brief that are not supported by the record and should be stricken. Our analysis of defendant's claim will be

based on the pertinent facts and will not include matters *de hors* the record. See *People v. Newbolds*, 364 Ill. App. 3d 672, 676, 847 N.E.2d 614, 618 (2006) (stating "a reviewing court may not consider matters not of record").

¶ 12 The right to a speedy trial is guaranteed by the United States and Illinois Constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. A criminal defendant also has a statutory right to a speedy trial. 725 ILCS 5/103-5 (West 2010). "Proof of a violation of the statutory right requires only that the defendant has not been tried within the period set by statute and that defendant has not caused or contributed to the delays." *People v. Staten*, 159 Ill. 2d 419, 426, 639 N.E.2d 550, 554 (1994).

¶ 13 A trial court's determination on a claim of a speedy-trial violation is reviewed for an abuse of discretion. *People v. Bonds*, 401 Ill. App. 3d 668, 671, 930 N.E.2d 437, 442 (2010). However, where an issue of law is involved, such as whether the State received sufficient notice, our review is *de novo*. *Bonds*, 401 Ill. App. 3d at 671, 930 N.E.2d at 442.

¶ 14 In this case, defendant focuses his argument on the statutory right to a speedy trial. Section 103-5(a) of the Code of Criminal Procedure of 1963 provides an automatic 120-day speedy-trial right for a person held in custody on the pending charge and does not require the accused to file a demand to exercise that right. 725 ILCS 5/103-5(a) (West 2010). Section 103-5(b) contains a 160-day speedy-trial right for an accused released on bond or recognizance, and the period begins to run only when the accused files a written speedy-trial demand. 725 ILCS 5/103-5(b) (West 2010).

¶ 15 Section 103-5(b) does not specifically require the defendant to serve the written demand on the State. However, our supreme court has held that, although the statute contains no explicit notice requirement, "the term 'demand' itself implies that the defendant's stated desire to

be tried within 160 days must be conveyed to those persons who are in a position to fulfill that desire." *People v. Jones*, 84 Ill. 2d 162, 167, 417 N.E.2d 1301, 1304 (1981). "Thus, to be effective, the demand must be 'communicated' to the State." *Bonds*, 401 Ill. App. 3d at 672, 930 N.E.2d at 442 (quoting *Jones*, 84 Ill. 2d at 167, 417 N.E.2d at 1304).

¶ 16 In *Jones*, 84 Ill. 2d at 165, 417 N.E.2d at 1303, the defendant filed a written demand for a speedy trial with the clerk of the court but notice of that demand was not communicated with the State. The supreme court held the mere filing of the demand and entry on the docket sheet did not put the State on constructive notice. *Jones*, 84 Ill. 2d at 169, 417 N.E.2d at 1305. The court noted that "[t]o permit a defendant to invoke his statutory right to a speedy trial without notifying the prosecution would allow him to exploit the possibility that the State will unwittingly fail to bring him to trial within the prescribed period." *Jones*, 84 Ill. 2d at 168, 417 N.E.2d at 1304-05.

¶ 17 In the case *sub judice*, the record does not establish the prosecutor was served with defendant's motion for speedy trial. Moreover, his proof of service was inadequate to show the State's Attorney was served with the motion for speedy trial. "When service of a paper is required, proof of service shall be filed with the clerk." Ill. S. Ct. R. 12(a) (eff. Dec. 29, 2009). Service is proved by personal delivery, by attorney certificate, or affidavit of a person, other than an attorney, who made delivery. Ill. S. Ct. R. 12(b) (eff. Dec. 29, 2009). Here, defendant's proof of service was not a sworn affidavit. See *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494, 782 N.E.2d 212, 214 (2002) (stating "an affidavit must be sworn to, and statements in a writing not sworn to before an authorized person cannot be considered affidavits"). Thus, it was insufficient to prove that demand for speedy trial had been served on the State. Defendant also called the demand for speedy trial a "letter to Judge" in his proof of service. As the record

indicates defendant failed to notify the State of his motion for speedy trial, we find the trial court did not err in denying his motion to dismiss.

¶ 18

### III. CONCLUSION

¶ 19

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 20

Affirmed.