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Sunseri (Kevin) v. State, 137 Nev. Adv. Op. 58 (Sep. 23, 2021).

Kim Strauss

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**CRIMINAL LAW: VIOLATION OF A DEFENDANT’S RIGHT TO A SPEEDY TRIAL
AS GROUNDS TO WITHDRAW A GUILTY PLEA AGREEMENT**

Summary

A defendant charged with a crime has a right to a speedy trial.² Violation of this right may serve as the grounds for granting a defendant’s motion to withdraw a guilty plea agreement, particularly where the defendant was not aware that this right was violated at the time he entered the plea agreement.

Background

The Appellee, the State, held a warrant for the arrest of the Appellant, Kevin Sunseri, for a robbery the Appellant committed. At the time that the warrant was issued, however, Appellant had been serving a two-to-five-year sentence for an unrelated crime since May 25, 2016. The arrest warrant pertaining to the robbery was not executed immediately.

Appellant served his sentence, and his release date was scheduled for August 27, 2018. Instead of releasing the Appellant, the State transferred Appellant to the jail to execute the arrest warrant. Appellant was not aware of the arrest warrant until his transfer. Appellant agreed to plead guilty to robbery and ownership or possession of a firearm by a prohibited person. Appellant subsequently suffered significant mental health issues and was deemed incompetent, thereafter being sent to a mental health facility.

Once Appellant regained competence, he filed a motion to withdraw his guilty plea agreement on the grounds that his constitutional right to a speedy trial was violated, and that his previous counsel never alerted Appellant to the fact that his charges could potentially have been dismissed because of the violation. Evidence was presented at the evidentiary hearing that showed the State did not attempt to locate Appellant before his release. Appellant testified that at the time he entered the guilty plea, he was unaware that his right to a speedy trial may have been violated. Appellant’s former counsel did not testify.

The district court denied Appellant’s motion to withdraw the guilty plea. Appellant then filed a motion to dismiss the case because of the violation of his right to a speedy trial. The district court denied this motion as well. The court convicted Appellant and sentenced him to 66 to 180 months based on the guilty plea.

Discussion

The Court stated that a defendant’s motion to withdraw a guilty plea before sentencing may be granted for any reason where permitting withdrawal would be fair and just. Appellant based his motion to withdraw the guilty plea on the argument that his right to a speedy trial was violated.

¹ By Kim Strauss.

² U.S. CONST. amend. VI.

The Court used the four-part *Barker-Doggett* test to evaluate the Appellant's claim.³ The factors for the test are as follows: (1) whether delay before trial was uncommonly long; (2) whether the government or the criminal defendant is more to blame for that delay; (3) whether, in due course, the defendant asserted his right to a speedy trial; and (4) whether he suffered prejudice as the delay's result. No factor is singularly determinative, and all factors must be considered together.

First, the Court held that the delay of executing the warrant 25 months after its issuance was uncommonly long. Therefore, the first factor weighed in Appellant's favor.

Second, the Court held that the government was responsible for the delay because Appellant was in the government's custody. A simple search would have alerted the government to the Appellant's whereabouts. Therefore, the delay was a result of the government's gross negligence, and the second factor weighed in favor of the Appellant.

Third, the Court acknowledged that Appellant did not assert his right to a speedy trial in due course; however, the Court held that Appellant had a colorable claim for the ineffective assistance of counsel. Because of this, the Appellant may not have been aware that his right to a speedy trial had been violated. Therefore, this factor did not weigh heavily against the Appellant.

Lastly, because the Appellant had demonstrated that he suffered significant mental health issues as a result of learning he would not be released from prison, the Court held that the delay had prejudiced him by causing him anxiety and concern. In addition, Appellant testified that he would have more difficulty recollecting the circumstances of the crime for which the warrant was issued than he would have had if the warrant had been served in a timely fashion. Therefore, the Court held that the last factor weighed in favor of the Appellant.

Weighing all of the factors together, the Court held that the Appellant made a strong argument that his right to a speedy trial had been violated.

The Court then analyzed Appellant's claim of ineffective counsel. The Court stated that the average, uneducated criminal defendant cannot reasonably be expected to understand that a delay in executing an arrest warrant may constitute a violation of his right to a speedy trial. The Court held that because Appellant had demonstrated he had a probable chance of having the charges against him dismissed under a violation of his right to a speedy trial, he likely would not have agreed to enter a guilty plea had his counsel alerted him to this fact. The Court ruled in favor of Appellant on this point because Appellant's prior counsel did not testify, and the state failed to rebut Appellant's claim that his counsel was ineffective.

The Court held that the Appellant's colorable claim of ineffective counsel coupled with his argument that his right to a speedy trial had been violated, constituted a fair and just reason for withdrawing his guilty plea.

Conclusion

The *Barker-Doggett* factors weighed in favor of the Appellant's argument that his right to a speedy trial had been violated. Appellant also made a strong argument that he would not have

³ See *Doggett v. U.S.*, 505 U.S. 647 (1992); see *Barker v. Wingo*, 407 U.S. 514 (1972).

agreed to enter a guilty plea had it not been for his prior counsel's failure to alert Appellant of the violation of his right to a speedy trial. Therefore, the Court vacated the judgment of conviction, reversed the district court's denial of Appellant's motion to withdraw his guilty plea, and remanded the matter for the district court to consider Appellant's motion to dismiss the charges.