

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERCY LAVAE BACON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46576

**FILED**

APR 06 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of five counts of forgery, five counts of burglary, and five counts of theft. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Percy Bacon to various concurrent and consecutive terms of imprisonment, amounting to 15 to 50 years.

First, Bacon contends that the district court erred in denying his pretrial petition for a writ of habeas corpus. However, because Bacon's petition was untimely filed and did not contain the required waiver and consents,<sup>1</sup> it was not cognizable in the district court and is not reviewable in this court.<sup>2</sup> Although the district court erred by considering the merits of Bacon's petition, it reached the correct result.<sup>3</sup>

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<sup>1</sup>NRS 34.700(1)(a) & (b).

<sup>2</sup>Sheriff v. Marshall, 96 Nev. 304, 608 P.2d 1101 (1980); Sheriff v. Jensen, 95 Nev. 595, 600 P.2d 222 (1979).

<sup>3</sup>See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm judgment of district court if it reached the correct result for the wrong reason).

Second, Bacon contends that he was deprived of due process of law when he appeared before the grand jury dressed in jail attire and in the custody of a law enforcement officer. "[I]t is a violation of the defendant's due process rights for a state to compel an accused to stand trial in prison clothing, as prison attire is inconsistent with the presumption of innocence mandated by the constitution."<sup>4</sup> Here, Bacon was not compelled to testify before the grand jury, the grand jury was not deciding Bacon's guilt or innocence, and the law enforcement officer's presence was justified by the State's interest in maintaining custody of Bacon.<sup>5</sup> Accordingly, Bacon was not deprived of due process of law during his appearance before the grand jury.

Third, Bacon contends that he was deprived of his right to a speedy trial. In assessing a claim that a defendant has been deprived of his constitutional right to a speedy trial, the court must weigh four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant.<sup>6</sup> The four "factors must be considered together, and no single factor is either necessary or sufficient."<sup>7</sup> But the length of the delay must be at least presumptively prejudicial before further inquiry into the other factors is

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<sup>4</sup>White v. State, 105 Nev. 121, 123, 771 P.2d 152, 153 (1989) (citing Estelle v. Williams, 425 U.S. 501 (1926); Grooms v. State, 96 Nev. 142, 605 P.2d 1145 (1980)).

<sup>5</sup>See McKenna v. State, 114 Nev. 1044, 1050-51, 968 P.2d 739, 743-44 (1998).

<sup>6</sup>Barker v. Wingo, 407 U.S. 514, 530-33 (1972).

<sup>7</sup>Sheriff v. Berman, 99 Nev. 102, 107, 659 P.2d 298, 301 (1983).

warranted.<sup>8</sup> There is no established time period that automatically constitutes undue delay; each case must be analyzed in an ad hoc basis.<sup>9</sup> Here, a period of 164 days elapsed between Bacon's arraignment in district court and the first day of trial. We conclude that the length of the delay is not presumptively prejudicial and that further inquiry into the other Barker factors is not warranted.

Fourth, Bacon contends that the district court abused its discretion in denying him advisory counsel. "After accepting a defendant's request to proceed in proper person, the trial court must meet its obligation to ensure that the accused receives a fair trial."<sup>10</sup> In doing so, the district court may appoint advisory counsel.<sup>11</sup> However, the district court does not have a duty to appoint advisory counsel, and "a defendant does not have a constitutional right to advisory counsel."<sup>12</sup> Here, the record shows that the district court met its obligation to ensure that Bacon received a fair trial. Accordingly, the district court did not abuse its discretion by not appointing advisory counsel.

Fifth, Bacon contends that insufficient evidence was adduced at trial to support his forgery, burglary, and theft convictions. Bacon claims that lack of authority is an essential element of the crime of

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<sup>8</sup>Barker, 407 U.S. at 530.

<sup>9</sup>Id. at 530-31.

<sup>10</sup>Harris v. State, 113 Nev. 799, 804, 942 P.2d 151, 155 (1997).

<sup>11</sup>Id.

<sup>12</sup>Id.

forgery,<sup>13</sup> and that the State's failure to establish his lack of authority through competent evidence renders his conviction improper. Bacon further argues that if the forgery convictions are invalid, by necessity, so too are the burglary and theft convictions. Our review of the record on appeal, however, reveals sufficient evidence to establish Bacon's guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>14</sup> We specifically note that Christopher Thompson, a fraud investigator for Bank of America, testified that he asked Clarice Webster about "Percy Bacon and she did not know a Percy Bacon." We conclude that a rational juror could reasonably infer from the evidence adduced at trial that Bacon did not have authority to present Clarice Webster's checks for payment and that he forged or altered her checks, entered Money Tree and Bank of America locations with the intent to commit forgery, and committed theft by falsely representing that he was an authorized payee.<sup>15</sup> It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>16</sup>

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<sup>13</sup>Bacon cites to Mathews v. Lamb, 84 Nev. 649, 650, 446 P.2d 651, 652 (1968).

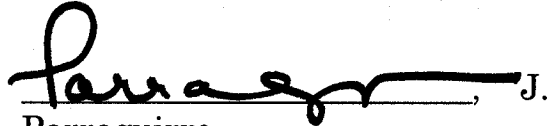
<sup>14</sup>See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (citing Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

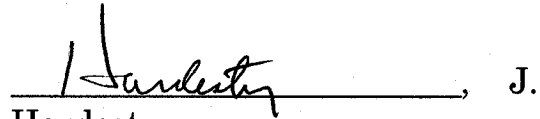
<sup>15</sup>See NRS 205.060(1); NRS 205.0832; NRS 205.090.


<sup>16</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

Having considered Bacon's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 J.  
Parraguirre

 J.  
Hardesty

 J.  
Saitta

cc: Hon. Donald M. Mosley, District Judge  
E. Brent Bryson, Ltd.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk