

2017 IL App (2d) 150318-U
No. 2-15-0318
Order filed April 26, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-1348
)	
MICHAEL JAMES,)	Honorable
)	Susan Clancy Boles,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to discharge for a statutory speedy-trial violation: delays to which he agreed were attributable to him and thus tolled the speedy-trial period, which ran from the date of his arrest.

¶ 2 Defendant, Michael James, appeals from an order of the circuit court of Kane County denying his motion to discharge for a violation of his statutory speedy-trial right (725 ILCS 5/103-5(a) (West 2012)). Defendant contends that certain delays were not attributable to him. Because the trial court did not abuse its discretion in attributing the delays to defendant, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On July 24, 2013, the State filed an unsigned complaint charging defendant with 4 felony counts of unlawful delivery of 1 or more, but less than 15, grams of a controlled substance (heroin) (720 ILCS 570/401(c)(1) (West 2012)) and 4 felony counts of unlawful possession of less than 15 grams of a controlled substance (heroin) (720 ILCS 570/402(c) (West 2012)). All eight counts alleged that the offenses occurred on or about July 17, 2013.

¶ 5 Also on July 24, 2013, defendant was arrested without a warrant. On that same date, the trial court ordered that defendant be remanded to the custody of the Kane County sheriff. On that form order, the court marked the box that stated that there was “probable cause for the arrest and detention.” The box that stated that there was “probable cause to hold the defendant for trial” was not marked.

¶ 6 On July 31, September 9, October 24, and November 17, 2013, the case was continued by agreement. On December 12, 2013, the case was continued, and defendant did not object to the continuance.

¶ 7 On December 18, 2013, defendant was indicted on 1 count of unlawful delivery on or about July 10, 2013, of 1 or more, but less than 15, grams of a controlled substance (heroin) (720 ILCS 570/401(c)(1) (West 2012)), 1 count of unlawful delivery on or about July 12, 2013, of 1 or more, but less than 15, grams of a controlled substance (heroin) (720 ILCS 570/401(c)(1) (West 2012)), 1 count of unlawful delivery on or about July 17, 2013, of 1 or more, but less than 15, grams of a controlled substance (heroin) (720 ILCS 570/401(c)(1) (West 2012)), and 1 count of unlawful delivery on or about July 15, 2013, of less than 1 gram of a controlled substance (heroin) (720 ILCS 570/401(d) (West 2012)). Also on December 18, 2013, upon defendant’s motion, the case was continued to January 9, 2014.

¶ 8 On January 9, 2014, defendant filed a motion to discharge for a statutory speedy-trial violation. Following a hearing, the court denied the motion. In doing so, the court noted that defendant, rather than demand a preliminary hearing, agreed to the continuances.

¶ 9 Following a jury trial, defendant was found guilty and sentenced to 3 concurrent prison terms of 10½ years and 1 concurrent 6-year prison term. Defendant, in turn, filed a timely notice of appeal.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant contends that his statutory speedy-trial right was violated, because he was in custody for a felony offense for more than 120 days before he was indicted and, because he was not properly charged as a felon, any pre-indictment continuances were not attributable to him.

¶ 12 The Speedy Trial Act provides an automatic 120-day, speedy-trial right for a defendant held in custody on a pending charge and does not require a defendant to file a demand to exercise the right. *People v. Sharifpour*, 402 Ill. App. 3d 100, 119 (2010) (citing 725 ILCS 5/103-5(a) (West 2008)). Proof of a violation of the statutory right requires only that the defendant has not been tried within the statutory period and has not caused or contributed to any delays. *Sharifpour*, 402 Ill. App. 3d at 119. The 120-day period commences when a defendant is taken into custody. *Sharifpour*, 402 Ill. App. 3d at 119. A defendant who is not tried within the statutory period is entitled to dismissal of the charges and a discharge from custody. *Sharifpour*, 402 Ill. App. 3d at 119 (citing 725 ILCS 5/103-5(d) (West 2008)). As for the standard of review, because this case involves the question of whether the trial court correctly attributed any delays to defendant, we review that determination for an abuse of discretion. See *People v. Brexton*, 2012 IL App (2d) 110606, ¶ 14.

¶ 13 In this case, defendant was taken into custody on July 24, 2013. Thus, absent any delays, the 120-day period would have expired on November 21, 2013. However, there were several continuances between July 31, 2013, and December 18, 2013. Those continuances were attributable to defendant, as he agreed to them. See *Brexton*, 2012 IL App (2d) 110606, ¶ 13 (citing 725 ILCS 5/103-5(a), (f) (West 2010)) (a delay is considered agreed to by a defendant unless he objects by making an oral or written demand for trial). Because the delays were attributable to defendant, the speedy-trial period had not run before defendant was indicted.

¶ 14 However, defendant contends that the delays were not attributable to him, because, as the offenses were felonies, he had not yet been properly charged via an indictment or information. See 725 ILCS 5/111-2(a) (West 2012). We disagree.

¶ 15 Defendant has not cited any authority that directly supports his position that the agreed-to delays were not attributable to him because he had not been properly charged. Nor are we aware of any such authority.

¶ 16 Absent any contrary authority, we do not see how the lack of any proper charging document impacted the agreed-to continuances. As discussed, the 120-day speedy-trial period was not triggered by the charging document, but rather by defendant's being taken into custody. See *Sharifpour*, 402 Ill. App. 3d at 119. Therefore, the speedy-trial period commenced on July 24, 2013, and ran for 120 days, irrespective of when defendant was charged. Because the speedy-trial period was triggered by defendant's custody and not when he was charged, the lack of a proper charge did not affect the running of the speedy-trial period. Likewise, any delays agreed to by defendant tolled the speedy-trial term regardless of whether defendant was properly charged. Thus, the agreed-to continuances constituted delays attributable to defendant.

¶ 17 Although defendant relies on *People v. Macon*, 396 Ill. App. 3d 451 (2009), and *People v. Herndon*, 105 Ill. App. 3d 167 (1982), neither of those cases supports his position. In each case, the issue was whether, for statute-of-limitations purposes, a complaint commenced a felony prosecution. *Macon*, 396 Ill. App. 3d at 454; *Herndon*, 105 Ill. App. 3d at 169. Each court ruled that a felony prosecution is commenced only upon the filing of either an information or an indictment. *Macon*, 396 Ill. App. 3d at 456; *Herndon*, 105 Ill. App. 3d at 169. Because a statutory speedy-trial right is triggered by a defendant's custody, as opposed to the commencement of a prosecution, neither *Macon* nor *Herndon* supports defendant's argument.

¶ 18 Defendant also relies on *People v. Williams*, 2 Ill. App. 3d 993 (1971). In that case, the defendant was taken into custody for the murder of one victim and the attempted murder of another. *Williams*, 2 Ill. App. 3d at 993. Although the defendant was indicted for the murder, no indictment was sought on the attempted-murder charge. *Williams*, 2 Ill. App. 3d at 994. The defendant remained in custody on both charges and filed a motion to dismiss the attempted-murder charge for a violation of his statutory speedy-trial right. *Williams*, 2 Ill. App. 3d at 993-94. The trial court dismissed the attempted-murder charge.

¶ 19 On appeal, the State argued that no speedy-trial violation had occurred, because the delay caused by the defendant's motions for continuances in the murder case were attributable to the defendant in the attempted-murder case. *Williams*, 2 Ill. App. 3d at 994. In rejecting that argument, the appellate court ruled that, because the attempted-murder case was not before the court when the defendant agreed to continuances in the murder case, those continuances did not toll the speedy-trial period in the attempted-murder case. *Williams*, 2 Ill. App. 3d at 994. The court explained that the continuances "had no relevancy to a case that was not in court." *Williams*, 2 Ill. App. 3d at 994.

¶ 20 The court in *Williams* did not rule that there was a speedy-trial violation in the attempted-murder prosecution because of the failure to indict the defendant. Rather, the court's ruling was based upon the lack of any continuances agreed to by the defendant in the attempted-murder case. Thus, *Williams* does not support defendant.

¶ 21 Here, defendant agreed to the various pre-indictment continuances. Accordingly, the trial court did not abuse its discretion in ruling that the related delays were attributable to defendant.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the order of the circuit court of Kane County denying defendant's motion to discharge. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 24 Affirmed.