IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

JOHN KEITH RHODES,

Respondent.

No. 37534

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting in part respondent John Keith Rhodes's pretrial petition for a writ of habeas corpus and denying appellant's motion to consolidate.

The State charged Rhodes with one count of insurance fraud and one count of obtaining money under false pretenses. A grand jury found that there was probable cause to indict Rhodes on these charges, and an indictment was filed.

Rhodes filed a pretrial petition for a writ of habeas corpus in the district court, seeking dismissal of the indictment. The State filed a pretrial motion to consolidate this case with another pending insurance fraud case against Rhodes. Following a hearing, the district court entered a written order on February 16, 2001: (1) granting the writ petition as to the insurance fraud count only, and (2) denying the motion to consolidate. This appeal followed.

We conclude that the district court did not err in granting the habeas corpus petition as to the insurance fraud count. The district court

granted the petition on the basis that the three-year statute of limitations had expired for the insurance fraud count.[1] Statutes of limitations protect a criminal defendant's Sixth Amendment right to a speedy trial "by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced."[2] In this case, the State did not contend that Rhodes committed any fraudulent acts after August 1, 1997, and the State filed its indictment against Rhodes on August 4, 2000. Thus, the district court did not commit substantial error in deciding the State presented insufficient evidence that Rhodes had committed insurance fraud within the three-year statute of limitations.[3]

We also conclude that the district court did not abuse its discretion by denying the State's motion to consolidate its indictments against Rhodes.[4] NRS 174.155 provides that the district court "may order two or more indictments or informations or both to be tried together." The district court stated it was exercising its discretion to deny the motion because it "has complete discretion on this matter and desires to have only

---

[1]See NRS 686A.291(3); NRS 171.085(2).

[2]United States v. Marion, 404 U.S. 307, 322 (1971); see also State v. Autry, 103 Nev. 552, 555-56, 746 P.2d 637, 639-40 (1987) (pretrial writ of habeas corpus may be granted on basis that right to fair trial has been prejudiced by expiration of statute of limitations).

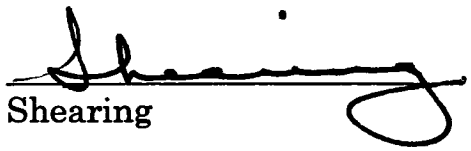
[3]See Sheriff v. LaMotte, 100 Nev. 270, 680 P.2d 333 (1984) (absent a showing of substantial error on part of district court in granting writ of habeas corpus based on insufficient evidence, this court will not overturn lower court's determination).

[4]See Tillema v. State, 112 Nev. 266, 914 P.2d 605 (1996) (holding that joinder pursuant to NRS 174.155 is within discretion of trial court, and its action will not be reversed absent abuse of discretion).

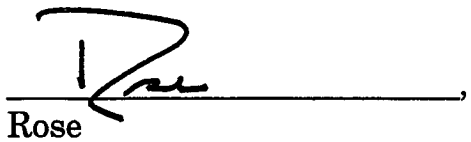
one trial at a time." Although we disagree that the district court has "complete discretion," and in fact has an obligation to "the possible prejudice to the Government resulting from two time-consuming, expensive and duplicitous trials" when making joinder decisions, we conclude that the district court did not abuse its discretion in this regard.[5]

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Shearing



_____, J.
Rose

_____, J.
Becker

cc: Hon. Michael A. Cherry, District Judge
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Robert G. Lucherini, Chtd.
Clark County Clerk

---

[5]Lisle v. State, 113 Nev. 679, 688-89, 941 P.2d 459, 466 (1997) (quoting United States v. Andreadis, 238 F. Supp. 800, 802 (E.D.N.Y. 1965)), limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).