2017 IL App (4th) 160510-U

NO. 4-16-0510

FILED
October 5, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
DEVONTE J. JACKSON,	)	No. 14CF336
Defendant-Appellee.	)	
	)	Honorable
	)	Thomas M. O'Shaughnessy,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in finding the 160-day speedy-trial period of section 103-5(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(b) (West 2014)) expired before defendant filed his motion to dismiss on speedy-trial grounds.

¶ 2 The State appeals the order dismissing the charges against defendant, Devonte J. Jackson, on the ground defendant was denied his right to a speedy trial. The State argues the trial court improperly attributed credit toward the 160-day speedy-trial term for time defendant spent in custody before his release on recognizance. We agree with the State, reverse the trial court's judgment, and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On August 4, 2014, defendant was arrested and taken into custody on charges of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2014)), mob action (720

ILCS 5/25-1(a)(1) (West 2014)), and aggravated discharge of a firearm in the direction of an occupied vehicle (720 ILCS 5/24-1.2(a)(2) (West 2014)).

¶ 5 On September 4, 2014, a preliminary hearing was held. At this hearing, a police officer testified regarding his investigation and the evidence against defendant. After the trial court found probable cause to believe defendant committed an offense, defense counsel made the following statement: "On behalf of my client, I would waive a reading of rights, charges, and penalties, plead not guilty, acknowledge receipt of a jury trial notice for September 29, 2014, 9 a.m., in Courtroom 4A, the State's motion for discovery and an amount of discovery. I would ask for 30 days to file responses. And I understand there was a subpoena return this morning that I wasn't aware of."

¶ 6 On September 29, 2014, the matter was called for trial and continued on defense counsel's motion. The trial court attributed the delay to defendant. Due to this motion to continue and a later one, the trial date was set for March 16, 2015.

¶ 7 On March 16, 2015, the date the trial was set to begin, the trial court asked defense counsel about defendant's status. The following discussion occurred:

> "[DEFENSE COUNSEL]: I believe it was gonna be a State's motion to continue.
>
> [PROSECUTOR]: Friday at the pretrial Sandy said it was a defense motion to continue.
>
> THE COURT: That's what Judge Wall has written down on [defendant], defense motion to continue.
>
> [PROSECUTOR]: But I think [the State] was gonna move

to continue.

[CODEFENDANT'S COUNSEL]: I'm demanding trial, Your Honor.

[PROSECUTOR]: Or, excuse me, I'll move to continue with regard to [codefendant]. No objection to a continuance with regard to [defendant].

THE COURT: Well, wait a minute. Are you moving to continue regarding [defendant]?

[DEFENSE COUNSEL]: Judge, the State disclosed on Friday at the pretrial they didn't have a witness available next week—

THE COURT: Alright. State motion to continue as to both defendants.

THE STATE: Correct.

THE COURT: [Codefendant] is announcing ready for trial. Are you announcing ready for trial?

[DEFENSE COUNSEL]: Yes.

THE COURT: Alright. [Defendant] is announcing ready for trial. State motion to continue will be allowed over the objection of both defendants who announce ready for trial. The delay would be attributable to the State."

The trial court set the trial for April 2015.

¶ 8 After multiple continuances, the trial was set for September 16, 2015. On that date, the State informed the trial court of witness-availability issues. According to the State, three of the State's witnesses reported their intent not to show for trial. The court continued the trial over objection by the defendant. The court released defendant on a recognizance bond and set the trial for a later date.

¶ 9 On September 17, 2015, defendant filed a written speedy-trial demand pursuant to section 103-5(b) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103-5(b) (West 2014)), simply demanding "speedy trial pursuant to 725 ILCS 5/103-5(b)." In November 2015, defendant moved to dismiss the charges against him, arguing his right to a speedy trial was violated. On December 14, 2015, defendant announced he intended to withdraw the September 2015 speedy-trial demand and his motion to dismiss. Defendant agreed to setting the matter for pretrial for January 7, 2016.

¶ 10 On December 15, 2015, defendant filed a speedy-trial demand. In his demand, defendant asserted, in part, the following:

> "4. A Preliminary Hearing was scheduled for Defendant and held on September 4, 2014; at the conclusion of which the Defendant formally demanded trial by jury which was set for September 29, 2014.
>
> 5. On March 16, 2015, this matter was called for Jury Trial[.] [T]he Defendant who was in custody announced ready for trial, the State moved to continue, and the matter was continued to April 19, 2015[,] over Defendant's objection ***.

* * *

12. The Defendant first demanded trial at his Preliminary Hearing on September 4, 2014. That from that date with applicable delay by the State that requires trial within 160 days to be on February 12, 2016, but no later."

¶ 11 At the January 7, 2016, hearing, defendant demanded his right to a speedy trial and asked that any delay from that point on be attributable to the State. Defendant acknowledged he delayed the case from December 15, 2015, until January 7, 2016. Jury trial was set for March 10, 2016.

¶ 12 On January 8, 2016, defendant filed a motion to accelerate the trial date and an amended speedy-trial demand. Defendant amended the December 15, 2015, speedy-trial demand to assert the State must try him no later than February 18, 2016. Defendant further asserted he was entitled to 118 days of credit for time spent in custody toward the speedy-trial period.

¶ 13 On March 2, 2016, defendant filed a motion to dismiss, arguing the speedy-trial deadline had passed. In his motion, defendant alleged, in part, on September 4, 2014, he demanded trial. The motion was scheduled for hearing on April 11, 2016.

¶ 14 On March 10, 2016, the trial court called the matter for the scheduled jury trial. Defendant moved to continue the trial as his motion to dismiss was scheduled to be heard in April. The court allowed the continuance and a subsequent continuance requested by defendant.

¶ 15 On June 16, 2016, a hearing was held on defendant's motion. The trial court observed defendant was taken into custody on August 4, 2014, and found defendant demanded trial on September 4, 2014. The court held defendant was entitled to credit for 118 days in

custody toward the speedy-trial calculation. The court's calculation included 17 days between defendant's August 4, 2014, arrest until the August 21, 2014, continuance of the preliminary hearing at defendant's request. The calculation also included 26 days from the September 4, 2014, preliminary hearing to September 29, 2014. The court further found the delay between September 29, 2014, until March 16, 2015, when defendant announced ready for trial, attributable to defendant. From March 16, 2015, to defendant's release from custody on September 16, 2015, the court attributed this as 75 days to the State. The court concluded defendant's speedy-trial term ended on February 19, 2016, and dismissed the charges against defendant.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant contends the speedy-trial term was on day 177 when the trial court dismissed his case. (We note defendant acknowledges the trial court incorrectly found 118 days were attributable to the State during his time in custody. Defendant asserts the correct calculation for that time period is 114 days.) Defendant's calculation includes 17 days from his August 4, 2014, arrest and confinement to August 21, 2014, and 101 days over a period of time starting September 4, 2014, until his release on September 16, 2015. The remaining 63 days span January 7, 2016, until March 10, 2016, when defendant asked to continue the scheduled trial to allow for the resolution of his motion to dismiss.

¶ 19 The State argues the speedy-trial term was on day 55 when defendant's case was dismissed. The State maintains defendant is not entitled to any time in custody because, according to the State, defendant did not make an in-custody jury demand as required by section

103-5(b) of the Code (725 ILCS 5/103-5(b) (West 2014)). The 55 days the State concedes are attributable to it begin January 7, 2016, and end on March 2, 2016, when defendant filed his motion to dismiss and set the hearing date for April 2016—after the trial was set to begin.

¶ 20 A. Standard of Review

¶ 21 In general, this court reviews a decision on a motion to dismiss for a speedy-trial violation for an abuse of discretion. See *People v. Kohler*, 2012 IL App (2d) 100513, ¶ 15, 968 N.E.2d 1132. A trial court's determination as to who is responsible for delaying trial is entitled to much deference. *People v. Pettis*, 2017 IL App (4th) 151006, ¶ 17. However, in instances where we apply the speedy-trial statute to undisputed facts, the question is one of law and is to be decided *de novo*. *People v. Stanitz*, 367 Ill. App. 3d 980, 983, 857 N.E.2d 288, 290 (2006).

¶ 22 B. August 4, 2014, to August 21, 2014

¶ 23 The disagreement over to whom this time period should be attributed centers on the interpretation of sections 103-5(a) and 103-5(b) of the Code (725 ILCS 5/103-5(a), (b) (West 2014)). Sections 103-5(a) and (b) state:

> "(a) Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant ***. Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record. The provisions of this subsection (a) do not apply to a person on bail or recognizance for an offense but who is in custody

for a violation of his or her parole, aftercare release, or mandatory supervised release for another offense.

The 120-day term must be one continuous period of incarceration. In computing the 120-day term, separate periods of incarceration may not be combined. If a defendant is taken into custody a second (or subsequent) time for the same offense, the term will begin again at zero.

(b) Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial unless delay is occasioned by the defendant ***. The defendant's failure to appear for any court date set by the court operates to waive the defendant's demand for trial made under this subsection.

For purposes of computing the 160[-]day period under this subsection (b), every person who was in custody for an alleged offense and demanded trial and is subsequently released on bail or recognizance and demands trial, shall be given credit for time spent in custody following the making of the demand while in custody. Any demand for trial made under this subsection (b) shall be in writing; and in the case of a defendant not in custody, the demand for trial shall include the date of any prior demand made under this provision while the defendant was in custody."

¶ 24 Defendant contends sections 103-5(a) and (b), when read together, create an ambiguity as to whether in-custody defendants must demand a speedy trial when they do not anticipate being released on bond or recognizance. Defendant contends subsection (a) gives a defendant in custody an automatic right to a speedy trial (see *People v. Wooddell*, 219 Ill. 2d 166, 174, 847 N.E.2d 117, 122 (2006)), whereas subsection (b) applies to defendants on bail or recognizance (*id*.). Defendant maintains these subsections create problems for individuals who are "a hybrid of the two," improperly requiring a defendant to make a formal demand for trial while in custody when no such demand is required for a speedy trial under section 103-5(a). Defendant contends such an interpretation is contrary to the finding of the *Wooddell* court that the General Assembly did not intend to "stack" speedy-trial terms. Such an interpretation, defendant maintains, would give the State a loophole to gain additional time to try the accused. Defendant argues, in effect, he need not make a demand to satisfy the requirements of section 103-5(b), as an automatic demand was made for him when he was taken into custody on August 4, 2014.

¶ 25 The State, pointing to the plain language of section 103-5, disagrees and argues the "automatic clock" of section 103-5(a) does not apply to section 103-5(b). The State maintains the statutory language is clear. According to the State, section 103-5(a) expressly does not apply to individuals on bail or recognizance, meaning the automatic demand provided by section 103-5(a) is limited only to individuals in custody. 725 ILCS 5/103-5(a) (West 2014). Once the defendant is released, according to the State, section 103-5(b)'s 160-day period does not apply to in-custody time unless a prior demand for trial was made under the provision while the defendant was in custody.

¶ 26 When construing a statute, this court's main objective is to give effect to legislative intent. *Merritt v. Department of State Police*, 2016 IL App (4th) 150661, ¶ 20, 56 N.E.3d 593. The language of the statute, given its plain and ordinary meaning, is the most reliable indicator of legislative intent. *Id.* When the statute's language is unambiguous, we apply the language as it is written, without resorting to the tools of statutory construction. *Id.* We assume the legislature did not intend to create an absurd or unjust result. *State Farm Fire & Casualty Co. v. Yapejian*, 152 Ill. 2d 533, 541, 605 N.E.2d 539, 542 (1992). We review *de novo* issues of statutory interpretation. *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 6, 919 N.E.2d 300, 303 (2009).

¶ 27 We agree with the State. The language in subsection 103-5(b) plainly and unambiguously requires a defendant in custody to make a demand for trial in order to receive in-custody credit against the 160-day speedy-trial period. The legislature clearly intended the "automatic demand" of section 103-5(a) to not survive the defendant's release from custody and to not satisfy section 103-5(b)'s requirement of a "jury demand."

¶ 28 We disagree with defendant's contention this interpretation results in unfairly allowing the State to stack speedy-trial periods in direct violation of legislative intent (see *Wooddell*, 219 Ill. 2d at 191, 847 N.E.2d at 125). As section 103-5(b) plainly indicates, the decision whether to invoke the 160-day period belongs to the defendant. Should he or she desire a speedy trial, a defendant in custody may in one sentence invoke his or her right to a trial within 160 days, preventing the State from stacking two speedy-trial periods.

¶ 29 By simply being taken into custody, defendant did not satisfy the jury-demand requirements of section 103-5(b). The record reveals no jury demand occurred at the time of

defendant's arrest. Indeed, defendant's own position is that no demand occurred until September 4, 2014. The trial court thus improperly included in its calculation the 17 days between August 4, 2014, and August 21, 2014.

¶ 30 C. September 4, 2014, to September 29, 2014

¶ 31 The State further argues the trial court erred when it found defendant demanded trial on September 4, 2014. The State maintains no sufficient oral demand was made on this date or at any time during defendant's time in custody for purposes of section 103-5(b).

¶ 32 Defendant responds by arguing the State forfeited any argument the speedy-trial clock began running on September 4, 2014. Defendant maintains, in his December 2015 written demand, he stated he made an earlier demand on September 4, 2014, while he was in custody. Because, according to defendant, the State did not challenge this assertion during the hearing before the trial court, the State cannot now argue the September 4, 2014, demand was insufficient. Issues not raised in the trial court are generally forfeited on appeal. *People v. Stevenson*, 2014 IL App (4th) 130313, ¶ 47, 12 N.E.3d 179.

¶ 33 Upon reviewing the record, we find the State did not forfeit the argument. In its response to defendant's motion to dismiss, the State initially argued, as it does on appeal, the speedy-trial period did not begin running until January 7, 2016. This argument assumes no demand was made on September 4, 2014. The State's arguments, using September 4, 2014, were made alternatively to its main contention defendant was entitled to no credit for time spent in custody: "It is the State's contention that the 160[-]speedy[-]trial clock did not start until January 7, 2016, or related back minimally because of a deficient written speedy trial demand or, in the alternative, similarly nowhere near to 160 days have elapsed because of deficient oral demands."

We further note, in its summary of the pertinent procedural history, with which the State began its response, the State did not list any "trial demands" occurring before September 17, 2015.

¶ 34 Finding the argument is not forfeited, we turn to the merits of the State's contention the trial court erred in concluding defendant made a jury demand on September 4, 2014. We agree with the State. The record reveals defendant made no jury demand on that date. The transcripts from the preliminary hearing on that day reveal defense counsel, other than introducing himself, thanking the trial court, interviewing a witness, and indicating he had no other questions, stated the following: "On behalf of my client, I would waive a reading of rights, charges, and penalties, plead not guilty, acknowledge receipt of a jury trial notice for September 29, 2014, 9 a.m., in Courtroom 4A, the State's motion for discovery and an amount of discovery. I would ask for 30 days to file responses. And I understand there was a subpoena return this morning that I wasn't aware of." The docket sheet also fails to indicate a demand was made: "Case called for Prelim Hrg. State present by Mr. Brozovich. Deft. Present with Mr. Kapella. Sworn testimony presented. Probable cause found. Formal reading waived. Not guilty plea entered. Set for Jury Trial 9-29-14 at 9 a.m. before NSF. Defense given 30 days to respond to discovery and file pretrial motions. Notice tendered by state in open court."

¶ 35 The trial court abused its discretion in attributing this delay to the State.

¶ 36 D. March 16, 2015, to September 16, 2015

¶ 37 In this time period, the parties dispute the number of days attributable to the State. The State argues defendant's December 15, 2015, written speedy-trial demand was deficient to trigger the application of credit for time spent in custody. The State contends defendant's statements on March 16, 2015, did not amount to a trial demand as defendant did not request a

"speedy trial" and merely mentioned he was "ready for trial." The State further argues the written demand was insufficient because defendant, in that demand, did not assert he made a demand on March 16, 2015. Accordingly, the State contends defendant is entitled to no days of credit over this period.

¶ 38 Defendant, on the other hand, contends the State is responsible for 72 days over the same period. Defendant argues section 103-5(b)'s requirement a written motion "shall include the date of any prior demand made under this provision while the defendant was in custody" should not be read so strictly as to require a written demand or an oral demand expressly mentioning "a speedy trial" while he was in custody. Defendant emphasizes the form of his written demand substantially complied with section 103-5(b), as the State was aware of his demand for trial.

¶ 39 Because we have already held the trial court improperly included 42 days in its calculation, a resolution of the question as to whom these 72 days should be attributed is unnecessary to our ultimate determination the court erred in granting defendant's motion to dismiss. Courts, with limited exceptions, should refrain from determining issues that would have no effect on the appeal's disposition. *Pielet v. Pielet*, 2012 IL 112064, ¶ 56, 978 N.E.2d 1000. However, a court of review may, when appropriate, address issues likely to recur on remand "in order to provide guidance to the lower court and thereby expedite the ultimate termination of the litigation." *Id.* In this case, the time period involved is large. To remand while leaving open the question regarding these 72 days would possibly force a trial unnecessarily soon or send a case back for trial only to have it dismissed again. The parties have addressed the matter in their briefs. We, therefore, choose to address the issue and "expedite the ultimate termination of the

litigation." *Id.*

¶ 40 We disagree with the State's conclusion the absence of the word "speedy" renders the oral demand insufficient. Even though the title of section 103-5 contains the term "speedy trial," the word "speedy" does not appear in the body of the section. Section 103-5(b) expressly requires only a trial demand: "every person who was in custody for an alleged offense and *demanded trial* and is subsequently released on bail or recognizance and demands trial, shall be given credit for time spent in custody following the making of the demand while in custody." (Emphasis added.) 725 ILCS 5/103-5(b) (West 2014). In addition, this court is reluctant to elevate the use of certain words or phrases to "magical incantations" to allow form to prevail over substance. See *People v. Shaw*, 2015 IL App (4th) 140106, ¶ 61, 44 N.E.3d 665. We therefore hold the use of the word "speedy" is unnecessary to trigger the start of credit under section 103-5(b).

¶ 41 The State's case, *People v. Peco*, 345 Ill. App. 3d 724, 803 N.E.2d 561 (2004), is distinguishable. *Peco* addresses the question of whether a delay under section 103-5(a) should be attributable to a defendant after the 120-day clock begins. *Id.* at 729-31, 803 N.E.2d at 565-66. *Peco* does not establish a defendant making an in-custody demand must use the term "speedy" to invoke section 103-5(b).

¶ 42 The State further contends the language used by defendant was deficient to establish a trial demand, asserting the phrase "ready for trial" does not equate to a demand for trial. We agree with the State it could be problematic to construe the phrase "ready for trial" to a proposed continuance as a trial demand. To announce preparedness, on its face, expresses no view on whether the defendant opposes a motion to continue. See *People v. Murray*, 379 Ill.

App. 3d 153, 161, 882 N.E.2d 1225, 1232-33 (2008). Defendant, however, cites one decision, *People v. Moore*, 99 Ill. App. 3d 664, 667, 425 N.E.2d 1134, 1136-37 (1981), in which the appellate court accepted "ready for trial" as a trial demand when the trial court construed it as a demand and the State did not object.

¶ 43 We find, in these circumstances, a trial demand was made. On the day trial was set to begin, the State asked for a continuance. After his codefendant demanded trial, the trial court asked defendant if he was "ready for trial." Defendant responded he was, and the trial court expressly construed its question and defendant's response as an objection to the delay. The court expressly attributed the delay to the State. The State did not object.

¶ 44 The question then becomes whether the written demand sufficiently refers to the March 16, 2015, trial demand to trigger the application of defendant's time spent in custody toward the 160-day speedy-trial period. The State argues the written demand is deficient, as defendant did not specify a trial demand was made on March 16, 2015. Defendant contends the written demand substantially complied with the speedy-trial statute. Defendant, although not stating a "trial demand" occurred, maintains the State knew a demand had been made because the court treated his "ready for trial" as a demand and the State knew defendant persisted in his demand.

¶ 45 Section 103-5(b) states the following regarding the requisites of the written demand: "Any demand for trial made under this subsection (b) shall be in writing; and in the case of a defendant not in custody, the demand for trial shall include the date of any prior demand made under this provision while the defendant was in custody." 725 ILCS 5/103-5(b) (West 2014). The State's argument asks the court to allow form to prevail over substance.

Although defendant did not state a "demand" was made on March 16, 2015, defendant listed the date as a trial date at which the defendant objected to the State's continuance request. The record shows the State knew the trial court treated this as a demand for trial and the State did not object to the attribution of days based on that determination. Defendant's written demand sufficiently complied with section 103-5(b). We find "[n]othing in the form, or the circumstances in which it was filed, suggests that the document was calculated to camouflage the defendant's demand or otherwise hide it from the prosecution's notice." *People v. Huff*, 195 Ill. 2d 87, 93-94, 744 N.E.2d 841, 844 (2001).

¶ 46 We note the State agrees, in its reply brief, if this court held the March 16, 2015, demand triggered the application of in-custody credit, defendant would be entitled to 72 days during the above period. Accordingly, we find defendant is entitled to credit for 72 days from the period of March 16, 2015, to September 16, 2015.

¶ 47 E. March 2, 2016, to March 10, 2016

¶ 48 The parties dispute how to attribute the days between March 2, 2016, the date defendant filed his motion to dismiss, and March 10, 2016, the date on which defendant moved to continue the trial to allow for the resolution of his motion to dismiss. The State contends defendant's filing of the motion to dismiss triggered the delay, and thus the time after that date should be attributed to him. Defendant maintains the filing did not delay or affect the trial date, which had already been set for March 10, 2016, until he asked to continue the trial. Therefore, according to defendant, the eight days should be attributed to the State.

¶ 49 We elect not to resolve this issue on appeal. The trial court, ruling the 160-day period expired on February 19, 2016, did not address this issue—an issue this court would

generally review for an abuse of discretion. See *Pettis*, 2017 IL App (4th) 151006, ¶ 17. Because the period of time at issue is short and the resolution of the issue would have no effect on the appeal's disposition, we will refrain from rendering an opinion to allow the trial court to first exercise its discretion.

¶ 50 Given how the trial court resolves this issue, the State has 25 or 33 days remaining in the 160 speedy-trial period to try defendant. The trial court improperly granted defendant's motion to dismiss.

¶ 51 III. CONCLUSION

¶ 52 We reverse the trial court's judgment and remand for further proceedings.

¶ 53 Reversed and remanded.