Order

Michigan Supreme Court
Lansing, Michigan

July 29, 2019

159453

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 159453
COA: 347329
Genesee CC: 17-041686-FC

MAURICE ANTOINE-HAKE DOBSON-EL,
Defendant-Appellant.

/

On order of the Court, the application for leave to appeal the March 12, 2019 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 29, 2019

Clerk

a0722

Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V MAURICE ANTOINE-HAKE DOBSON-EL

Docket No. 347329

LC No. 17-041686-FC

Patrick M. Meter
Presiding Judge

Amy Ronayne Krause

Brock A. Swartzle
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 12 2019
Date

Chief Clerk

STATE OF MICHIGAN

IN THE MICHIGAN COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

MAURICE ANTOINE-HAKEM DOBSON-EL,

Defendant-Appellant.

Court of Appeals
No.:

Genesee County Circuit
Court No.: 17-041686-FC

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DELAYED APPLICATION FOR LEAVE TO APPEAL

FILED VIA TRUEFILING

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STATEMENT OF JURISDICTION/REASON FOR DELAY

Appellant, Maurice Antoine-Hakem Dobson-El, appeared before the Genesee County Circuit Court. On October 30, 2018, Dobson-El entered into a plea agreement. On December 3, 2018, Dobson-El was sentenced and, on the same date, he made a timely request for the appointment of appellate counsel. On December 17, 2018, the undersigned was appointed. This Court has jurisdiction to consider granting leave to appeal. See MCR 7.203(B)(1), MCR 7.205(G)(4)(c). This application is filed well within six-months of sentencing. The undersigned time to collect the record, review the record, meet Mr. Dobson-El to review the potential risks and potential benefits, if any, in pursuing the appeal.

QUESTION PRESENTED

ISSUE ONE

IF GRANTED LEAVE, MR. DOBSON-EL WOULD ARGUE THAT HIS CASE SHOULD HAVE BEEN DISMISSED FOR A VIOLATION OF HIS RIGHT TO A SPEEDY TRIAL.

The Trial-Court answered: No.

Defendant-Appellant answers: Yes.

STATEMENT OF FACTS

Defendant-Appellant, Maurice Antoine-Hakem Dobson-El, appeared before the Genesee County Circuit Court, the Hon. Celeste D. Bell presiding, on one count of premeditated first-degree murder,[1] three counts of assault with intent to commit murder,[2] four counts of felony-firearm,[3] and one malicious destruction of property count.[4] The charges arose from a May 4, 2017, shooting in the City of Flint. Dobson-El was arrested on said date and bound over to circuit court on July 18, 2017. *See* Register of Actions Entry 1.

On August 9, 2017, the matter was set for a January 8, 2018, trial date. *See* Register of Actions Entry 4. That date was adjourned by the court. *See* Register of Actions Entry 10. Several pre-trial hearings occurred thereafter. On May 16, 2018, an adjournment occurred on the stipulation of both parties. *See* Register of Actions Entry 22.

On June 25, 2018, a motion for speedy trial and bond (citing the 180-day rule) was filed. *See* Register of Actions Entry 24. On July 23, 2018, the motion was denied; the delay was attributed to outstanding lab reports (T. 7/23/18 at 12-13). On August 22, 2018, a "9/25/18" trial date was set; on September 12, 2018, it was adjourned to "10/2/2018." *See* Register of Actions Entries 32 and 36. On September 27, 2018, said date was set aside and an October 8, 2018, motion hearing date was set. *See* Register of Actions Entry 39.

On October 8, 2018, a defense motion for bond reduction under the 180-day rule was heard. *See* Register of Actions Entry 45. The court recognized the passage of time was a problem and granted bond (T. 10/8/18 at 9 line 18-19).

On October 29, 2018, a motion hearing was held. The motion sought a ruling on whether a self-defense instruction would be allowed at the beginning of the trial. Based on the parties version of the incident, the prosecution prevailed (T. 10/29/18 at 11-13). A plea offer was placed on the record

[1] MCL 750.316 (Count 1)
[2] MCL 750.83 (Count 3, 5, and 7)
[3] MCL 750.227b (Counts 2, 4, 6, and 8)
[4] MCL 750.377a (Count 9)

(T. 10/29/18 at 15).

On October 30, 2018, Dobson-El entered into a plea agreement. Count 1 was amended to murder in the second-degree.[5] Dobson-El pled no contest to the amended Count 1 and no contest to Counts 2 and 3 as charged. Counts 4, 5, 6, 7, 8 and 9 were dismissed. (T. Plea at 3). There was an agreement that the sentence on Count I would be 264 to 528-months. (T. Plea at 4).

The court reviewed the agreement and advice of rights form with Dobson-El (T. Plea at 5-9; *See* Register of Actions Entries 59 through 61). A factual basis was derived from Dobson-El's statement to police, an autopsy report, and preliminary exam testimony (T. Plea at 10-11).[6] The court accepted the plea; counsel agreed that the court rules were met (T. Plea at 11). The court noted that the two families (that of the decedent and the defendant) had her sympathy as, "This is a sad case." (T. Plea at 12).

According to the PSIR, Dobson-El, age 24, is a native of Flint, had no felony or juvenile record, three driving-related misdemeanors, no psychiatric history and no physical handicap. *See* Cover. He was raised in a stable home, obtained a high school degree and some college, had one child, and an employment history. *See* "Evaluation and Plan." He had no gang involvement. He had two brothers who were killed in homicides. His guidelines range was scored at Level C-III of the M2 Grid, being 225 to 375-months or life.

According to the PSIR:

> The within offense involved the defendant exiting his mother's house, shooting and killing the driver who was stopped next door to drive a resident to a job interview. In the process, the defendant also shot three other passengers who subsequently fled the vehicle. [PSIR at Evaluation and Plan].
>
> ***
>
> To [Dobson's] credit, the defendant did call emergency services to report the shooting on the morning of the incident. Also, the defendant reported that he did not realize the van's passengers were also shot and injured; a fact for which he expressed remorse. [*Id*].

[5] MCL 750.317 (Count 1)

[6] The two volume exam and Mr. Dobson-El's statement (a 57-page transcript) are in the circuit court file. Trial counsel provided her entire file to counsel on a 5.15 GB flash drive.

Two of the other occupants sustained non-fatal bullet injuries to their legs; the fourth sustained a non-fatal bullet injury to the temple and sinus area of the head. *Id.*

The PSIR explains, however, that Dobson-El believed the driver (Mr. Sharpe) was involved in the killing of his (Dobson-El's) brother, had not been held accountable, and continued to threaten Dobson-El and his people. *Id.* Police reports indicate that Dobson-El reported prior shootings to the police, which caused him to obtain a CPL license. *Id.* Dobson-El reported that Mr. Sharpe shot at him the day prior to the subject shooting – something the prosecution did not dispute – and apparently earlier on the day of the shooting. *Id.*

On December 3, 2018, Dobson-El was sentenced. Challenges to the guidelines were argued (T. Sentencing at 9-11).[7] The defense argued that Dobson-El was "unlike 99.9 percent" of her clients in similar cases, as to his own qualities, the support of his people, and as to his being "substantially in fear for his life and his mother's life who was in the home with him" (T. Sentence at 13-14). Also, he was "exceedingly remorseful ... especially to the victims herein that there was absolutely no history with." (T. Sentence at 15). Dobson-El expressed remorse and apologized when it was his time to speak (T. Sentebce at 15).

The court noted Dobson-El's remarkable family support but, even taking Dobson's fear into account, the court found that the shooting should not have occurred (T. Sentence at 16-17). But because Dobson-El took responsibility for his actions, the court followed the parties agreement and imposed a sentence of 264 to 528 months on Count 1 and a flat two years with 578 days credit on Count 2. *Id.* On Count 3 the court imposed 135 to 225-months (T. Sentence at 18). No jail credit was given on Counts 1 and 3. *Id.*

Mr. Dobson-El made a timely request for the appointment of appellate counsel. On December 17, 2018, the undersigned was appointed. Dobson-El seeks leave to appeal.

[7] The only challenge the guidelines variable the defense did not prevail on was as to the scoring of OV 6. Even if OV 6 had not been scored, the advisory guidelines range would not have changed.

ARGUMENT

ISSUE ONE

IF GRANTED LEAVE, MR. DOBSON-EL WOULD ARGUE THAT HIS CASE SHOULD HAVE BEEN DISMISSED FOR A VIOLATION OF HIS RIGHT TO A SPEEDY TRIAL.

I. Standard of Review / Issue Preservation

Defendant preserved this claim of error. *See* Exhibit One, "Defendant's Renewed Motion for Speedy Trial and for Bond Reduction Pursuant to MCR 6.004," filed on October 1, 2018. This Court "review[s] this constitutional issue de novo." *People v. Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999).

II. Introduction

The defense would have difficulty showing prejudice caused by the pre-trial delay. Dobson-El gave the police a confession. This Court has observed that, "[O]ur Supreme Court has repeatedly recognized in the context of lengthy pretrial incarcerations that the most significant concern is whether the defendant's ability to defend himself or herself has been prejudiced." *People v. Waclawski*, 286 Mich App 634, 668–669; 780 NW2d 321 (2009).

That said, this is a sad case. Mr. Sharpe fired at Dobson-El in the past and was likely involved in killing his brother. The prosecutor never disputed that and instead focused on the missing imminent danger requirement that is necessary for a successful self-defense claim. The parties weighed the equities and arrived at an agreement that spared Dobson-El the risk of serving life without parole. It would be foolish to upset that agreement. Instead, we raise an issue Dobson-El has concerns about.

III. The Standards

As this Court has explained, a defendant has the right to a speedy trial under the federal and Michigan constitutions, which the Michigan Legislature statutorily enforces. U.S. Const., Am. VI; Const. 1963, art. 1 § 20; MCL 768.1. This right ensures that a guilty verdict results only from

a valid foundation in fact. See *People v. Eaton*, 184 Mich App 649, 655–656; 459 NW2d 86 (1990). But see *United States v. MacDonald*, 456 US 1, 8–9; 102 SCt 1497; 71 LEd 2d 696 (1982).

"The time for judging whether the right to a speedy trial has been violated runs from the date of the defendant's arrest." *People v. Williams*, 475 Mich 245, 261; 716 NW2d 208 (2006). Defendant was arrested on May 4, 2017, and on October 30, 2018, he resolved his case by entering into a plea agreement.

Michigan courts apply the four-part balancing test articulated in *Barker v. Wingo*, 407 US 514; 92 SCt 2182; 33 LEd 2d 101 (1972), to determine if a pretrial delay violated a defendant's right to a speedy trial. See *People v. Collins*, 388 Mich 680; 202 NW2d 769 (1972). The test requires a court to consider "(1) the length of the delay, (2) the reasons for the delay, (3) the defendant's assertion of the right, and (4) prejudice to the defendant." *People v. Williams*, 163 Mich App 744, 755; 415 NW2d 301 (1987).

A delay that is under eighteen months requires a defendant to prove that the defendant suffered prejudice. *People v. Taylor*, 110 Mich App 823, 828–829; 314 NW2d 498 (1981). However, a delay of eighteen months or more, is presumed prejudicial and places a burden on the prosecutor to rebut that presumption. *People v. Simpson*, 207 Mich App 560, 563; 526 NW2d 33 (1994). [*Cain*, 238 Mich App at 111–112.]

IV. Application of the Standards

We begin with the last element, prejudice:

Arrest	Date of ReNewed Motion	Date of Plea (Trial Date)	Passage of Time
May 4, 2017	October 1, 2018	⟶	16 months and 27 days
May 4, 2017	⟶	October 30, 2018	17 months and 26 days

This Court has described 'prejudice' as a "critical" part of the analysis. *Id.* at 112. Because the time between defendant's arrest and his trial date was under 18-months, prejudice is not presumed, and the burden is on defendant to prove that he suffered prejudice. *Id.*

There are two types of prejudice recognized in a speedy trial claim: "prejudice to the person and prejudice to the defense." *People v. Gilmore*, 222 Mich App 442, 461–462; 564 NW2d 158 (1997). As our Supreme Court has explained, "[p]rejudice to the defense is the more serious concern, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *People v. Williams*, 475 Mich 245, 264; 716 NW2d 208 (2006) (quotation marks and citations omitted).

In this case, defendant did not attempt to argue that he suffered prejudice to his defense, nor is any such prejudice apparent from the record. Instead, the defense merged their speedy trial argument into a request for bond under the 180-day rule MCR 6.004. Frankly, there is no evidence that the just under 18-months that passed between Dobson-El's arrest and his trial date (at which he pled-out) caused any evidence to go missing, any witnesses to be lost, or otherwise affected defendant's ability to present a defense.

Defendant instead argues that he suffered personal prejudice. In *United States v. Marion*, 404 US 307, 320; 92 SCt 455; 30 LEd 2d 468 (1971) the United States Supreme Court wrote:

> It is apparent also that very little support for appellees' position emerges from a consideration of the purposes of the Sixth Amendment's speedy trial provision, a guarantee that this Court has termed an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself. Inordinate delay between arrest, indictment, and trial may impair a defendant's ability to present an effective defense.
>
> But the major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to an accused's defense. To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime. Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.... So viewed, it is readily understandable that it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment. [Quotation marks and citations omitted.]

Mr. Dobson El's repeated attempts to inform the trial court that he wanted to be brought to trial implicates the personal prejudice discussed in *Marion*. It is true that this Court has written that, "General allegations of prejudice are insufficient to establish that a defendant was denied the right to a speedy trial." *People v. Walker*, 276 Mich App 528, 544–545; 741 NW2d 843 (2007), vacated in part on other grounds 480 Mich 1059 (2008). But to insure that the constitutional right to a speedy trial has meaning, and does not become a mere form of words, it should be applied to the facts of this case.

If the Court finds prejudice, the other factors also need to demonstrate a violation of the speedy trial right. The first factor, the length of the delay, weighs in favor of defendant – it is just under 18 months. But see, *People v. Holtzer*, 255 Mich App 478, 491–495; 660 NW2d 405 (2003) (finding a 19–month delay "somewhat lengthy," but ultimately not warranting dismissal); *Cain*, 238 Mich App at 112–113 (explaining that a 27–month delay was "longer than a routine period between arrest and trial [,]" but did "not approach the outer limits of other delays" that this Court has addressed).

The second factor, reasons for the delay, supports defendant's claim. "In assessing the reasons for delay, this Court must examine whether each period of delay is attributable to the defendant or the prosecution." *People v. Waclawski*, 286 Mich App 634, 666; 780 NW2d 321 (2009). Here, the delay appears to be attributable to producing lab reports that never were produced – the testing was never done. Unexplained delays or delays inherent in the legal system are charged against the prosecution. *Id.* But while delays inherent in the legal system are technically charged to the prosecution, "they are given a neutral tint and are assigned only minimal weight in determining whether a defendant was denied a speedy trial." *Id.* (quotation omitted).

The third factor is the assertion of the right to a speedy trial. *Cain*, 238 Mich. App. at 111–112. Defendant did assert his right to a speedy trial on multiple occasions. On June 25, 2018, a motion for a speedy trial was filed. *See* Register of Actions Entry 24. On July 23, 2018, the motion was

denied; the delay was attributed to outstanding lab reports (T. 7/23/18 at 12-13). Then we have the events in October 2018, which have been discussed. This factor weights in favor of defendant.

V. Conclusion

If granted leave to appeal on this issue, the defense would argue that Mr. Dobson-El's Sixth Amendment right to a speedy trial was violated. If the Court, however, does not grant leave to appeal on this issue, we have nonetheless offered the file to this Court for its review should it choose to find other error in the record that appointed appellate counsel has not found and therefore does not believe exists.

SUMMARY AND RELIEF REQUESTED

WHEREFORE, the Defendant-Appellant, Maurice Antoine-Hakem Dobson-El, through appointed counsel, thanks this Honorable Court for its time and asks that the Court: (1) Consider granting him leave to appeal on the issue presented or, (2) If the Court finds other error that disfavored Dobson-El, grant relief as to that error.

Respectfully submitted,

MICHAEL A. FARAONE, P.C.

/s/ Michael A. Faraone

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Dated: January 20, 2019

STATE OF MICHIGAN
IN THE 7TH CIRCUIT COURT FOR THE COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

v

MAURICE ANTOINE-HAKEEM DOBSON-EL

Defendant,

Case No. 17-041686-FC

Hon. Celeste D. Bell

FILED
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BY DEPUTY CLERK

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DEFENDANT'S RENEWED MOTION FOR SPEEDY TRIAL AND FOR BOND REDUCTION PURSUANT TO MCR 6.004

NOW COMES DEFENDANT, by and through his Attorney, Jessica R. Mainprize-Hajek, who states as follows:

1. Defendant stands before this Honorable Court charged with the following: Count I: First Degree Premeditated Murder; Count II: Felony Firearm; Count III: Assault with Intent to Murder; Count IV: Felony Firearm; Count V: Assault with Intent to Murder; Count VI: Felony Firearm; Count VII: Assault with Intent to Murder; Count VIII: Felony Firearm; Count IX: MDOP $200<$1000.
2. Mr. Dobson is currently held without bond.
3. The alleged offense occurred on May 4, 2017 and Mr. Dobson has been incarcerated since that time.
4. On June 25, 2018, Defendant by and through counsel previously filed this same motion.
5. Since such date, several adjournments of pre-trials and trial dates have been adjourned due to the court's schedule.
6. Defendant has not appeared in court since the July 23rd date.
7. MCR 6.004(A) states that "[t]he defendant and the people are entitled to a speedy trial and to a speedy resolution of all matters before the court. Whenever the defendant's constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice.

8. Defendant was arraigned on the charges on May 8, 2017 and held even prior to such date.
9. Mr. Dobson-El has been waiting laboratory reports in this matter for over 1 year, however, has recently been advised by the prosecutor that such lab reports may not be forthcoming.
10. MCR 6.004(C) states that in a felony case in which the defendant has been incarcerated for a period of 180 days or more to answer for the same crime or a crime based on the same conduct arising from the same criminal episode . . . the defendant must be released on a personal recognizance, unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person in the community.
11. MRE 6.004(C) continues by listing time periods to be excluded when computing the 180 days including but not limited to periods of incompetency, adjournments requested by defendant's lawyer, adjournments requested by the prosecution if the prosecution demonstrates the unavailability of material evidence or exceptional circumstances necessitating more time to prepare the state's case.
12. Herein, there is no question that Mr. Dobson-El has been held in both cases for longer than 180 days.
13. Defendant asserts that there have been previous trial days set in this matter, however, the prosecution has been unable to proceed due to the lack of forensic reports being completed.
14. There is presently a pre-trial date set for November 29, 2018.
15. Defendant further asserts that the speedy trial requirement of MCR 6.004(C) has clearly been violated through no fault of Mr. Dobson-El.
16. Defendant asserts that though the charges herein are serious the Defendant asserts his innocence and is, in fact, clearly innocent until proven guilty beyond a reasonable doubt.
17. Further, Defendant asserts he has no prior record, was a valid CPL holder, and in fact acted in self-defense herein.

WHEREFORE, the Mr. Dobson-El requests that he be granted a personal recognizance bond pursuant to the Michigan Rules of Court in the interests of justice and fairness.

Respectfully Submitted,

/s/ Jessica R Mainprize-Hajek
Jessica R. Mainprize-Hajek P70942
Attorney for Defendant

Dated: September 28, 2018