

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK D. VINCENT, A/K/A
DERRICK DEON VINCENT, A/K/A
DERRICK DELEON VINCENT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52575

FILED

DEC 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of stop required on the signal of a police officer and robbery. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. The district court sentenced appellant Derrick D. Vincent to serve concurrent prison terms of 24-72 months and 48-132 months.

Vincent contends that the district court erred by denying his motion to dismiss based on the violation of his right to a speedy trial. Specifically, Vincent claims that the delay in bringing him to trial provided the State with an opportunity to process fingerprints and DNA subsequently used to convict him. We disagree with Vincent's contention.¹

¹Vincent claims that because he was not brought to trial within 60 days after the filing of the indictment, as required by NRS 178.495, his speedy trial rights were violated. NRS 178.495, however, was repealed in 1967 and replaced by NRS 178.556. See 1967 Nev. Stat., ch. 523, §§ 368, 447, at 1456, 1472. In 1991, NRS 178.556(1) was amended to provide, in part, that a district court may dismiss an indictment if a criminal defendant is not brought to trial within 60 days after arraignment. See 1991 Nev. Stat., ch. 40, § 1(1), at 70.

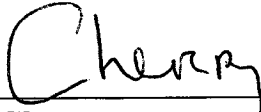
The Sixth Amendment guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” U.S. Const. amend VI. In assessing a claim that a defendant has been deprived of his constitutional right to a speedy trial, the court must weigh four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his rights; and (4) prejudice to the defendant. See Barker v. Wingo, 407 U.S. 514, 530 (1972); see also Doggett v. United States, 505 U.S. 647, 651 (1992); Furbay v. State, 116 Nev. 481, 484-85, 998 P.2d 553, 555 (2000). The four factors “must be considered together, and no single factor is either necessary or sufficient.” Sheriff v. Berman, 99 Nev. 102, 107, 659 P.2d 298, 301 (1983). But the length of the delay must be at least presumptively prejudicial before further inquiry into the other factors is warranted. Barker, 407 U.S. at 530. There is no established time period that automatically constitutes undue delay; each case must be analyzed on an ad hoc basis. Id. at 530-31; see also State v. Fain, 105 Nev. 567, 569-70, 779 P.2d 965, 966-67 (1989) (holding that a 4 1/2 year delay did not violate the appellant’s right to a speedy trial because no specific witness, piece of evidence, or defense theory was lost due to the delay).


In the instant case, the district court found that although the State may have been responsible for the initial continuance and delay in bringing Vincent to trial, Vincent failed to demonstrate that he was prejudiced in any meaningful way. See United States v. Tedesco, 726 F.2d 1216, 1221 (7th Cir. 1984) (explaining that “[p]rejudice’ is not caused by allowing the Government properly to strengthen its case, but rather by delays intended to hamper defendant’s ability to present his defense”). Further, even assuming, without deciding, that the State was, in fact, responsible for the initial continuance requested by the defense, that delay totaled only the first, approximately, 13 days of the 3 1/2 month delay—all

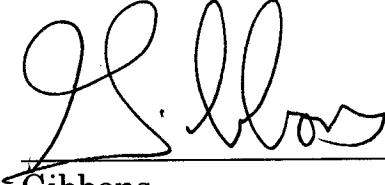
subsequent continuances were requested by the defense due to an unanticipated conflict of interest, the withdrawal of Vincent's public defender from the case and the appointment of new counsel, the need for additional trial preparation time, and health reasons. Therefore, we conclude that Vincent's right to a speedy trial was not violated and that the district court did not err by denying his motion to dismiss.

Having considered Vincent's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Legal Resource Group
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

²Although this court has elected to file the appendix submitted by Vincent, we note that it fails to comply with the requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2) (currently codified as NRAP 3C(e)(2)(c)); NRAP 30(c). Specifically, the appendix submitted by Vincent does not contain a cover, is not paginated sequentially, and does not include an alphabetical index identifying each of the documents contained therein. Counsel for Vincent is cautioned that failure to comply with the appendix requirements in the future may result in it being returned, unfiled, to be correctly prepared, see NRAP 32(c) (currently codified as NRAP 32(e)), and may also result in the imposition of sanctions by this court, NRAP 3C(n).