

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
RUBEN ONTIVEROS,
Respondent.

No. 46503

FILED

MAY 19 2006

JANE T. HILSON
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing charges against respondent. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The State contends on appeal that the district court erred when it dismissed Ontiveros' case by finding his right to a speedy trial attached when the complaint was filed and therefore was violated. Additionally, the State contends the district court also erred by failing to properly weigh the factors used in determining a speedy trial violation. These claims are belied by the record.¹

A criminal complaint and arrest warrant were filed against Ontiveros on November 13, 2002. On October 17, 2002, Ontiveros was sentenced to a prison term in Nevada on a different case. It was not until his release from prison that Ontiveros was arrested, on September 7, 2005.

The Sixth Amendment guarantees that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public

¹See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

trial."² This court has determined that the guarantee of a speedy trial attaches once a "defendant is 'accused' by arrest, indictment, or the filing of a criminal complaint, whichever comes first."³ Additionally, the United States Court of Appeals for the Ninth Circuit has "consistently held that the date of the filing of a criminal complaint, or indictment where there is no complaint, marks the inception of the speedy trial guarantee of the Sixth Amendment."⁴ As a result, Ontiveros' speedy trial right attached when the criminal complaint was filed in 2002.

The United States Supreme Court established a four-part balancing test that a court must conduct when determining if the right to a speedy trial has been violated.⁵ The four factors are the length of delay, the reason for the delay, whether the defendant asserted the right, and prejudice.⁶

Here, the length of delay was nearly three years. Although there is no bright line rule, delays approaching one year are presumptively prejudicial.⁷ The district court correctly found that the State failed to rebut this presumption persuasively.

²U.S. Const. amend. VI.

³Sheriff v. Berman, 99 Nev. 102, 106, 659 P.2d 298, 301 (1983) (quoting Dillingham v. United States, 423 U.S. 64 (1975)).

⁴Northern v. United States, 455 F.2d 427, 429 (9th Cir. 1972).

⁵Barker v. Wingo, 407 U.S. 514, 520 (1972).

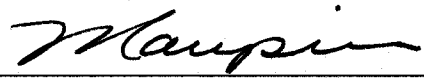
⁶Id.


⁷Doggett v. United States, 505 U.S. 647, 652 n.1 (1992).

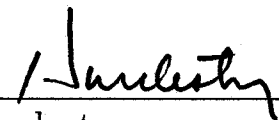
The State asserts the reason for the delay is the fault of Ontiveros for being in prison. There is no reason, however, why Ontiveros could not have been brought to trial prior to his release from prison. Further, Ontiveros did assert his speedy trial right as soon as he was apprised of the charges against him.

The final factor is the prejudice to Ontiveros. As previously stated, a delay of three years is presumptively prejudicial. Accordingly, we find that the district court did not err in its finding that dismissal of the charges was appropriate based upon all four Barker factors weighing in favor of Ontiveros. Therefore we,

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe County Public Defender
Washoe District Court Clerk