

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROYAL BECKHAM,
Appellant;
vs.
THE STATE OF NEVADA,
Respondent.

No. 38329

FILED

APR 10 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted embezzlement.

In April 1996, appellant Royal Beckham was arrested in Missouri on Nevada charges alleging that he had embezzled a rental car. He was subsequently extradited to Nevada. On May 28, 1996, a guilty plea agreement was signed by Beckham and filed in open court. Several sentencing hearings were scheduled, however, Beckham failed to appear and a bench warrant for his arrest was issued on January 30, 1997. Beckham fled from Nevada, eventually committing the crimes of theft and forgery in Arizona, and was arrested in Illinois on November 24, 1999. Beckham was convicted and sentenced in Arizona on March 16, 2000.

On August 28, 2000, while incarcerated in Arizona, Beckham filed a motion in the Clark County district court requesting the resolution of his attempted embezzlement case. Beckham later filed a motion to dismiss the charges against him. The district court denied the motions. On July 11, 2001, counsel for Beckham filed in open court an "Affidavit and Request for Waiver of Appearance and Authorization to be Sentenced

in Absentia.” The district court subsequently sentenced Beckham, in absentia, to serve a prison term of 12-30 months and restitution in the amount of \$13,668.53. The sentence was ordered to run concurrently with the sentence imposed in a case from Arizona.

First, Beckham contends that his rights under the Interstate Agreement on Detainers (IAD)¹ were violated by the delay in his sentencing. Beckham argues that the delay in his sentencing violated Article III of the IAD and requires the dismissal of the charges against him. We disagree.

Adopting the reasoning in Carchman v. Nash,² this court has stated: “[T]he plain language of the [IAD] does not include sentencing hearings within its scope. . . . [T]he purpose of the [IAD] is not furthered by extending the [IAD’s] reach to sentencing hearings.”³ In this case, Beckham had already entered a guilty plea and was only awaiting a sentencing hearing. Therefore, we conclude that the IAD’s 180-day dispositional requirement does not apply to Beckham’s case, and that his contention is without merit.

¹See NRS 178.620 (Article III(a) of the IAD requires a trial within one hundred and eighty days after the defendant has “caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer’s jurisdiction written notice of the place of his imprisonment and his request for a final disposition”).

²473 U.S. 716 (1985).

³Prince v. State, 118 Nev. ___, ___, 55 P.3d 947, 950 (2002).

Second, Beckham contends that his Sixth Amendment right to a speedy trial⁴ was violated by the delay in his sentencing, and therefore, the charges against him must be dismissed. Beckham argues that eleven months - the period of time from when he requested the disposition of his case until his sentencing - was “uncommonly long,” and as a result, he “lost valuable credit for time served.” We disagree.

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.⁵ The four factors must be considered together and no single factor is either necessary or sufficient.⁶ But the length of the delay must be at least presumptively prejudicial before further inquiry into the other factors is warranted.⁷ There is no established time period that automatically constitutes undue delay; each case must be analyzed on an ad hoc basis.⁸

⁴ U.S. Const. amend. VI.

⁵ See Barker v. Wingo, 407 U.S. 514, 530 (1972); see also Doggett v. United States, 505 U.S. 647 (1992).

⁶ Sheriff v. Berman, 99 Nev. 102, 107, 659 P.2d 298, 301 (1983).

⁷ Barker, 407 U.S. at 530.

⁸ Id. at 530-31.

We conclude that Beckham's constitutional right to a speedy trial was not violated.⁹ The eleven-month delay in sentencing after Beckham's request for the resolution of his case was mostly due to Beckham's own actions, including the filing of several motions and a petition for a writ of habeas corpus, and several continuances requested by defense counsel. In denying Beckham's motion to dismiss the charges, the district court noted that the delay was also attributable to Beckham's initial failure to contact his attorney, and "from the court's efforts to insure that [Beckham] was represented by counsel and that appropriate motions were filed." Additionally, Beckham's flight from Nevada prior to sentencing was the initial and ultimate cause of the delay. Therefore, we conclude that Beckham's contention is without merit.

Third, Beckham contends that his due process rights under the federal constitution¹⁰ and NRS 176.015(1) were violated by the delay in his sentencing because it should have taken place "without unreasonable delay."¹¹ Beckham claims that the State acted in a purposeful and oppressive manner by not notifying him about his rights

⁹Beckham concedes that he did not assert his right to a speedy trial until August 2000, more than four years after the execution of the negotiated plea agreement. On appeal, Beckham complains only about the eleven-month period from his request for resolution until his sentencing in the district court.

¹⁰See U.S. Const. amend. V, IV.

¹¹NRS 176.015(1) states in relevant part: "Sentence must be imposed without unreasonable delay."

under the IAD or the procedure for sentencing in absentia. Beckham argues that “he would not be faced with the possibility of returning to Nevada to complete his sentence” if he had been sentenced immediately following his request for resolution of the case; instead, he claims he “lost months of possible credit for time served because of Nevada’s policies and procedures.” Beckham’s contention is without merit.

In assessing a claim that an unreasonable delay in sentencing resulted in a due process violation, this court will again consider the Barker test.¹² As we discussed above, the delay in Beckham’s sentencing was attributable to his own actions, and his right to a speedy trial was not violated. Moreover, a “[d]elay in sentencing that is not purposeful or oppressive on the part of the government does not violate a defendant’s due process rights.”¹³ Therefore, we conclude that Beckham’s due process rights were not violated.

Finally, Beckham contends that he is entitled to additional credit for time served: (1) for the time he was in custody in Missouri awaiting extradition to Nevada in 1996, and while he was being transported; and (2) from the time the detainer was placed on him in Arizona. We agree, in part, with Beckham’s contention.

¹²See Prince, 118 Nev. at ___, 55 P.3d at 951; see also Barker, 407 U.S. at 536.

¹³Prince, 118 Nev. at ___, 55 P.3d at 951 (citing Pollard v. United States, 352 U.S. 354, 361 (1957); State v. McRoy, 85 Nev. 406, 408, 455 P.2d 918, 919 (1969)).

Beckham was taken into custody in Missouri for the instant offense sometime near the end of April 1996, and he was subsequently extradited and arrested in Nevada on May 4, 1996. On May 28, 1996, Beckham entered a guilty plea and was released on his own recognizance. When Beckham was finally sentenced on July 11, 2001, the district court gave Beckham credit for the 24 days of presentence confinement in Nevada, but not for the time spent in custody for the instant offense in Missouri awaiting extradition to Nevada, or for the time spent in transit.

We conclude that the district court erred in not granting Beckham credit for the time spent in custody in Missouri awaiting extradition to Nevada. Initially, we note that the overwhelming majority of states allows credit for time served in presentence incarceration while awaiting extradition when the sole purpose for the foreign incarceration is the offense for which the defendant is ultimately convicted and sentenced.¹⁴ NRS 176.055(1) states, in relevant part, that “whenever a sentence of imprisonment . . . is imposed, the court may order that credit be allowed against the duration of the sentence . . . for the amount of time which the defendant has actually spent in confinement before conviction.”

¹⁴Although the statutes and case law vary in form and substance, the following states, at a minimum, allow for such credit: Alabama, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawai'i, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, West Virginia, Washington, Wisconsin, and Wyoming.

The statute makes no distinction between in-state or out-of-state presentence custody. Although Beckham has not provided this court with a record enabling us to determine exactly when he was taken into custody in Missouri, it appears that he is entitled to additional credit for this period of presentence incarceration. Therefore, this case must be remanded to the district court for an evidentiary hearing to determine how much additional credit Beckham is entitled to based on his presentence confinement in Missouri and the time spent in transit.¹⁵


Beckham also argues that he is entitled to credit for time served from the time the detainer was placed on him in Arizona. We disagree. A defendant may be entitled to credit for presentence confinement “unless his confinement was pursuant to a judgment of conviction for another offense.”¹⁶ Beckham was convicted and sentenced in Arizona for the crimes of theft and forgery, both of which were committed in Arizona. Therefore, Beckham is not entitled to credit against his Nevada sentence for the time spent incarcerated in Arizona.

Accordingly, we

¹⁵At the hearing, the burden remains with Beckham to provide the district court with specific factual information in support of his claim. See Pangallo v. State, 112 Nev. 1533, 1536-37, 930 P.2d 100, 102 (1996), limited in part on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

¹⁶NRS 176.055(1); McMichael v. State, 94 Nev. 184, 194, 577 P.2d 398, 404 (1978) (“Only incarceration pursuant to a charge for which sentence is ultimately imposed can be credited against that sentence.”), abrogated on other grounds by Braunstein v. State, 118 Nev. ___, 40 P.3d 413 (2002).

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Nancy M. Saitta, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk