

SPEEDY TRIAL

Court Rules That State Violated Defendant's Constitutional Right to Speedy Trial and Orders Convictions Vacated and Charges Dismissed With Prejudice

State v. Washington, ___ N.C. App. ___, 665 S.E.2d 799 (2 September 2008).

The defendant was convicted of multiple offenses (first-degree burglary, armed robbery, attempted first-degree sexual offense, etc.) arising from a burglary that occurred in May 2002. The state brought the defendant to trial in February 2007. The court conducted an extensive analysis of the four factors set out in *Barker v. Wingo*, 407 U.S. 514 (1972) (length of delay; reason for the delay; defendant's assertion of the right to speedy trial; prejudice to the defendant) and ruled that the state had violated the defendant's constitutional right to a speedy trial and ordered that the convictions be vacated and the charges dismissed with prejudice (which bars a retrial).

No Violation of Constitutional Right to Speedy Trial

State v. McBride, 187 N.C. App. 496, 653 S.E.2d 218 (4 December 2007).

The court ruled that a delay of three years and seven months from arrest to trial did not violate the defendant's constitutional right to a speedy trial. The court noted that although the delay was exceptionally long, (1) the appellate record did not indicate the reason for the delay; (2) the defendant did not assert his right to a speedy trial until trial; (3) the defendant showed no prejudice from the delay; and (4) the defendant was not incarcerated during the delay.

Constitutional Law--Right to speedy trial--Pre-indictment delay

State v. Stanford, 169 N. C. APP. 214 (2005)

The trial court did not err in a second-degree sexual offense, second-degree rape, and taking indecent liberties with a minor case by denying defendant's motion to dismiss the charges based on the fifteen-year delay that the victim took in reporting the incidents prior to the indictment being issued, because: 1) defendant's Sixth Amendment right to a speedy trial is not implicated until he becomes accused of a crime, which in this case came on the day he was indicted; 2) the State cannot delay indictment of an offense it knew nothing about; and 3) the State has no statute of limitations on the crimes of rape, sex offense, or indecent liberties.

Constitutional Law--Speedy trial--Barker factors balanced--No violation

State v. Spivey, 357 N.C. 114 (2003)

A first-degree murder defendant's right to a speedy trial was not violated by a delay of four and one-half years after his arrest when the Barker v. Wingo factors were balanced. The delay is long enough to trigger examination of the other factors; the delay was caused by neutral factors, including the number of pending first-degree murder cases; defendant failed to carry his burden of showing neglect or willfulness the State; defendant's assertion of the right to a speedy trial does not alone entitle him to relief, even assuming that his pro se speedy trial request while he was represented by counsel was proper; and defendant did not show that his defense was impaired by the delay. He ultimately pled guilty to second degree murder rather than risk rejection of his self-defense contention and face the death penalty.

1) Criminal Law--Prisons and Prisoners--Securing attendance of incarcerated defendant--Not a speedy trial motion

State v. Doisey, 162 N. C. APP. 447 (2004)

N.C.G.S. § 15A-711 does not guarantee a prisoner the right to a speedy trial within a specified period of time, and this defendant's request under the statute should not have been treated as a speedy trial motion. A prosecutor complies with the statute by making a written request to secure defendant's presence at the trial within six months of defendant's request that he do so, whether or not the trial actually takes place during the statutory period. This case was remanded for a determination of whether the prosecutor complied with the statute; the Attorney General's assumption of the case was subject to defendant's previously filed request and no further service was necessary.

2) Constitutional Law--Speedy trial--No prejudice from delay

State v. Doisey, 162 N. C. APP. 447 (2004)

A defendant's constitutional right to a speedy trial was not violated by a two-year delay between the offenses and trial where defendant did not show that the delay in any way hampered his ability to present a defense and did not show neglect or wilfulness by the prosecution.

Constitutional Law--speedy trial--changing attorneys

State v. King 158 N. C. APP. 60 (2003)

A defendant's right to a speedy trial was not violated where the significant time between indictment and trial was largely due to several attorneys preparing for trial and then withdrawing after conflicts with defendant.

Constitutional Law--Right to speedy trial--Long period of pretrial incarceration

State v. Strickland, 153 N. C. APP. 581 (2002)

The trial court did not violate a defendant's right to a speedy trial under U.S. Const. amend. VI and N.C. Const. art. I, § 18 in a second-degree rape and misdemeanor breaking and entering case even though defendant was incarcerated awaiting trial for 940 days, because: 1) the prosecutor offered evidence to show that the long period of defendant's pretrial incarceration was the result of a prosecutorial backlog of other serious felony cases, and defendant did not present any evidence of neglect or willfulness by the prosecutor or that the delay was purposeful or oppressive to him; 2) defendant did not allege any prejudice created by the two and one-half year delay before his trial other than prolonged anxiety and concern; and 3) defendant did not even allege that any witnesses had disappeared, died, or were otherwise unavailable, and defendant did not assert the loss, deterioration or disintegration of physical evidence.

Constitutional Law--Right to a speedy trial--Delay in processing appeal

State v. China, 150 N. C. APP. 469 (2002)

A defendant's right to a speedy trial was not violated in a second-degree burglary case even though there was almost a seven-year delay in processing review of his conviction, because: 1) there is no constitutional right to an appeal under the United States Constitution for a convicted criminal, and the right is purely statutory; 2) the record fails to indicate that defendant asserted his right to a speedy appeal prior to 14 June 2000, and defendant contributed to the delay by failing to assert earlier his right to a speedy appeal; 3) although defendant contends he suffered a greater degree of anxiety over the outcome of his appeal compared to a typical appellant, defendant failed to support his claim; and 4) although defendant contends he was prejudiced since the passage of time has prevented him from obtaining a certified transcript of his trial, defendant has failed to show that the unsigned transcript provided in the record is inaccurate.

1) Criminal Law § 222 (NCI4th Rev.)--First-degree murder--Statutory speedy trial--No error

State v. Pickens, 346 N.C. 628 (1997)

The was no error in the trial court's denial of a defendant's motion for a speedy trial under N.C.G.S. § 15A-711(c) on a first-degree murder retrial where defendant was released from the custody of the Department of Correction and returned to Buncombe County, where he was bonded out within six months of his request. Thus, even though defendant admitted that he failed to properly serve a copy of the motion on the district attorney and was not entitled to relief, the essential requirement of the statute was met.

**2) Constitutional Law § 321 (NCI4th)--First-degree murder retrial -
Constitutional speedy trial--No error**

The constitutional right to a speedy trial was not violated in a first-degree murder retrial by the extended prosecution and appeal processes in the case where the length of delay was five years and six months from indictment to retrial, but only approximately eighteen months passed from the time of remand on the first appeal to the second trial and the primary reason for delay was defendant's appeal of his first conviction. The only prejudice defendant attributes to the delay was the unavailability of a witness for the prosecution who died before the second trial and whose prior testimony, including the cross-examination by defendant, was read into the record at the second trial at the prosecution's request. A balancing of the factors set out in *State v. McCollum*, 334 N.C. 208, indicates that defendant's constitutional right to a speedy trial was not violated.