Speedy Trial Issues (Constitutional and Statutory) and Interstate Agreement on Detainers

Online References

Summaries of relevant recent cases are available under *Speedy Trial and Related Issues* in Jessica Smith, **Criminal Case Compendium**, http://www.sog.unc.edu/node/1171.

For blog posts about speedy trial issues in *North Carolina Criminal Law Blog*, go to http://sogweb.sog.unc.edu/blogs/ncclaw/. Then type "speedy trial" or other appropriate term in the search block in the upper right hand corner.

I. Statutory Speedy Trial Provisions

A. Generally

The speedy trial statutory provisions in Art. 35 of Chapter 15A (G.S. 15A-701 through -710) were repealed effective October 1, 1989.

B. Interstate Agreement on Detainers; G.S. 15A-761

1. Requires trial of charges within 180 days from time out-of-state prisoner properly notifies prosecutor

Article III(a) of the Interstate Agreement on Detainers (G.S. 15A-761) provides that an out-of-state prisoner against whom a detainer has been lodged must be tried within 180 days after the prisoner has "caused to be delivered" to the prosecutor and court written notice of the place of his or her imprisonment and a request for a final disposition to be made of the criminal charge. Continuances may granted that extend the time in which the State may prosecute the charge. *State v. Capps*, 61 N.C. App. 225 (1983). If a trial is not begun within the appropriate time period, the charge must be dismissed with prejudice (that is, the charge may not be tried again).

The beginning date for the 180-day period is when the prosecutor actually received the request, not when the prosecutor should have received the request. *State v. Treece*, 129 N.C. App. 93 (1998) (defendant mailed request on January 16, 1996 but the request was not delivered to the district attorney's office until March 18, 1996; the latter date is the beginning of the 180-day period); *State v. McQueen*, 295 N.C. 96 (1978) (no evidence district attorney's office received defendant's request).

If a prisoner is released from prison before the expiration of the 180-day period, the interstate agreement no longer provides a defendant with the right to a speedy trial. *State v. Dunlap*, 57 N.C. App. 175 (1982).

The agreement does not apply to a North Carolina prisoner who has criminal charges pending in North Carolina. *State v. Dammons*, 293 N.C. 263 (1977).

Sample cases:

State v. Ferdinando, 298 N.C. 737 (1979) (prisoner's request for speedy trial before detainer was lodged against him was ineffectual to trigger law).

State v. Vaughn, 296 N.C. 167 (1978) (prisoner's request was ineffectual because it failed to provide information required by law). See also *State v. Schirmer*, 104 N.C. App. 472 (1991) (similar ruling).

State v. Parr, 65 N.C. App. 415 (1983) (interstate agreement only applies to those charges that are basis for issuance of detainer).

State v. Prentice, 170 N.C. App. 593 (2005). The defendant was convicted and sentenced in federal court on August 7, 2001, and was transferred as a federal prisoner to the Orange County jail based on a contract to house federal prisoners between the federal government and Orange County. On August 21, 2001, the Orange County grand jury indicted the defendant for state offenses. The Orange County sheriff served the defendant with an order for arrest on August 28, 2001. The following day he appeared in state court, was informed of the charges against him, and was appointed an attorney. He then was returned to the Orange County jail and federal custody. On September 10, 2001, federal authorities transported the defendant to a federal prison in Kentucky. On May 28, 2003, the State prepared a writ of habeas corpus ad prosequendum to secure the defendant's presence in state court, and the defendant was transferred to state custody on July 15, 2003. The defendant remained in state custody through his trial, which ended on October 28, 2003. The court ruled that the State's service of the order for arrest on the defendant in federal custody was not a detainer under the Interstate Agreement on Detainers (IAD) and thus did not trigger the trial obligations under IAD (trial within 120 days once in State's jurisdiction). The court noted that the order for arrest was not filed with the Federal Bureau of Prisons or any other federal institution. Nor did the State request federal officials to hold the defendant at the end of his federal sentence or notify it before the defendant's release from federal custody.

2. Requires trial of charges within 120 days of prisoner's arrival in state after State had requested prisoner to be released to State for trial

Article IV(c) of the Interstate Agreement on Detainers (G.S. 15A-761) provides that a prisoner in another state against whom a detainer has been lodged must be tried within 120 days of prisoner's arrival in this state when the State had requested the prisoner for trial. Continuances may granted that extend the time in which the State may prosecute the charge. For cases upholding State's continuances or excluding time from the 120-day time limitation because of a defendant's continuances, see *State v. Lyszaj*, 314 N.C. 256 (1985); *State v. Vaughn*, 296 N.C. 167 (1978); *State v. Capps*, 61 N.C. App. 225 (1983); *State v. Collins*, 29 N.C. App. 478 (1976).

If a trial is not begun within the appropriate time period, the charge must be dismissed with prejudice (that is, the charge may not be tried again).

If a trial is begun within 120 days and results in a mistrial, the State is not required to try the defendant again within the 120-day period. The State only is required to use due diligence in trying the defendant again. *State v. Williams*, 33 N.C. App. 344 (1977).

3. State's duty to try prisoner before returning prisoner to other jurisdiction

Sample case:

Alabama v. Bozeman, 533 U.S. 146 (2001). An Alabama prosecutor requested and received custody, under Article IV of the Interstate Agreement on Detainers, of a prisoner in a Florida federal prison (for whom the state had filed a detainer) and arraigned him and appointed counsel on criminal charges in an Alabama state court. After spending one day in an Alabama jail, the prisoner was returned to the Florida federal prison. He later was returned to Alabama for trial. The court ruled that the act of bringing the federal prisoner to Alabama triggered Alabama's duty under subsection (e) of Article IV (see G.S. 15A-761 for North Carolina's similar provision) to try the prisoner before returning him to the Florida prison. The Court affirmed the dismissal of the Alabama charges, rejecting Alabama's argument that dismissal is inappropriate for a "technical" violation. The Court stated in dicta that a prisoner could waive his right to trial under subsection (e) of Article IV.

C. North Carolina Prisoner Requesting Trial; G.S. 15A-711 and G.S. 15-10.2

G.S. 15A-711(c) provides that a North Carolina prisoner's written request for trial filed with the clerk of court where charges are pending requires the State to proceed with a request for the prisoner under G.S. 15A-711(a) within six months from the date the prisoner's request is filed with the clerk. If the State does not comply with this six-month time limitation, then the charges must be dismissed. G.S. 15A-711(a) authorizes the prosecutor to make a written request to the custodian of the institution where the prisoner is located to release the prisoner for a period of 60 days to try the prisoner.

In *State v. Dammons*, 293 N.C. 263 (1977), the court stated that the legislature envisioned that trial would begin within eight months from the defendant's request—six months under G.S. 15A-711(c) and the 60-day release provision in G.S. 15A-711(a). However, in *State v. Doisey*, 162 N.C. App. 447 (2004), the court stated that the dismissal of charges is based solely on whether the State failed within six months of the defendant's request to be produced for trial to request the defendant's release from a penal institution for trial. The dismissal of charges is not based on the State's failure to try the defendant within a particular time period. See also *State v. Turner*, 34 N.C. App. 78 (1977) (State proceeded within six months limitation when it requested defendant from state prison; trial is not required within six months); *State v. Williamson*, ___ N.C. App. ___, 711 S.E.2d 765 (2011) (court noted that G.S. 15A-711 is not a speedy trial statute).

A prisoner's failure to serve a copy of his or her written request on the prosecutor in the manner provided by Rule 5(b) of the Rules of Civil Procedure [see G.S. 15A-711(c)] bars the dismissal of charges. *State v. Pickens*, 346 N.C. 628 (1997); *State v. Hege*, 78 N.C. App. 435 (1985).

For cases on G.S. 15-10.2, see *State v. McKoy*, 294 N.C. 134 (1978); *State v. Dammons*, 293 N.C. 263 (1977).

II. Constitutional Issues

A. Constitutional Protections

Every defendant has a right to a speedy trial under the Sixth and Fourteenth Amendments to the federal constitution.

1. Due Process Clause

Speedy trial rights under the Fourteenth Amendment protect "a putative defendant against delayed accusations" and are activated when due process standards of fundamental fairness are violated by the period of delay between the time the defendant allegedly committed the crime and when the defendant is actually accused of that crime. *United States v. Lovasco*, 431 U.S. 783 (1977); *State v. McCoy*, 303 N.C. 1 (1981).

2. Sixth Amendment

The Sixth Amendment right to a speedy trial applies only to post-accusation delays and is triggered when criminal prosecution begins and a person is "formally accused" by indictment or arrest, whichever occurs first. *United States v. Marion*, 404 U.S. 307 (1971); *United States v. Lovasco*, 431 U.S. 783 (1977); *State v. McCoy*, 303 N.C. 1 (1981). The court in *McCoy* struggled with whether Sixth Amendment speedy trial provisions attach earlier and apply to pre-indictment delays between the time an arrest warrant is issued and when it is served. The court did not resolve the issue but concluded that neither Sixth nor Fourteenth Amendment speedy trial protections were violated under the facts of that case.

B. Balancing Test to Determine Due Process Violations

Due process standards apply to periods of delay between the occurrence of a crime and when a defendant is formally accused of committing that crime. Two factors, discussed below, are considered in determining whether a pre-accusation delay violates due process. The defendant has the initial burden of going forward with the evidence to show a violation.

1. Prejudice to the defendant—the delay actually prejudiced the conduct of his or her defense, and

2. Reasonableness of the delay—it was "unreasonable, unjustified, and engaged in by the prosecution deliberately and unnecessarily in order to gain tactical advantage over the defendant." *State v. McCoy*, 303 N.C. 1, 7-8 (1981). See also *State v. Goldman*, 311 N.C. 338 (1984); *State v. Stanford*, 169 N.C. App. 214 (2005); *State v. Martin*, 195 N.C. App. 43 (2009).

C. Balancing Test to Determine Sixth Amendment Violations

In determining whether a defendant has been deprived of a speedy trial, the burden of proof is initially with the defendant to show a prima facie case that substantial delay was caused by the "neglect or willfulness of the prosecution," and then shifts to the State to justify the reason for the delay. *Doggett v. United States*, 505 U.S. 647 (1992) (based on facts in this case, delay of eight and one-half years between defendant's indictment and his arrest violated his right to a speedy trial); *Barker v. Wingo*, 407 U.S. 514 (1992) (based on facts in this case, delay of five years did not violate right to speedy trial); *State v. Johnson*, 275 N.C. 264 (1969); *State v. McKoy*, 294 N.C. 134 (1977). The court weighs the following four factors in comparing the conduct of the prosecution and defense:

1. Length of the delay

Although this factor is not determinative, the court is not required to consider the three other factors unless the length of the delay is "presumptively prejudicial." *Barker v. Wingo*, 407 U.S. 514 (1972); *State v. McCoy*, 303 N.C. 1 (1981).

There are no explicit guidelines on what length of delay is presumed prejudicial. However, some cases evaluating this factor include: *State v. Pippin*, 72 N.C. App. 387 (1985) (delay of fourteen months between arrest and murder trial was prima facie unreasonable requiring State to justify delay); *State v. McCoy*, 303 N.C. 1 (1981) (delay of eleven months between issuance of arrest warrant and murder trial was not presumptively prejudicial); *State v. Avery*, 302 N.C. 517 (1981) (delay of six months between arrest and murder trial was not presumptively prejudicial); *State v. McKoy*, 294 N.C. 134 (1977) (twenty-two month delay between arrest and trial is "unusual" necessitating consideration of the three remaining factors). See also *State v. Lyszaj*, 314 N.C. 256 (1985); *State v. Jones*, 310 N.C. 716 (1984).

Cases not finding a speedy trial violation: *State v. Lee*, ___ N.C. App. ___ (2012) (twenty-two month delay from arrest to trial); *State v. McBride*, 187 N.C. App. 496 (2009) (delay of three years and seven months from arrest to trial did not violate defendant's constitutional right to a speedy trial); *State v. Doisey*, 162 N.C. App. 447 (2004) (no speedy trial violation for approximately two-year delay); *State v. Strickland*, 153 N.C. App. 581 (2002) (no speedy trial violation when delay of 940 days from arrest to trial while defendant remained incarcerated); *State v. Hammond*, 141 N.C. App. 152, *affirmed*, 354 N.C. 353 (2001) (four-and-one-half year delay; no speedy trial violation); *State v. Spivey*, 357 N.C. 114 (2003) (four-and-one-half year delay; no speedy trial violation).

Cases finding a speedy trial violation: *State v. Washington*, 192 N.C. App. 277 (2008) (almost five year delay from arrest to trial); *State v. Johnson*, 275 N.C. 264 (1969); *State v. McKoy*, 294 N.C. 134 (1977); *State v. Pippin*, 72 N.C. App. 387 (1985).

The time between a good-faith dismissal of criminal charges and the filing of new charges is not to be considered in determining a violation of the right to a speedy trial. *United States v. MacDonald*, 456 U.S. 1 (1982).

For a case that involved a determination of the period of delay when case was appealed for trial de novo, see *State v. Friend*, ___ N.C. App. ___, 724 S.E.2d 85 (2012).

2. Cause of the delay

The weight allocated to any delay caused by the State depends on the reason for the delay—that is, whether the delay was for investigative purposes, due to negligence, or a result of a deliberate attempt by the State to "hamper the defense" or to gain "tactical advantage" over the defendant. See *United States v. Lovasco*, 431 U.S. 783 (1977); *Barker v. Wingo*, 407 U.S. 514 (1972); *State v. McKoy*, 294 N.C. 134 (1977); *State v. Pippin*, 72 N.C. App. 387 (1985); *State v. Bare*, 77 N.C. App. 516 (1985); *State v. Brooks*, 136 N.C. App. 124 (1999) (part of delay attributed to defendant's firing his court-appointed lawyers).

Delay caused by appointed defense counsel or a public defender is not attributable to the State in determining whether a defendant's speedy trial right was violated, unless the delay resulted from a systemic breakdown in the public defender system. *Vermont v. Brillon*, 129 S. Ct. 1283 (2009).

3. Defendant's assertion of right to speedy trial

Whether the defendant caused all or part of the delay or acquiesced in the delay (by, for example, failing to assert the right to a speedy trial). *State v. Spinks*, 136 N.C. App. 153 (1999). But see *State v. Chaplin*, 122 N.C. App. 659 (1996) (court dismissed charge even though defendant did not assert right to speedy trial until 30 days before case was tried).

4. Prejudice to the defendant

Whether the defendant was prejudiced as a result of the delay and the nature and degree of that prejudice. See, for example, *State v. Lundy*, 135 N.C. App. 13 (1999) (defendant failed to show how delay negatively impacted testimony of defense witnesses).

D. Remedy for Constitutional Violation

The court must dismiss the charges with prejudice if the defendant shows that he or she has been denied a speedy trial under the state or federal constitution. G.S. 15A-954(a)(3); *Strunk v. United States*, 412 U.S. 434 (1973). See also *State v. Woodward*, 318 N.C. 276 (1986) (court upholds district court judge's dismissal of impaired driving case "for failure of State to prosecute").