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2019 IL App (3d) 170246-U

Order filed August 9, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-17-0246
ANTON D. GRAYSON,	)	Circuit No. 16-CF-368
Defendant-Appellant.	)	Honorable Stephen A. Kouri, Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) Defendant's statutory speedy trial rights were not violated. (2) Defendant knowingly and voluntarily waived his right to a jury trial.

¶ 2 Defendant, Anton D. Grayson, appeals his conviction and sentence. He contends that his statutory speedy trial rights were violated. Alternatively, defendant contends that he did not knowingly and voluntarily waive his right to a jury trial. We affirm.

¶ 3

## I. BACKGROUND

¶ 4

Defendant was taken into custody on July 15, 2016. The State charged defendant with aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1) (West 2016)) and unlawful use of a weapon by a felon (*id.* § 24-1.1(a)). On July 19, 2016, defendant first appeared in court. There is no report of the proceedings from this hearing, but the written order shows that the public defender was appointed to represent defendant and the matter was continued until August 11, 2016, for arraignment. When the parties appeared in court on August 11, 2016, defendant entered a plea of not guilty, and defense counsel stated, “[w]e’d ask the case to be set to August 26th for pretrial and September 6th for jury trial.” Counsel did not state that he was ready for trial on that day or that he objected to the matter being continued. The written order entered that day did not attribute delay to any party.

¶ 5

At the August 26, 2016, hearing, the matter was continued on the defense’s motion until September 6, 2016, for review. The matter was then continued twice by agreement of the parties until November 18, 2016.

¶ 6

On November 18, 2016, defense counsel informed the court that defendant was ready for trial. The State asked to continue the matter, telling the court,

“I called the Morton Crime Lab this morning. We have DNA evidence that has been processed; however, the latent portion is backed up approximately nine months. However, they believe that with a jury trial setting they would be able to expedite the process 30 to 60 days. So we’re asking for a jury trial setting of January 23rd, 2017 \*\*\* with a pretrial conference on January 13th, 2017.”

Defense counsel objected, but the court granted the continuance on the State’s motion.

¶ 7 On January 13, 2017, the State filed a “Motion for Continuance” stating that the crime laboratory had still not finished processing the evidence for the case. The motion requested for the court to continue defendant’s trial and grant the State an “additional 60 days beyond the allotted 120 days reserved for defendant’s Speedy Trial.” The same day the State filed its motion for continuance, the parties appeared in court for a scheduled pretrial conference. At the pretrial conference, the State informed the court of its motion to continue defendant’s trial. The defense objected. During the discussion between the court and counsel, the prosecutor advised the trial court that there were not any speedy trial issues on that date because the speedy trial deadline, according to the prosecutor’s calculation, would not become an issue until February 18, 2017. The court continued defendant’s trial over the defense’s objection.

¶ 8 On February 27, 2017, the parties appeared for a final pretrial conference. Defense counsel told the court, “Judge, after consulting with my client, it’s his desire to waive jury and set this matter for bench trial” The defense also presented a written waiver of a jury trial signed by defendant. The written waiver stated that defendant “knowingly and understandingly waive my right to a trial by jury \*\*\* and consent to a trial by the Court without a jury.” The court then had the following discussion with defendant:

“THE COURT: That’s your signature?

[DEFENDANT]: Yes, sir.

THE COURT: You’re giving up your right to have a jury trial?

[DEFENDANT]: Yes, sir.

THE COURT: And that’s your decision, not your attorney’s decision?

[DEFENDANT]: Yes, sir.

THE COURT: Okay. See you tomorrow.”

¶ 9 On the day of trial, defense counsel made an oral motion to dismiss the case on the basis that defendant’s speedy trial rights were violated. The State responded that it was standing on the motion it previously submitted to the court. The court denied defendant’s motion. The cause proceeded to a bench trial. The court found defendant guilty of unlawful use of a weapon by a felon and not guilty of aggravated discharge of a firearm. The court sentenced defendant to five years’ imprisonment.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the court erred by denying his motion to dismiss on speedy trial grounds. Alternatively, defendant contends he is entitled to a new trial because he did not knowingly and voluntarily waive his right to a jury trial.

¶ 12 A. Speedy Trial

¶ 13 First, defendant contends his statutory speedy trial rights were violated because the State delayed his trial beyond the 120-day statutory speedy trial period. “In Illinois, a defendant has \*\*\* a statutory right to a speedy trial.” *People v. Cordell*, 223 Ill. 2d 380, 385 (2006). “Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant \* \* \*. Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record.” 725 ILCS 5/103-5(a) (West 2016).

¶ 14 In this case, defendant was tried 228 days after his arrest (July 15, 2016 to February 28, 2017). The four days from defendant’s arrest to his first appearance on July 19, 2016, are attributable to the State. See *People v. Mayo*, 198 Ill. 2d 530 (2002) (the 120-day statutory period begins to run automatically from the day defendant is taken into custody and no formal demand

for trial is required). However, the record is clear that the delay in the proceedings from July 19, 2016, until November 18, 2016, was either agreed to or requested by defendant. This period, therefore, is excluded from calculating the 120-day period. The remaining delay from November 18, 2016, until defendant’s trial is attributable to the State’s requests for continuances. This period is 102 days. Adding the original four days delay attributable to the State shows that the State occasioned 106 days of delay.

¶ 15 In reaching this conclusion, we reject defendant’s argument that the period from August 11, 2016, to August 26, 2016, should be attributable to the State. Although the written order memorializing the hearing did not specify to whom the delay would be attributable, defense counsel specifically agreed to continuing the matter by asking the court to set the matter for a later date. Moreover, defense counsel did not announce that he was prepared for trial on that day, and did not express an objection to the new trial date. Given defense counsel’s actions, we conclude that this period of delay was agreed to by defendant and therefore excluded from the speedy trial calculation as delay attributable to the State. *Cordell*, 233 Ill. 2d at 391-92.

¶ 16 Therefore, we conclude that defendant was tried well within the 120-day statutory speedy trial period. For clarity, we have prepared a chart allocating the 106 days of delay to the State:

<b><u>SPEEDY TRIAL PERIOD</u></b>				
<b>Date</b>	<b>Description</b>	<b>Delay by State</b>	<b>Delay by Defendant</b>	<b>Joint Delay</b>
7/15/16 to 7/19/16	Taken in to Custody	4 days		
7/19/16 to 8/26/16	Orders of Continuance on Agreement of Parties			38 days
8/26/16 to 9/6/16	Order of Continuance on Defendant’s Motion		11 days	
9/6/16 to 9/26/16	Order of Continuance on Agreement of Parties			20 days
9/26/16 to 10/17/16	Order of Continuance on Agreement of Parties			21 days

10/17/16 to 11/18/16	Order of Continuance on Agreement of Parties			32 days
11/18/16 to 1/13/17	Order of Continuance on State's Motion - Objection by Defendant	56 days		
1/13/17 to 1/20/17	Order of Continuance on State's Motion - Objection by Defendant	7 days		
1/20/17 to 2/28/17	Order of Continuance on State's Motion - Objection by Defendant	39 days		

¶ 17 The parties have presented the speedy trial issue on appeal by requesting our court apply an abuse of discretion standard to the trial court's decision to grant the State's "Motion for Continuance," presented to the court on January 13, 2017. Defendant takes issue with the trial court's failure to make an express finding of fact that the State had been duly diligent as required by section 103-5(c) of the Code of Criminal Procedure of 1963 (the Code) (725 ILCS 5/103-5(c) (West 2016)).

¶ 18 The record documents that the crime laboratory had not finished processing the ballistic evidence by January 13, 2017. Here, the court directly questioned the prosecutor about the speedy trial deadline and took care to address the issue *before* deciding whether to grant the State's motion over defendant's objection. During the discussion between the court and counsel, the prosecutor advised the trial court that there were not any speedy trial issues on that date because the speedy trial deadline, according to the prosecutor's calculation, would not become an issue until February 18, 2017. In fact, the speedy trial deadline was sometime after February 18, 2017, and the State provided the court with a conservative estimation of the remaining time on the speedy trial clock.

¶ 19 Originally, the State’s written motion requested 180 days for speedy trial, as allowed by statute under special circumstances and based on special findings by the court. The issue as framed by defendant on appeal challenges the trial court’s failure to make an express finding that the State had been duly diligent before resetting the trial date. When the trial occurs within 120 days a special finding for a continuance is not required, although helpful.

¶ 20 Obviously, since we conclude that the trial court conducted a trial within the 120-day window, we will not address the issue as framed by defendant on appeal. We conclude there was no abuse of discretion in this record because defendant’s trial was timely.

¶ 21 In closing, we note that because we find no speedy trial violation, we reject defendant’s claim that counsel provided ineffective assistance by failing to raise the issue again in a posttrial motion. See *Cordell*, 223 Ill. 2d at 285 (failure of counsel to argue a speedy trial violation cannot satisfy a claim of ineffective assistance where there is no lawful basis for arguing a speedy trial violation).

¶ 22 **B. Jury Trial Waiver**

¶ 23 Next, defendant contends that his jury waiver was invalid. Specifically, defendant argues that his waiver was invalid because the circuit court did not explicitly provide the following admonishments: (1) the nature of a jury or bench trial, (2) the constitutional right to a jury trial, or (3) the implications of waiving the right. The record shows that defendant signed a written waiver, and he did not object when his counsel presented the court with defendant’s written waiver in defendant’s presence.

¶ 24 A criminal defendant has a constitutional right to a trial by jury. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. However, a defendant may waive this right so long as the waiver is knowingly and understandingly waived in open court. 725 ILCS 5/103-6 (West 2016);

*People v. Bracey*, 213 Ill. 2d 265, 269-70 (2004). “While it may be preferable for a trial court to advise a defendant of his right to a jury trial, the trial court is not constitutionally required to do so in order to maintain a valid waiver.” *People v. Steiger*, 208 Ill. App. 3d 979, 981 (1991). “A court need not give any specific admonishment or advice for a waiver to be effective; instead, the determination of whether a jury waiver is valid depends on the facts and circumstances of a particular case.” *People v. West*, 2017 IL App (1st) 143632, ¶ 10. Moreover, a circuit court need not “give a defendant an explanation concerning the ramifications of a jury waiver unless there is an indication that the defendant did not understand his right to a jury trial.” *Steiger*, 208 Ill. App. 3d at 981. “Generally, a jury waiver is valid if it is made by defense counsel in defendant’s presence in open court, without an objection by defendant.” *Bracey*, 213 Ill. 2d at 270. Further,

“Although a signed jury waiver alone does not prove a defendant’s understanding, it is evidence that a waiver was knowingly made. [Citation.] Similarly, a present defendant’s silence while his or her attorney requests a bench trial provides evidence that the waiver is valid. [Citation.] Reviewing courts may also consider a defendant’s prior interactions with the justice system in determining whether a jury waiver was made knowingly.” *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7.

¶ 25 Here, defense counsel stated, in court with defendant present, that defendant wished to waive his right to a jury and that the cause would proceed to a bench trial. A written jury waiver was tendered to the court, which stated that defendant knowingly and voluntarily waived his right to a jury trial. The waiver was signed by defendant the same day it was tendered. Defendant made no objection and was present in the courtroom when he advised the court that it was his decision to waive his right to a jury trial. Here, the record is devoid of any indication that

defendant did not understand his right to a trial by jury, and the court was not required to explain to defendant his right to a jury or provide any admonishments. Viewing the above facts in totality, we cannot say defendant's jury waiver was invalid.

¶ 26

### III. CONCLUSION

¶ 27

The judgment of the circuit court of Tazewell County is affirmed.

¶ 28

Affirmed.