IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN SZCZEPANIK, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 40068
STEPHEN SZCZEPANIK, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 40540
STEPHEN SZCZEPANIK, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 41252
STEPHEN SZCZEPANIK, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 41648

FILED

MAR 03 2005

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

ORDER OF AFFIRMANCE

These are consolidated appeals from several district court orders in the same district court case. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge. Docket No. 40068 is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of aggravated stalking. The district court sentenced appellant to serve two consecutive terms of 28 to 72 months in the Nevada State Prison. Docket No. 40540 is an appeal from an order of the district court denying appellant's motion to correct sentence credit. Docket No. 41252 is an appeal from an order of the district court denying appellant's proper person motion to vacate illegal sentence. Docket No. 41648 is an appeal

from an order of the district court denying appellant's proper person post-conviction petition for a writ of habeas corpus.[1]

Appellant's first contention on appeal is that the district court erred in failing to dismiss his case due to a violation of his right to a speedy trial. The Sixth Amendment to the United States Constitution provides the right to a speedy trial.[2] This right extends to criminal defendants in state courts.[3] In determining whether a defendant's right to a speedy trial has been violated, this court must examine 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.[4]

In the instant case, a period of twenty-one months elapsed between the filing of the criminal complaint and appellant's scheduled preliminary hearing; this delay was entirely attributable to the State.[5]

---

[1]We note that although counsel for appellant requested to consolidate these appeals, he failed to assign any error with respect to the district court's denial of appellant's motion to vacate illegal sentence, motion to correct sentence credit, and post-conviction habeas petition. Nonetheless, our review reveals that the district court did not err in denying the motions and the petition. Accordingly, we affirm the orders of the district court denying appellant relief in Docket Nos. 40540, 41252, and 41648.

[2]See Adams v. Sheriff, 91 Nev. 575, 575 n.1, 540 P.2d 118, 119 n.1 (1975) (citing Klopfer v. North Carolina, 386 U.S. 213 (1967); McGee v. Sheriff, 86 Nev. 421, 423, 470 P.2d 132, 133 (1970) (citing Klopfer).

[3]Id.

[4]Barker v. Wingo, 407 U.S. 514, 530 (1972); State v. Fain, 105 Nev. 567, 568-69, 779 P.2d 965, 966 (1989).

[5]Although an additional period of forty months elapsed between appellant's scheduled preliminary hearing and his trial, this delay cannot be attributed to the State.

Although the record reveals that appellant did not assert his right to a speedy trial during this twenty-one month delay, it does not appear that he had an opportunity to do so. Therefore, the first three factors tend to weigh in favor of appellant.

With respect to the final factor to be evaluated, the court may weigh a showing of prejudice—or its absence—more heavily than other factors.[6] Here, appellant failed to demonstrate that he was prejudiced in any way by the delay. As prejudice is the principal concern in evaluating a speedy trial claim,[7] we conclude that the district court did not err in failing to dismiss the charges.

Next, appellant argues that the district court erred in admitting hearsay testimony from the State's investigator. The record reveals that investigator Pat Malone testified that he received a note from an inmate at the Clark County Detention Center. The note contained personal information concerning appellant's victims, such as their respective height, weight, eye and hair color, address, and vehicle. Malone testified that the inmate represented to him that the note came from appellant. As a result of receiving the note, Malone warned the victims that they were in danger.

Appellant first contends that the note itself was inadmissible hearsay. However, appellant's ex-wife testified that the note was written in appellant's handwriting, and it was therefore admissible as appellant's own statement.[8]

---

[6]See Fain, 105 Nev. at 570, 779 P.2d at 967.

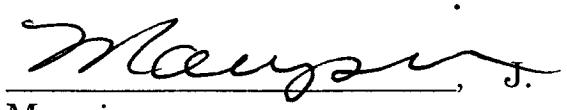
[7]See id. at 569, 779 P.2d at 966.

[8]See NRS 51.035(3)(a).

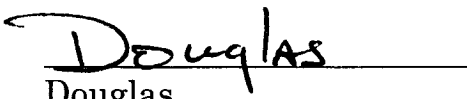
Appellant also argues the district court erred in allowing Malone's hearsay testimony that the inmate stated the note came from appellant. The district court ruled that this statement was not hearsay because it was being admitted to explain Malone's subsequent action of warning the victims they were in danger.[9] Even assuming, however, that the district court erred in admitting this statement, we conclude that it was harmless.[10] The State introduced evidence concerning the note largely to prove the solicitation to commit murder charges of which appellant was acquitted. Consequently, we conclude that appellant is not entitled to relief on this claim.

Having reviewed appellant's contentions and concluded that they are without merit, we

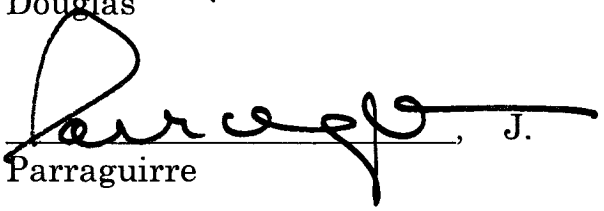
ORDER the judgments of the district court AFFIRMED.



_____, J.
Maupin



_____, J.
Douglas



_____, J.
Parraguirre

---

[9]See NRS 51.035; Wallach v. State, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) (holding that statement is not hearsay if it is not offered to prove the truth of matter asserted).

[10]See Franco v. State, 109 Nev. 1229, 1237, 866 P.2d 247, 252 (1993) (providing that errors concerning hearsay are subject to harmless error analysis).

cc: Hon. Kathy A. Hardcastle, District Judge
Christopher R. Oram
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk