

No. 25-3970

- 2 -

On October 20, Jones's trial began. *Id.* A jury convicted him on all charges, except for one weapons-related offense. *Id.* at *1. The trial court sentenced him to life imprisonment, and the Ohio Court of Appeals affirmed. *Id.*

In 2025, Jones filed this § 2254 petition in the district court, claiming that the delay between his arrest and trial violated his speedy trial rights. A magistrate judge recommended denying Jones's petition because the state court reasonably determined that Jones's speedy-trial-rights argument lacked merit. Over Jones's objections, the district court adopted the magistrate judge's recommendation and denied the petition. The court also denied Jones a COA.

A court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant must show that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Under the Antiterrorism and Effective Death Penalty Act, a district court may not grant a habeas petition on a claim adjudicated on the merits in the state courts unless the adjudication resulted in a decision that (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court," or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). If the state courts adjudicated the petitioner's claim on the merits, the relevant question at the COA stage is whether jurists of reason could debate the district court's application of § 2254(d) to that claim. *Miller-El*, 537 U.S. at 336. If "reasonable jurists could debate whether . . . the petition should have been resolved in a different manner," then the petitioner has met his burden to obtain a COA. *Id.* (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

The Sixth Amendment guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. To determine whether a defendant received a speedy trial, courts consider: (1) the length of the delay, (2) the reasons for

No. 25-3970

- 3 -

it, (3) whether the defendant timely asserted his right to a speedy trial, and (4) whether he suffered any prejudice. *United States v. Allen*, 86 F.4th 295, 304 (6th Cir. 2023) (per curiam). A delay exceeding one year is presumptively prejudicial and triggers consideration of the remaining factors. *United States v. Richards*, 164 F.4th 508, 518 (6th Cir. 2026).

The Ohio Court of Appeals determined that no Sixth Amendment violation occurred because Jones filed multiple motions that contributed to the delay, and he failed to show that the delay prejudiced his defense. *Jones*, 2021 WL 4340826, at *4-5. Jones asserts that the Ohio Court of Appeals erroneously counted the May 21, December 2, February 18, May 11, August 24, and October 14 dates against him. He also asserts that he suffered prejudice because the trial court did not grant him a continuance to obtain records from the Department of Children and Family Services (DCFS) and to locate a DCFS employee.

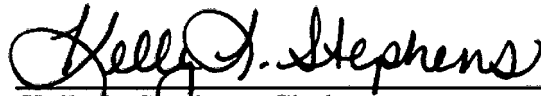
Reasonable jurists would not debate the district court's denial of this claim. The length of the delay between Jones's arrest and trial exceeded one year: police arrested him on March 12, 2019, and his trial began on October 20, 2020. *Id.* at *3-4. But Jones caused much of the delay. He represented himself during stages of the pretrial process, requested standby counsel and a psychiatric evaluation, and filed numerous motions. *Id.* He also sought to recuse the trial court judge, which required adjudication by the Ohio Supreme Court. *Id.* at *3. And the COVID-19 pandemic justifiably delayed the trial by several months. *Id.* at *3-4; *see Allen*, 86 F.4th at 305. Moreover, although Jones timely asserted his right to a speedy trial, he failed to show "substantial" prejudice. *United States v. Schuster*, 135 F.4th 1037, 1054 (6th Cir. 2025). He asserts that he could not locate a DCFS social worker and did not receive certain DCFS records. But he subpoenaed the social worker. *Jones*, 2021 WL 4340826, at *7. And he does not otherwise explain what the witness's testimony and DCFS records would have shown or how they would have affected his trial. *See Allen*, 86 F.4th at 306. Reasonable jurists thus would not debate the district court's conclusion that the Ohio Court of Appeals reasonably applied clearly established federal law in denying Jones's claim.

No. 25-3970

- 4 -

For these reasons, Jones's COA application is **DENIED**. The motion to proceed in forma pauperis is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SHAWN-LAMAR JONES,	)	CASE NO. 1:22-CV-02155
	)	
Petitioner,	)	JUDGE CHARLES ESQUE FLEMING
	)	
vs.	)	MAGISTRATE JUDGE CARMEN E.
	)	HENDERSON
WARDEN KENNETH BLACK,	)	
	)	OPINION AND ORDER ADOPTING
Respondent.	)	MAGISTRATE JUDGE'S REPORT
	)	AND RECOMMENDATION

On November 30, 2022, Petitioner Shawn-Lamar Jones ("Petitioner") filed a Petition for Writ of Habeas Corpus ("Petition"), pursuant to 28 U.S.C. § 2254. (ECF No. 1). On May 8, 2024, Magistrate Judge Carmen E. Henderson filed a Report and Recommendation ("R&R") recommending that the Court deny and dismiss the Petition. (ECF No. 11).

Fed. R. Civ. P. 72(b)(2) provides that the parties may object to a Magistrate Judge's R&R within 14 days after service. The R&R also gave the parties notice of the 14-day time limit for filing objections. (ECF No. 12, PageID# 1342). Under the Federal Magistrates Act, a district court must conduct a *de novo* review of those portions of the R&R to which the parties have objected. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). Absent objection, a district court may adopt an R&R without further review. *See Peretz v. United States*, 501 U.S. 923, 939 (1991); *Thomas v. Arn*, 474 U.S. 140, 141-42 (1985). The Court **ADOPTS** sections II. (Factual Background), III. (Additional State Procedural History), IV. (Federal Habeas Corpus Petition), and V. (Applicable Law) of the R&R and incorporates those sections as if fully rewritten in this Order.

On July 26, 2024, Petitioner filed his objections to the R&R. (ECF No. 14). He objected to a portion of the R&R quoting the decision of the Ohio court of appeals, in which the court of appeals determined, based on Ohio Rev. Code Ann. § 2945.71, that the trial court had not violated Petitioner's speedy-trial right:

[W]e need not reach the issue whether the triple[-]count provision is applicable to this case[,] [h]owever, because the record reflects that only 55 days of speedy-trial time had expired by the time Jones was brought to trial. Therefore, even if we were to assume without deciding that the triple-count provision applied to this case, only 55 of the 90 days expired by the time trial commenced.

(ECF No. 14, PageID #1381) (quoting *State of Ohio v. Jones*, No. 110081, 2021 WL 4340826, at *4 (Ohio Ct. App. Sept. 23, 2021)). Petitioner objects, stating that the court of appeals and Magistrate Judge "erred by not correctly counting the Petitioner's days spent in Cuyahoga County Jail awaiting trial." (*Id.* at PageID #1382) (emphasis omitted).

The Magistrate Judge did not make any factual finding concerning the number of days in which Petitioner was in custody awaiting trial. This is because, as the Magistrate Judge explained, "Ohio's statutory right to a speedy trial is not cognizable in a habeas action." (ECF No. 11, PageID #1368) (quoting *West v. Sloan*, No. 17-3704, 2017 WL 6762418, at *2 (6th Cir. Dec. 4, 2017) (citing *Norris v. Schotten*, 146 F.3d 314, 328 (6th Cir. 1998))).

Instead, the Magistrate Judge reviewed Petitioner's federal speedy trial claim and concluded that it should be dismissed. (*Id.* at PageID #1370). Petitioner briefly objects to the Magistrate Judge's conclusion that "Petitioner's failure to show prejudice 'is alone sufficient to tip the balance [of the *Barker*¹ factors] in favor of the state court's finding no violation.'" (ECF No. 14, PageID #1387) (quoting ECF No. 11, PageID #1370) (quoting *Brown v. Bobby*, 656 F.3d 325, 337 (6th Cir. 2011)). Petitioner claims that litigants are presumed prejudiced when denied

¹ *Barker v. Wingo*, 407 U.S. 514 (1972).

access to relevant records, though he does not cite authority holding as much. (*Id.*). Petitioner also did not argue any correlation between his lack of access to Cuyahoga County Department of Children and Family Services records and the delays in his trial. The Magistrate Judge thus did not err in concluding that Petitioner was not prejudiced by the delays in his trial.²

Accordingly, the Court **ADOPTS** Magistrate Judge Grimes's R&R, incorporates it fully herein by reference, and **DENIES** and **DISMISSES** the Petition. The Court also **CERTIFIES**, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision cannot be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. Fed. R. App. P. 22(b); 28 U.S.C. § 2253(c).

IT IS SO ORDERED.

Date: November 4, 2025



CHARLES ESQUE FLEMING
UNITED STATES DISTRICT JUDGE

² To the extent that Petitioner challenges the law as stated in *Brown*, the Magistrate Judge did not err in its citation to that case for the proposition that a failure to show prejudice is alone "sufficient to tip the balance in favor of the state courts finding no violation." The more complete quote states:

Although the length of the delay surpasses the threshold required to present a speedy trial claim and *Brown* clearly asserted his speedy trial right, it is not clear that the state is more to blame for the delay or that *Brown* was prejudiced by the delay. Even if one assumes that the state is more to blame, *Brown* was not blameless and in fact was responsible for a significant portion of the delay. Regardless, *Brown* has not shown that he suffered any prejudice, in the form of either oppressive incarceration or impairment to his defense, from this over nineteen-month delay, and this alone is sufficient to tip the balance in favor of the state court's finding no violation. We explained in *United States v. Bohn*, 281 F. App'x 430, 437 (6th Cir.2008), that "a finding in the defendant's favor on each of the four *Barker* factors does not necessarily warrant dismissal of the indictment," because "[a] violation of the right to a speedy trial arises [only] when 'the circumstances of the case are such that further delay would endanger the values the right protects.'" *Id.* (quoting *Barker*, 407 U.S. at 522); see also *United States v. Love*, 178 F.3d 1297, 1999 WL 115523, at *6-8 (6th Cir. Feb. 8, 1999) (finding no violation when the first three of the four *Barker* factors weighed in favor of the defendant, but the defendant had not shown any prejudice from the delay). The state court, in short, reasonably applied *Barker* in *Brown*'s case.

Brown, 656 F.3d at 337-38. Not only is the quotation accurate, but the citation stands for precisely what the Magistrate Judge recommended here: even though two of the *Barker* factors weighed in Petitioner's favor, the lack of prejudice caused by the delay alone justifies denial of a motion to dismiss based on a violation of one's speedy-trial right.

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SHAWN-LAMAR JONES,	)	CASE NO. 1:22-CV-02155-CEF
	)	
Plaintiff,	)	JUDGE CHARLES ESQUE FLEMING
	)	
v.	)	
	)	MAGISTRATE JUDGE
WARDEN KENNETH BLACK,	)	CARMEN E. HENDERSON
	)	
Defendant,	)	REPORT & RECOMMENDATION
	)	

I. Introduction

Shawn-Lamar Jones (“Petitioner”) seeks a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner is an Ohio prisoner who is currently serving a life sentence with parole eligibility after 100 years for rape, attempted rape, gross sexual imposition, and various weapons violations. (ECF No. 1, PageID #: 1; *see* ECF No. 9-1 at Ex. 32). Petitioner now asserts a single ground for relief. (ECF No. 1, PageID #: 5). Respondent, Warden Kenneth Black, filed a return of writ on June 16, 2023. (ECF No. 9). Petitioner filed a traverse on June 28, 2023. (ECF No. 10).

This matter was referred to me under Local Rule 72.2 to prepare a report and recommendation on Jones’s petition and other case-dispositive motions. Because Petitioner’s single ground is meritless, I recommend that the Court deny his petition in its entirety and not grant him a certificate of appealability.

II. Factual Background

The Ohio Court of Appeals for the Eighth Appellate District set forth the following facts¹ on appeal:

{¶ 2} In 2019, Jones was charged in Cuyahoga C.P. No. CR-19-638172 with four counts of rape, one count of attempted rape, and three counts of gross sexual imposition; the alleged victim in all counts was under the age of 13. Each count had an additional specification alleging that Jones was a sexually violent predator. He was charged in Cuyahoga C.P. No. CR-19-638173 with carrying concealed weapons, improperly handling firearms in a motor vehicle, and two counts of having weapons while under disability.

{¶ 3} During the pretrial process, Jones filed numerous motions, including motions to dismiss and motions to suppress. In one of his motions, he moved to dismiss his case based on a violation of his speedy-trial rights that the trial court denied. The sexually violent predator specifications were dismissed prior to trial. The two cases were tried together.

{¶ 4} The record reflects that Jones began inappropriately touching the victim when she was 12 years old. She was still 12 years old when he began raping her. The victim and her family contacted the police, who investigated, and issued a warrant for Jones's arrest. On March 12, 2019, the police pulled Jones over in his car. After a prolonged standoff, Jones surrendered and a .40-caliber semi-automatic loaded handgun was recovered from the driver's side door of his Ford Taurus.

{¶ 5} A jury convicted Jones of all counts in both cases except it acquitted him of one count of having weapons while under disability in Case No. CR-19-638173. Jones was sentenced to a total sentence of life in prison with a possibility of parole after 25 years and ordered to forfeit the Ford Taurus and .40-caliber handgun.

State v. Jones, 2021-Ohio-3359, ¶¶ 2-5 (8th Dist. Ohio Ct. App. Sept. 23, 2021).

III. Additional State Procedural History

On November 25, 2020, Jones, through counsel, filed a notice of appeal. (ECF No. 9-1, Ex. 34). Jones asserted the following assignments of error:

1. The trial court erred by denying Defendant-Appellant's motion to dismiss based on violation of his right to a speedy trial as guaranteed by statute and also the

¹ The facts found by the appellate court of record "shall be presumed to be correct," and the petitioner has "the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. §2254(e)(1); *Warren v. Smith*, 161 F.3d 358, 360-61 (6th Cir. 1998), *cert. denied*, 527 U.S. 1040 (1999).

respective constitutions of the both the State of Ohio and the United States of America.

2. Defendant-Appellant was denied his constitutional right to due process and a fair and impartial jury by virtue of an abuse of discretion on behalf of the trial court in denying a request to dismiss a juror for cause who had professed potential bias and was unable to unequivocally state that he could be fair and impartial.

3. Defendant-Appellant is entitled to a new trial on the basis of ineffective assistance of counsel in violation of his rights to due process as guaranteed to him by the Sixth and Fourteenth Amendments of the United States Constitution.

(*Id.* at Ex. 37). The state filed an opposition brief and Jones filed a reply. (*Id.* at Exs. 35, 39). On September 23, 2021, the appellate court affirmed Jones's convictions. (*Id.* at Ex. 40).

Jones, through counsel, filed a notice of appeal to the Ohio Supreme Court on November 8, 2021. (*Id.* at Ex. 41). Jones included a single proposition of law in his memorandum in support of jurisdiction:

Criminal Defendants throughout the State of Ohio are being systemically denied their constitutionally protected right to a speedy trial by virtue of the arbitrary, capricious and unreasonable designation of the trial courts that speedy trial calculation is stayed via actions of defendants and/or trial continuances which, according to law, should not stay speedy trial calculation.

(*Id.* at Ex. 42). The state waived filing a response. (*Id.* at Ex. 43). The Ohio Supreme Court declined to accept jurisdiction on January 18, 2022. (*Id.* at Ex. 44). Jones moved for reconsideration of the declination of jurisdiction on January 27, 2022. (*Id.* at Ex. 45). The Ohio Supreme Court denied the motion on March 29, 2022. (*Id.* at Ex. 46).

On December 21, 2021, while his direct appeal was pending, Jones filed a pro se petition for post-conviction relief in the trial court. (*Id.* at Ex. 50). Jones raised two claims in his post-conviction petition:

1. The Defendant: Shawn-Lamar Jones, was deprived of my Sixth Amendment right to counsel because trial counsel was ineffective.
2. The Defendant: Shawn-Lamar Jones, was deprived of my fifth and fourteenth

Amendment Due Process. (Ms. Box) "CCDCFS" Records was not turned over to the Defendant Shawn-Lamar Jones, pro se, or the lawyer (Craig Smotzer).

(*Id.* at PageID #: 484, 488). The state filed a response and motion for summary judgment. (*Id.* at Ex. 51). The trial court denied Jones's post-conviction petition on February 10, 2022. (*Id.* at Ex. 52).

IV. Federal Habeas Corpus Petition

On November 30, 2022, Jones filed a pro se 28 U.S.C. § 2254 habeas petition raising a single ground for relief:

Ground One: Violation of my constitutional right to a speedy trial.

Supporting facts: 1) Tolling of 56 days due to competency evaluation was a contrary conclusion. 2) The Judge granted a 78 day trial continuance on December 2, 2019 to February 18, 2020 was not a reasonable continuance. 3) The Petitioner should have made it to Trial May 11, 2020, August 24, 2020 and October 14, 2020. The Petitioner never consented to a continuance and there was never a waiver signed by the Petitioner. 4) The Petitioner did not receive the 3 for 1 count. The Petitioner was prejudice for not receiving a continuance on October 22, 2020 to contact and locate one of his key witnesses (Delcrecia Box) as well as his other witnesses.

(ECF No. 1, PageID #: 5).

V. Applicable Law

To obtain habeas relief under 28 U.S.C. § 2254, a petitioner must show either that the state court decision (1) resulted in a decision contrary to, or involved an unreasonable application of, clearly established federal law as determined by the United States Supreme Court ("contrary to" clause); or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings ("unreasonable application" clause).

Under the contrary to clause, a federal habeas court may grant a writ if the state court "arrives at a conclusion opposite to that reached by the [United States Supreme] Court on a

question of law or [based on] a set of materially indistinguishable facts.” *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000). Under the unreasonable application clause, a federal habeas court may grant the writ “if the state court identifies the correct governing legal principle from th[e] Court’s decisions but unreasonably applied that principle to the facts of the prisoner’s case.” *Id.* at 413. “Clearly established federal law” refers to the holdings, not dicta, of the Supreme Court’s decisions as of the time of the relevant state court decision, and legal principles and standards flowing from Supreme Court precedent. *Id.* at 412; *Ruimveld v. Birkett*, 404 F.3d 1006, 1010 (6th Cir. 2005). A state court is not required to cite Supreme Court precedent or reflect on awareness of Supreme Court cases “so long as neither the reasoning nor the result of the state-court decisions contradicts” such precedent. *Early v. Packer*, 537 U.S. 3, 8 (2002); *Lopez v. Wilson*, 426 F.3d 339, 358 (6th Cir. 2005). If the Supreme Court has not addressed the petitioner’s specific claims, a reviewing district court cannot find that a state court acted contrary to, or unreasonably applied, Supreme Court precedent or clearly established federal law. *Carey v. Musladin*, 549 U.S. 70, 77 (2006); *White v. Woodall*, 572 U.S. 415, 426 (2014) (“Section 2254(d)(1) provides a remedy for instances in which a state court unreasonably applies this Court’s precedent; it does not require state courts to extend that precedent or license federal courts to treat the failure to do so as error.”).

In determining whether the state court’s decision involved an unreasonable application of law, the court uses an objective standard. *Williams*, 529 U.S. at 409. “A state court’s determination that a claim lacks merit precludes federal habeas review so long as ‘fair-minded jurists could disagree’ on the correctness of the state court’s decision.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)); *see also Bray v. Andrews*, 640 F.3d 731, 738 (6th Cir. 2011). “A state prisoner must show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well

understood and comprehended in existing law beyond any possibility for fair-minded disagreement.” *Harrington*, 562 U.S. at 103.

VI. Analysis

Jones’s single ground for relief alleges that his right to a speedy trial was violated. (ECF No. 1, PageID #: 5).

The Sixth Amendment guarantees a criminal defendant the right to a speedy trial. In evaluating a Sixth Amendment speedy-trial claim, courts must consider the following four factors: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion of his right; and (4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). None of these four factors is “either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.” *Id.* at 533, 92 S.Ct. 2182. “Rather, they are related factors and must be considered together with such other circumstances as may be relevant.” *Id.*

Alexander v. Warden, Ross Corr. Inst., 485 F. App'x 97, 100 (6th Cir. 2012).

The state appellate court reviewed Jones’s speedy trial claim on direct appeal:

{¶ 7} In the first assignment of error, Jones contends that the trial court erred in denying his motion to dismiss his indictments based on violations of his statutory and constitutional rights to a speedy trial.

{¶ 8} The right to a speedy trial is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution, made obligatory on the states by the Fourteenth Amendment. Article I, Section 10 of the Ohio Constitution guarantees an accused this same right. *State v. MacDonald*, 48 Ohio St.2d 66, 68, 357 N.E.2d 40 (1976). Although the United States Supreme Court declined to establish the exact number of days within which a trial must be held, it recognized that states may prescribe a reasonable period of time consistent with constitutional requirements. *Barker v. Wingo*, 407 U.S. 514, 523, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). In response to this authority, Ohio enacted R.C. 2945.71 that designates specific time requirements for the state to bring an accused to trial.

{¶ 9} Pursuant to R.C. 2945.71(C)(2), the state must bring a defendant to trial on felony charges within 270 days of arrest. The statutory speedy-trial period begins to run on the date the defendant is arrested, although the date of arrest is not counted when calculating speedy-trial time. *State v. Wells*, 8th Dist. Cuyahoga No. 98388, 2013-Ohio-3722, ¶ 44, 2013 WL 4680491, citing *State v. Tatum*, 3d Dist. Seneca No. 13-10-18, 2011-Ohio-3005, 2011 WL 2448972. Once the statutory limit has expired, the defendant has established a prima facie case for dismissal. *State v.*

Butcher, 27 Ohio St.3d 28, 30-31, 500 N.E.2d 1368 (1986). At that point, the burden shifts to the state to demonstrate that sufficient time was tolled pursuant to R.C. 2945.72. *Brecksville v. Cook*, 75 Ohio St.3d 53, 55-56, 661 N.E.2d 706 (1996). If the state has violated a defendant's right to a speedy trial, then the court must dismiss the charges against the defendant. R.C. 2945.73(B).

{¶ 10} Speedy-trial time is tolled by certain events delineated in R.C. 2945.72. Such tolling events include “[a]ny period of delay occasioned by the neglect or improper act of the accused,” any period of delay “necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused, and any continuances granted upon the accused's own motion,” and a “period of any reasonable continuance granted” upon any other party's motion. R.C. 2945.72(D), (E), and (H). A defendant's demand for discovery tolls the speedy-trial time until the state responds to the discovery, or for a reasonable time, whichever is sooner. *State v. Shabazz*, 8th Dist. Cuyahoga No. 95021, 2011-Ohio-2260, ¶ 26, 31, 2011 WL 1797269; R.C. 2945.72(E). Thus, the tolling period for a motion filed by the accused provides a “reasonable time” for the state to respond to motions and the court to rule on them. Courts have ruled that “30 days” is a “reasonable time.” *State v. Walker*, 8th Dist. Cuyahoga No. 99239, 2013-Ohio-3522, ¶ 15, 2013 WL 4105194, citing *State v. Byrd*, 8th Dist. Cuyahoga No. 91433, 2009-Ohio-3283, 2009 WL 1912699. Also, a reasonable continuance by the court that is agreed to by defense counsel extends the speedy-trial limit. *State v. McRae*, 55 Ohio St.2d 149, 152-153, 378 N.E.2d 476 (1978), *Cleveland v. Wronko*, 8th Dist. Cuyahoga No. 52132, 1987 WL 11088, 1987 Ohio App. LEXIS 6764, 9 (May 14, 1987).

{¶ 11} Under the “triple-count provision” contained in R.C. 2945.71(E), each day a defendant is held in jail in lieu of bail counts as three days in the speedy-trial time calculation. However, in *MacDonald*, 48 Ohio St.2d 66, 357 N.E.2d 40, the Ohio Supreme Court held the triple-count provision applies “only to those defendants held in jail in lieu of bail solely on the pending charge.” *Id.* at paragraph one of the syllabus. As such, when an accused is also being held in jail on another charge, the triple-count provision does not apply.

{¶ 12} Additionally, “[t]he Ohio Attorney General has opined that courts may suspend jury trials to prevent the spread of the coronavirus and they may do so consistent with state and federal speedy-trial obligations.” *In re Disqualification of Paris*, 161 Ohio St.3d 1285, 2020-Ohio-6875, 164 N.E.3d 509, ¶ 5, quoting *In re Disqualification of Fleegle*, 161 Ohio St.3d 1263, 2020-Ohio-5636, 163 N.E.3d 609, ¶ 7, citing 2020 Ohio Atty.Gen.Ops. No. 2020-002. In *Fleegle*, the Ohio Supreme Court held that trial judges have the authority to continue trials for defendants on a case-by-case basis without violating speedy-trial requirements and continuing a trial because of a pandemic state of emergency is reasonable under R.C. 2945.72(H). *Fleegle* at *id.*

{¶ 13} When reviewing a speedy-trial question, an appellate court must count the number of delays chargeable to each side and then determine whether the number

of days not tolled exceeded the time limits under R.C. 2945.71. *State v. Ferrell*, 8th Dist. Cuyahoga No. 93003, 2010-Ohio-2882, ¶ 20, 2010 WL 2541252. Furthermore, this court must construe the statutes strictly against the state when reviewing the legal issues in a speedy-trial claim. *Cook*, 75 Ohio St.3d at 57, 661 N.E.2d 706.

{¶ 14} Jones was arrested on March 12, 2019, and was scheduled to be arraigned on March 26, but the case was continued to March 27 at Jones's request. As of March 26, 2019, 14 days of speedy-trial time had elapsed. On March 27, Jones filed his motions for discovery and bill of particulars that tolled the time for one day until the state responded on March 28.

{¶ 15} The first pretrial was held on April 1; at this point, a total of 17 days of untolled calendar time had expired. The case was continued several times from April to August at Jones's request for ongoing discovery. Two days of untolled calendar days expired when pretrials were not held on July 15 and July 31, 2019 (they were held on July 16 and August 1 respectively), bringing the total to 19 days that are not counted against Jones. Jones, who represented himself during stages of the pretrial process, also requested new standby counsel and was examined for competency to represent himself at trial during this time. *See State v. George*, 8th Dist. Cuyahoga No. 106317, 2018-Ohio-5156, ¶ 18, 2018 WL 6721245 (A trial court's order for a competency examination tolls the speedy-trial time.).

{¶ 16} Beginning in September 2019, Jones filed a series of motions including motions to dismiss, motion to suppress evidence, and a motion for the trial court to recuse itself, all which tolled time. In October 2019, Jones filed another motion for the trial court to recuse itself, and on October 18, 2019, the Ohio Supreme Court stayed all proceedings until its ruling on Jones's affidavit of disqualification. On November 12, the Ohio Supreme Court ruled that the affidavit was meritless. On November 15, Jones moved to reinstate standby counsel and the court continued the case at Jones's request until December 2.

{¶ 17} From December 2, the court was unavailable for trial and the parties agreed to a February 18, 2020 trial date. The trial did not begin on February 18; the reason is not stated in the docket. On February 19, 2020, the trial was continued at the state's request due to witness unavailability. On March 19, 2020, the courthouse was closed due to the COVID-19 pandemic. As a result, the trial court continued the trial date until May 11, 2020. From February 18 to March 19, 2020, 30 untolled calendar days ran, making a total of 49 elapsed speedy-trial days.

{¶ 18} On May 5, 2020, a pretrial occurred and the case was continued to June 4 to select a new trial date because the COVID-19 pandemic was still ongoing, the court was closed to the public, and no jury trials were being held. The pretrial set for June 4 did not occur until June 10; therefore, 6 days passed for a total of 55 days not counted against Jones. The next pretrial occurred on June 10, 2020, and the trial court reset trial for August 24, 2020 because of the ongoing COVID-19 pandemic.

On August 11, a pretrial occurred and the trial court scheduled a new trial date for October 14 at Jones's request and due to the COVID-19 pandemic; the court continued the trial date from October 14 until October 19. On September 16, 2020, Jones filed his motion to dismiss based on speedy-trial violations. On October 19, 2020, the trial court heard Jones's motion and denied it. Trial began on October 20, 2020.

{¶ 19} As an initial matter, the state contends that the triple-count provision set forth in R.C. 2945.71(E) does not apply to this case because Jones was in jail awaiting trial on two separate cases. Jones contends that the triple-count provision is applicable because he was arrested and indicted for both crimes on the same day, the two cases share an identical litigation history, and there was a common nexus between the two cases. *See State v. Parker*, 113 Ohio St.3d 207, 2007-Ohio-1534, 863 N.E.2d 1032, ¶ 21 (“When multiple charges arise from a criminal incident and share a common litigation history, pretrial incarceration on the multiple charges constitutes incarceration on the ‘pending charge’ for the purposes of the triple-count provision of the speedy-trial statute, R.C. 2945.71(E).”).

{¶ 20} We need not reach the issue whether the triple-count provision is applicable to this case, however, because the record reflects that only 55 days of speedy-trial time had expired by the time Jones was brought to trial. Therefore, even if we were to assume without deciding that the triple-count provision applied to this case, only 55 of the 90 days expired by the time trial commenced.

{¶ 21} In light of the significant tolling events that took place including motions Jones filed and continuances he sought, and the COVID-19 coronavirus pandemic, we find that Jones was brought to trial well within his statutory speedy-trial time.

{¶ 22} Jones also argues his constitutional speedy-trial rights were violated in this matter. Citing the significant length of time between his arrest and trial, Jones contends that the reasons for the delay are not clear and prejudiced his ability to present an adequate defense at trial.

{¶ 23} In determining whether a constitutional speedy-trial violation exists, we balance four factors: “the length of the delay, the reason for the delay, the accused's assertion of his or her right to a speedy trial, and the prejudice to the accused as a result of the delay.” *Barker*, 407 U.S. at 530, 92 S.Ct. 2182, 33 L.Ed.2d 101. This court has explained “ ‘[t]he first factor, the length of the delay, is a “ ‘triggering mechanism,’ ” determining the necessity of inquiry into the other factors.’ ” *State v. Robinson*, 8th Dist. Cuyahoga No. 105243, 2017-Ohio-6895, ¶ 9, 2017 WL 3084821, quoting *State v. Triplett*, 78 Ohio St.3d 566, 569, 679 N.E.2d 290 (1997), citing *Barker* at *id.* The defendant must make a threshold showing of a “presumptively prejudicial” delay to trigger an analysis of the other *Barker* factors. *Doggett v. United States*, 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). Post-accusation delay approaching one year is generally found to be presumptively prejudicial. *Doggett* at fn. 1.

{¶ 24} Regarding the first factor above, the record supports Jones's assertion that there was more than a one-year delay. However, with regard to factor two — the reason for the delay — it is readily apparent that most of the delay between Jones being charged and tried was the result of his own motions or the COVID-19 pandemic. Jones sought several continuances and filed numerous motions, including pro se motions even when he was represented by counsel.

{¶ 25} With regard to the third factor, Jones did file a motion to dismiss his indictment based on his speedy-trials rights. But with regard to the fourth factor, we see no evidence of prejudice to Jones. The Ohio Supreme Court has explained that the prejudice factor in the analysis “should be assessed in the light of the interests of defendants[,] which the speedy trial right was designed to protect.” *Barker* at 532, 92 S.Ct. 2182. The three interests are “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” *State v. Long*, 163 Ohio St.3d 179, 2020-Ohio-5363, 168 N.E.3d 1163, ¶ 22. The third interest — the impact of the delay on the ability of the defendant to prepare his or her defense — is the greatest concern because it “skews the fairness of the entire system.” *Id.*

{¶ 26} In this case, Jones argues that he was prejudiced by the delay because, he alleges, one of his witnesses, social worker Delcresha Box (“Box”), was no longer employed by the Cuyahoga County Department of Children and Family Services (“CCDCFS”) and did not appear at trial. He concedes that he subpoenaed Box and that he only heard a “rumor” that she was no longer working at the agency.

{¶ 27} Jones's asserted difficulty in preparing a defense is hypothetical and relies on nothing more than mere speculation that is not sufficient to show prejudice. *See State v. Hubbard*, 12th Dist. Butler No. CA2014-03-063, 2015-Ohio-646, ¶ 24, 2015 WL 758653 (finding defendant's speculation witnesses may have moved without any knowledge to verify, or even suggest, the witnesses moved, insufficient to show prejudice). Jones does not identify how the delay in trial hindered his ability to gather evidence, contact witnesses, or prepare for his defense. Accordingly, we find Jones has failed to show any reasonable prejudice sufficient to suggest that this *Barker* factor should weigh in his favor.

{¶ 28} Based on our examination of the relevant *Barker* factors, we cannot conclude Jones's constitutional right to a speedy trial was violated.

{¶ 29} Jones's first assignment of error is overruled.

Jones, 2021-Ohio-3359, ¶¶ 7-29.

Petitioner challenges the state appellate court's conclusion, asserting that 1) the “tolling of 56 days due to competency evaluation was a contrary conclusion;” 2) the continuance from

December 2, 2019 to February 18, 2020 was not reasonable; 3) he did not consent to continuances of the May 11, August 24, or October 14, 2020 trial dates and there is not a signed waiver; and 4) he “did not receive the 3 for 1 count.” (ECF No. 1, PageID #: 5). Additionally, Petitioner argues he was prejudiced when he did not receive a continuance of the October 22, 2020 trial date to locate a key witness. (*Id.*). Respondent argues that “[w]hether under the Ohio statute or the U.S. Constitution, the adjudication of the Ohio Court of Appeals fits within the broad standard of AEDPA review to support the denial of Jones’ petition.” (ECF No. 9 at 25).

The state appellate court’s decision shows that it considered Jones’s speedy trial claim under both state and federal law. To the extent Jones is now challenging the state court’s determination of the number of days the speedy trial clock ran under Ohio Revised Code § 2945.71, the Sixth Circuit has held that “Ohio’s statutory right to a speedy trial is not cognizable in a habeas action.” *West v. Sloan*, No. 17-3704, 2017 WL 6762418, at *2 (6th Cir. Dec. 4, 2017) (citing *Norris v. Schotten*, 146 F.3d 314, 328 (6th Cir. 1998)). Rather, this Court must look to the appellate court’s decision on Jones’s federal speedy trial claim and determine whether it was either (1) contrary to, or involved an unreasonable application of, clearly established federal law; or (2) based on an unreasonable determination of the facts. 28 U.S.C. § 2254.

In considering Petitioner’s federal speedy trial claim, the state appellate court correctly set forth the law under *Barker* and applied it to Petitioner, finding that (1) there was more than a one-year delay; (2) most of the delay was attributable to Jones or the COVID-19 pandemic; (3) Jones did assert his speedy trial right; and (4) Jones had not shown he was prejudiced by the delay because his “asserted difficulty in preparing a defense [was] hypothetical and relies on nothing more than mere speculation that is not sufficient to show prejudice.” *Jones*, 2021-Ohio-3359, ¶¶ 24-27. In his current petition, Petitioner challenges the appellate court’s conclusions regarding the second and

fourth *Barker* factors, arguing that the “(1) the May 21, 2019 pre-trial, (2) the December 2, 2019 trial, (3) the February 18, 2020 trial, (4) the May 11, 2020 trial, (5) the August 24, 2020 trial, and (6) the October 14, 2020 trial . . . [were] continued for no fault of the Petitioner” and he was prejudiced when he did not receive “Delcrecia Box CCDCFS Records”; when he was denied a continuance to locate a witness, Delcrecia Box; and by the continuance of the December 2, 2019 trial. (ECF No. 1-1, PageID #: 28).

Jones’s arguments are unavailing. As to the time attributed to Petitioner, the appellate court did not count the continuance of the February 18, May 11, or August 24 trial dates solely against Petitioner. Rather, the February 18 trial continuance was credited to the state (and the appellate court found that the speedy trial clock ran for 30 days due to the continuance), and the May 11 and August 24 trial dates were continued due to the COVID-19 pandemic. *Jones*, 2021-Ohio-3359, ¶¶ 17-18. Additionally, the appellate court did not credit the October 14 trial continuance to Petitioner, specifically noting that “the *court* continued the trial date from October 14 until October 19.” *Id.* at ¶ 18 (emphasis added). While the appellate court did attribute the May 21 pretrial and December 2 trial continuances to the Petitioner, this conclusion is supported by the record. *Id.* at ¶¶ 15, 17. Specifically, the record shows that the May 21 pretrial was continued based on Jones’s request to proceed pro se and the trial court’s ordering of a psychiatric evaluation to ensure Jones was competent to waive his right to counsel. (ECF No. 9-1, Ex. 53 at PageID #: 529). This delay was appropriate given the trial court’s duty to ensure itself that Petitioner was competent to waive his right to counsel. *See Godinez v. Moran*, 509 U.S. 389, 400 (1993) (“In addition to determining that a defendant who seeks to plead guilty or waive counsel is competent, a trial court must satisfy itself that the waiver of his constitutional rights is knowing and voluntary.”). As to the December 2 trial continuance, the record indicates that while the trial was continued until February 18, 2020

because of the court's unavailability, Jones agreed to this continuance. (ECF No. 9-1, Ex. 53 at PageID #: 526).

Additionally, Petitioner has not shown that he was prejudiced by the delay. While Petitioner argues he was prejudiced because Box was not available to testify, he concedes that his counsel failed to subpoena Box prior to the beginning of trial and argues that her unavailability was due to counsel misspelling her name on the subpoena. (*See* ECF No. 1-1, PageID #: 29-30). Petitioner makes no argument regarding how going to trial *earlier*, when his counsel had not contacted Box *at all*, would have led to a different result. To the extent Petitioner argues that he was prejudiced when he was denied access to the CCDCFS records, he does nothing to link this denial to the delays in his trial. (ECF No. 1-1, PageID #: 34-35). Petitioner's failure to show prejudice "is alone sufficient to tip the balance [of the *Barker* factors] in favor of the state court's finding no violation." *Brown v. Bobby*, 656 F.3d 325, 337 (6th Cir. 2011).

Petitioner has not shown that the state appellate court's decision was contrary to, or involved an unreasonable application, of federal law or that it was an unreasonable determination of the facts. Accordingly, his petition should be denied.

VII. Certificate of Appealability

A. Legal Standard

A habeas petitioner may not appeal the denial of his application for a writ of habeas corpus unless a judge issues a certificate of appealability and specifies the issues that can be raised on appeal. 28 U.S.C. § 2253(c) ("A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right."). The "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v.*

McDaniel, 529 U.S. 473, 484 (2000)). The granting of a certificate of appealability does not require a showing that the appeal would succeed on any claim. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

B. Analysis

Jones's single ground for relief is meritless. If the Court accepts the foregoing recommendation, then Jones has not made a substantial showing of a denial of a constitutional right. He would then not be entitled to a certificate of appealability. Thus, I recommend that the Court not issue a certificate of appealability.

VIII. Recommendation

Jones has presented only a meritless claim. Thus, I recommend that the Court deny his petition in its entirety and not grant him a certificate of appealability.

DATED: May 8, 2024

s/Carmen E. Henderson
Carmen E. Henderson
United States Magistrate Judge

OBJECTIONS

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days after being served with a copy of this document. Failure to file objections within the specified time may forfeit the right to appeal the District Court's order. *Berkshire v. Beauvais*, 928 F.3d 520, 530-31 (6th Cir. 2019).

No. 25-3970

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

May 20, 2026

KELLY L. STEPHENS, Clerk

SHAWN-LAMAR JONES,

Petitioner-Appellant,

V.

TOM WATSON, Warden,

Respondent-Appellee.

O R D E R

Before: MOORE, CLAY, and READLER, Circuit Judges.

Shawn-Lamar Jones, a pro se Ohio prisoner, petitions for rehearing of our April 17, 2026, order denying his motion for a certificate of appealability. We have reviewed the petition and conclude that this court did not overlook or misapprehend any point of law or fact in denying his motion for a certificate of appealability. *See* Fed. R. App. P. 40(b)(1)(A).

Accordingly, the petition for rehearing is **DENIED**.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens
Kelly L. Stephens, Clerk

Kelly L. Stephens, Clerk