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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13-CF-261
	)	
VICTOR M. ALVAREZ,	)	Honorable
	)	John A. Barsanti,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in dismissing the case on speedy-trial grounds: as defendant was released from bail while a prior appeal was pending and as bail was not reinstated (automatically or otherwise) upon the filing of our mandate the statutory speedy-trial protection did not apply.

¶ 2 The State appeals from the judgment of the circuit court of Kane County granting defendant Victor M. Alvarez's motion to dismiss for a violation of his statutory right to a speedy trial (725 ILCS 5/103-5 (West 2014)). Because defendant was not being held to bail, and thus the relevant speedy-trial provision was not triggered, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on two counts of aggravated driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (a)(2), (d)(3) (West 2012)), one count of aggravated reckless driving (625 ILCS 5/11-503(a)(2) (West 2012)), and two counts of DUI (625 ILCS 5/11-501(a)(1), (a)(2) (West 2012)).

¶ 5 On February 13, 2013, while in custody, defendant filed a demand for a speedy trial. After posting bail, defendant was released from pretrial custody. On March 21, 2013, he filed a supplemental demand for a speedy trial.

¶ 6 On April 18, 2014, the trial court granted defendant's motion to quash his arrest and suppress evidence and on May 15, 2014, the State filed its notice of appeal. On May 23, 2014, defendant moved to be released from bail pending appeal. After finding that the State had not shown any compelling reason to continue bail, the court commented that it had "no authority even to put any conditions on [defendant] during the pendency of the appeal." Therefore, the court released defendant from bail and stated that it was not going to impose any conditions during the pendency of the appeal. The written order added that there would be "[n]o further date until [the] mandate." The court further ordered that defendant's bail money be refunded to his attorney.

¶ 7 On April 27, 2015, this court reversed the grant of the motion to quash and suppress and remanded for further proceedings. See *People v. Alvarez*, 2015 IL App (2d) 140503-U. On June 15, 2015, our mandate was filed in the circuit court.

¶ 8 The next activity in this case was on January 20, 2016, when the State appeared before the trial court. The State advised the court that the mandate had been issued the previous June, that it had "never gotten another court date on it," and that the case had been "basically in limbo for a long time." The State told the court that it would issue a summons to have defendant

appear on February 24, 2016. When defendant did not appear on February 24, the matter was continued to May 4, 2016.

¶ 9 On May 4, 2016, defendant filed a motion to dismiss based on a violation of his statutory right to a speedy trial (see 725 ILCS 5/103-5 (West 2014)). Defendant asserted that the 160-day period began to run on June 16, 2015, the day after the mandate was filed and expired on November 23, 2015 (see 725 ILCS 5/103-5(b) (West 2014)).

¶ 10 In ruling on the motion to dismiss, the trial court found that it had never placed defendant “back on bond again or placed him on recognizance again.” The court clarified that, when it released defendant from bail, it relied on Illinois Supreme Court Rule 604(a)(3) (eff. Dec. 11, 2014) and that its ruling was limited to the period during which the appeal was pending. The court ruled that the speedy-trial period began running upon the filing of the mandate and that it expired on November 23, 2015. Thus, the court granted defendant’s motion to dismiss. The State filed a certificate of impairment (see Ill. S. Ct. R. 604(a)(1) (eff. Mar. 8, 2016)) and a timely notice of appeal.

¶ 11

## II. ANALYSIS

¶ 12 On appeal, the State contends that the speedy-trial time did not begin to run upon the filing of the mandate, as defendant was released from bail following the filing of its appeal and had not been placed back on bail upon the filing of the mandate. Defendant responds that, because the court’s release from bail was limited to the period during which the State’s appeal was pending, the filing of the mandate automatically reinstated bail and therefore triggered the speedy-trial period.

¶ 13 Although it was the State’s duty to bring defendant to trial within the applicable speedy-trial period, it was defendant’s burden on a motion to dismiss to affirmatively establish a violation of his speedy-trial right. *People v. Jones*, 104 Ill. 2d 268, 274 (1984).

¶ 14 We begin our analysis by looking to section 103-5(b) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103-5(b) (West 2014)). The construction and application of section 103-5 to undisputed facts is reviewed *de novo*. *People v. Stanitz*, 367 Ill. App. 3d 980, 983 (2006). Section 103-5(b) provides, in pertinent part, that “[e]very person on bail or recognizance shall be tried \*\*\* within 160 days from the date defendant demands trial unless delay is occasioned \*\*\* by an interlocutory appeal.” 725 ILCS 5/103-5(b) (West 2014). Therefore, for section 103-5(b) to apply, a defendant must be on bail or recognizance. *People v. Eblin*, 114 Ill. App. 3d 891, 893 (1983).

¶ 15 In this case, defendant was not held to bail following the filing of the State’s appeal, as the trial court, having found no compelling reason to continue bail during the appeal, released him from bail. See Ill. S. Ct. R. 604(a)(3) (eff. Dec. 11, 2014) (a defendant “shall not be held in jail or to bail during the pendency of an appeal by the State” absent “compelling reasons for [defendant’s] continued detention or being held to bail”). Thus, section 103-5(b) did not operate while the State’s appeal was pending. See *Jones*, 104 Ill. 2d at 284-85 (State’s interlocutory appeal tolls the running of the speedy-trial period between the filing of the notice of appeal and the filing of the mandate) (citing Ill. S. Ct. R. 604(a)(4) (eff. July 1, 1982)).

¶ 16 Defendant contends that because he was released from bail “pending” appeal, once the mandate was filed, bail was automatically reinstated. Essentially, defendant maintains that bail was merely suspended during the appeal. We disagree. In releasing defendant from bail, the trial court refunded the money posted to secure his appearance in court and compliance with the

conditions of bail. The record does not show that, after the filing of the mandate, defendant provided any money or property to secure his appearance in court or compliance with any bail conditions. Absent the provision of security, there was no bail. See 725 ILCS 5/102-6 (West 2014) (bail is the amount of money set by the court and required to be obligated and secured for the release of the defendant to ensure his appearance in court and compliance with any bail conditions). Nor did the court impose any conditions of bail. See 725 ILCS 5/102-7 (West 2014). Thus, defendant was not held to bail merely upon the filing of the mandate.

¶ 17 Defendant maintains that, if we hold that bail was not reinstated automatically upon the filing of the mandate, the word “pendency” in Rule 604(a)(3) and the term “pending” in Rule 604(a)(4) will be rendered meaningless. That is not so, however, as the use of the term “pendency” or “pending” merely reflects the limited applicability of Rules 604(a)(3) and 604(a)(4), respectively, to the time of the appeal. Those terms do not suggest that, once the appeal is over, bail is automatically reinstated and the speedy-trial protection of section 103-5(b) becomes effective.

¶ 18 Finally, defendant asserts that, if the statutory speedy-trial right does not apply, his case could go on until the State decided to act. It could not, however, as it would remain subject to the constitutional speedy-trial protection. See e.g. *People v. Staten*, 159 Ill. 2d 419, 426 (1994).

¶ 19 Because defendant was not being held to bail after the filing of the mandate, the speedy-trial protection of section 103-5(b) did not apply. Therefore, the trial court erred in dismissing the case based on a violation of section 103-5(b).

¶ 20

### III. CONCLUSION

¶ 21 For the reasons stated, we reverse the judgment of the circuit court of Kane County and remand for further proceedings.

¶ 22 Reversed and remanded.