

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, CLARK COUNTY,
Appellant,
vs.
SPENCER BROOKS, JR.,
Respondent.

No. 39417

FILED

MAY 15 2003

ORDER OF REVERSAL AND REMAND

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

This is an appeal from an order of the district court granting respondent Spencer Brooks, Jr.'s pretrial petition for a writ of habeas corpus.

On October 29, 1982, Brooks was arrested. He was later released on his own recognizance. On November 22, 1982, a criminal complaint was filed against Brooks, charging him with three counts of sexual assault, battery with intent to commit a crime, and robbery. Thereafter, a summons was issued for Brooks to appear in court on December 20, 1982. However, police officers were unable to locate Brooks and a bench warrant was issued for his arrest. In 2001, Brooks was arrested in California on the Nevada warrant and extradited to Las Vegas. On February 19, 2002, Brooks filed a pretrial petition for writ of habeas corpus, which the district court granted. The Sheriff of Clark County (the State), on behalf of the State of Nevada, now appeals.

Brooks argued in his petition that the State was at fault for the nineteen-year delay between his 1982 arrest and his 2002 trial date, and therefore, violated his Sixth Amendment of the United States Constitution right to a speedy trial. In determining whether this right was violated, a court must balance the following factors: "(1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his

right; and (4) the prejudice to the defendant from the delay.”¹ This court reviews the record to determine if substantial evidence supports the district court’s findings as to these factors.²

The district court found that the State was at fault for the delay because, pursuant to Doggett v. State,³ the State was not reasonably diligent in attempting to bring Brooks to court. On November 9, 1982, Brooks signed a form that stated he was released from jail on his own recognizance, he must return to court on Wednesday, November 17 at 1:30 p.m., and the charge was for robbery. There is an absence of records from the Las Vegas justice court for November 17. However, this court finds that the release form proves that Brooks was aware the State was taking action against him and he needed to appear in court. Officers attempted to serve a summons on Brooks, but Brooks no longer lived at the address he provided officers less than a month earlier. After officers could not locate Brooks, a bench warrant was issued for his arrest and entered into the National Crime Information Computer system (NCIC). Unlike Doggett, where the defendant was living openly under his name, and thus, could easily be discovered by the government,⁴ Brooks is listed in the

¹Sheriff v. Berman, 99 Nev. 102, 106, 659 P.2d 298, 301 (1983); Barker v. Wingo, 407 U.S. 514, 530 (1972).

²State v. Autry, 103 Nev. 552, 555, 746 P.2d 637, 639 (1987).

³505 U.S. 647 (1992) (finding the State negligent in locating defendant because it was aware of his location at various times, he re-entered the United States through customs, he lived openly under his own name in the U.S. for six years, and he was discovered through a credit check under his name eight years after his indictment).

⁴Id. at 649.

NCIC as having five aliases.⁵ We hold, therefore, that the record does not support the district court's finding that the State was at fault for the delay, and instead, find that Brooks caused the delay by fleeing after his release.

Brooks also failed to assert his right to a speedy trial in due course.⁶ If a defendant knew of the charges against him long before he was apprehended and asserted his Sixth Amendment right, this factor strongly supports a determination that his rights were not violated.⁷ Doggett hinged on the fact that the defendant was unaware of the indictment against him because he was never arrested, he left the country before officers went to arrest him, and he was never told officers were looking for him.⁸ In contrast, Brooks was arrested, released twelve days later on his own recognizance, and signed a release form.⁹ Thus, the record indicates that Brooks did not want a speedy trial because he was sufficiently aware of the charges against him in 1982, yet did not assert his right to a speedy trial until 2002.¹⁰ Because we hold that the record

⁵See U.S. v. Walker, 92 F.3d 714, 718 (8th Cir. 1996) (finding Doggett "not even remotely comparable" because defendant fled after release and assumed a false identification).

⁶Id. at 718.

⁷Barker, 407 U.S. at 536; Doggett, 505 U.S. at 653.

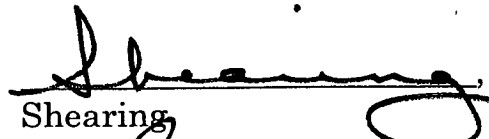
⁸Doggett, 505 U.S. at 647, 653.

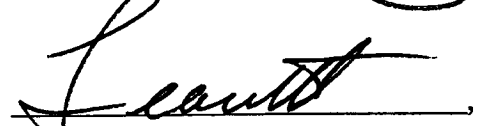
⁹See U.S. v. Sandoval, 990 F.2d 481, 485 (9th Cir. 1993) (holding no speedy trial right violation because, unlike Doggett, defendant was aware of indictment, skipped bail, and became a fugitive).

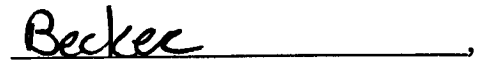
¹⁰Barker, 407 U.S. at 536.

supports a finding that the State diligently pursued Brooks and he was aware of the charges against him, even severe prejudice as a result of the delay cannot "tip the balance in his favor."¹¹ We hold, therefore, that Brooks' Sixth Amendment right to a speedy trial was not violated.

Accordingly, we ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Michael L. Douglas, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Public Defender
Clark County Clerk

¹¹U.S. v. Aguirre, 994 F.2d 1454, 1458 (9th Cir. 1993).