

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 122,764

STATE OF KANSAS,
Appellee,

v.

HAROLD GLEN FORD JR.,
Appellant.

SYLLABUS BY THE COURT

The constitutional right to a speedy trial detaches upon a conviction.

Appeal from Johnson District Court; THOMAS KELLY RYAN, judge. Opinion filed November 10, 2022. Affirmed.

Kristen B. Patty, of Wichita, argued the cause, and was on the brief for appellant.

Jacob M. Gontesky, assistant district attorney, argued the cause, and *Stephen M. Howe*, district attorney, and *Derek Schmidt*, attorney general, were with him on the brief for appellee.

The opinion of the court was delivered by

ROSEN, J.: In 1993, Harold Glen Ford Jr. pleaded guilty to first-degree murder and related charges. His convictions were vacated in 2016 because it was unclear whether he received a requested competency hearing before his guilty plea. On remand, a jury found Ford guilty of first-degree premeditated murder, aggravated robbery, and aggravated burglary. On appeal, he argues the delay between the original charges in 1992 and the trial that began in 2019 violated his constitutional right to a speedy trial. We disagree and affirm the district court.

FACTUAL AND PROCEDURAL BACKGROUND

In September 1992, Michael Owen was found dead in his front yard in Leawood, Kansas. An investigation led officers to Ford, and on September 21, 1992, the State charged Ford with first-degree murder, aggravated robbery, and aggravated burglary. Shortly thereafter, Ford's counsel filed a motion to determine Ford's competency, which the court granted. *State v. Ford*, 302 Kan. 455, 458, 353 P.3d 1143 (2015). A doctor determined Ford was competent to stand trial, and the court file-stamped the completed evaluation. 302 Kan. at 458. The record did not reflect whether a competency hearing took place. 302 Kan. at 458.

On February 12, 1993, Ford pleaded guilty to felony murder, aggravated robbery, and aggravated burglary. The court sentenced him to consecutive sentences of life in prison for the felony murder, 15 years to life for the aggravated robbery, and 5 to 20 years for the aggravated burglary.

In April 2010, Ford filed a motion to correct an illegal sentence. He argued his sentence and conviction were void because the district court never held a competency hearing. At a hearing on the motion, Ford's counsel appeared, but Ford was not personally present. 302 Kan. at 459. The district court concluded there was no record of a competency hearing as required by K.S.A. 22-3302(1). However, it retrospectively concluded Ford had been competent to stand trial and denied the motion. 302 Kan. at 460-61.

This court affirmed the district court's decision that the State failed to prove Ford received a competency hearing and that a retrospective competency hearing was feasible. 302 Kan. at 470, 472-73. However, it concluded the district court's retrospective hearing had not remedied the due process error because Ford had not been present and it was unclear whether he had waived his presence. 302 Kan. at 476. It therefore remanded the

case to the district court for a new hearing. It instructed the court to determine whether Ford had waived his presence and, if not, to conduct a new retrospective competency hearing or determine such a hearing was not feasible. 302 Kan. 476-77.

On remand, the district court concluded Ford had not waived his presence at the hearing on his motion. It also concluded a retrospective competency hearing was not feasible. On December 30, 2016, the district court vacated Ford's convictions and ordered the continued prosecution of the case.

On May 31, 2018, Ford filed a motion to dismiss, arguing the decades-long delay between the original charge and the impending trial violated his constitutional speedy trial right. At an evidentiary hearing on the motion, Ford focused largely on the prejudice his defense had suffered by the long delay. He presented the testimony of private investigator Ed Brunt who, at Ford's request, had tried to locate people who had been interviewed in the original investigation. Brunt testified that some of those people had been difficult or impossible to find, that some had died, and that the memories of the interviewees to whom he spoke had faded. Ford also offered exhibits that showed some evidence had been returned, disposed of, or was missing. The court denied the motion to dismiss, concluding there had been no unjustifiable delay.

After a trial that began February 25, 2019, a jury found Ford guilty of first-degree premeditated murder, aggravated robbery, and aggravated burglary. The district court sentenced Ford to consecutive terms of life without the possibility of parole for 40 years for the murder conviction, 15 years to life for the aggravated robbery conviction, and 5 to 20 years for the aggravated burglary conviction. Ford has appealed his convictions to this court.

DISCUSSION

Ford presents only one claim. He argues his constitutional right to a speedy trial was violated by the over 26-year delay between the original charge in 1992 and the 2019 trial.

"As a matter of law, appellate courts have unlimited review when deciding if the State has violated a defendant's constitutional right to a speedy trial." *State v. Shockley*, 314 Kan. 46, 61, 494 P.3d 832 (2021).

The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." *State v. Owens*, 310 Kan. 865, 869, 451 P.3d 467 (2019). Pursuant to the Fourteenth Amendment to the United States Constitution, this provision is applicable to proceedings in state courts. *Klopfer v. North Carolina*, 386 U.S. 213, 222-23, 87 S. Ct. 988, 18 L. Ed. 2d 1 (1967). Unlike the Kansas statute requiring a speedy trial, the constitutional speedy trial provision does not create a strict timeframe within which the State must bring a defendant to trial. Rather, what is "speedy" is relative to each defendant and the circumstances surrounding the case against them. *Barker v. Wingo*, 407 U.S. 514, 521-22, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

To determine whether the State has violated a defendant's constitutional right to a speedy trial, courts generally consider the following nonexclusive factors outlined by the United States Supreme Court in *Barker*: (1) Length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. 407 U.S. at 530; *Owens*, 310 Kan. at 869. A court assesses the conduct of both the prosecution and the accused and considers the factors together along with "any other relevant circumstances." 310 Kan. at 869.

Our analysis begins and ends with the first factor: length of delay. Ford focuses heavily on the prejudice his defense suffered from the decades between his charge and trial. But he hinges that claim on his assertion that the speedy trial clock ran continuously from the day he was charged in 1992 until the 2019 trial. The State argues the time Ford stood convicted does not count toward a constitutional speedy trial analysis. We agree. Because Ford makes no claim that the roughly two years and nine months that accumulated outside of the time he stood convicted constituted a speedy trial violation, Ford's appeal fails.

"The constitutional protection of a speedy trial attaches when one becomes accused and the criminal prosecution begins, usually by either an indictment, an information, or an arrest, whichever first occurs." *State v. Rivera*, 277 Kan. 109, 112, 83 P.3d 169 (2004) (quoting *State v. Taylor*, 3 Kan. App. 2d 316, 321, 594 P.2d 262 [1979]). A court generally counts the time between that origin point and the defendant's trial to calculate the length of delay in a constitutional speedy trial analysis.

But Ford's 1993 guilty plea and resultant conviction complicate the calculation. Supreme Court caselaw indicates this earlier conviction extinguished Ford's right to a speedy trial. In *Betterman v. Montana*, 578 U.S. 437, 441, 136 S. Ct. 1609, 194 L. Ed. 2d 723 (2016), the Supreme Court held there is no right to speedy sentencing because the speedy trial right "detaches" after conviction. The Court explained that the speedy trial right is "a measure protecting the presumptively innocent" and, consequently, "loses force upon conviction." 578 U.S. at 442. It observed the speedy trial right "[r]eflect[s] the concern that a presumptively innocent person should not languish under an unresolved charge," and thus "guarantees 'the *accused*' 'the right to a speedy . . . trial.'" 578 U.S. at 443 (quoting U.S. Const. amend. VI). "At the founding," the Court explained, "'accused' described a status preceding 'convicted' . . . [a]nd 'trial' meant a discrete episode after which a judgment (i.e., sentencing) would follow." 578 U.S. at 443.

Although *Betterman* focused solely on whether speedy trial rights exist between a conviction and sentencing, the court's rationale makes it clear that a conviction causes the speedy trial right to "detach." Other courts have relied on *Betterman* in coming to this conclusion even when the issue was not speedy sentencing. *Williams v. State*, 642 S.W.3d 896, 900 (Tex. App. 2021) (speedy trial right detached upon conviction even though defendant's guilty plea later found to be involuntary); *State v. Tatum*, No. 2019AP1016-CR, 2021 WL 246218, at *5 (Wis. Ct. App. 2021) (unpublished opinion) (speedy trial right detaches after conviction even though conviction later vacated).

The Supreme Court of Nebraska reached a similar conclusion without relying on *Betterman*. It has ruled that, "[a]bsent extraordinary circumstances, we do not consider the entire period of time beginning with the original charge or arrest in computing the length of the delay when there has been a mistrial." *State v. Short*, 310 Neb. 81, 117, 964 N.W.2d 272 (2021), *cert. denied* 142 S. Ct. 1155 (2022). The court held "[o]nly misconduct involving deliberate delay tactics designed to circumvent the right to a speedy trial" would constitute extraordinary circumstances requiring a court to count time before a new trial mandate. *Short*, 310 Neb. at 118; see also *Icgoren v. State*, 103 Md. App. 407, 423, 653 A.2d 972 (1995) (calculating length of delay from date of previous mistrial to new trial); *Arnold v. McCarthy*, 566 F.2d 1377, 1382 (9th Cir. 1978) (refusing to "lump together" periods between arrest and first trial and mistrial and second trial and instead analyzing speedy trial for each time period).

Additional reasoning supports this position. The Texas Court of Criminal Appeals opined that the argument the speedy trial clock runs even after a conviction "amounts to an assertion that [a convicted defendant] should have been prosecuted while incarcerated pursuant to a presumptively valid conviction." *Soffar v. State*, No. AP-75,363, 2009 WL 3839012, at *39 (Tex. Crim. App. 2009) (unpublished opinion). And keeping the clock running would often function to immunize people from re-prosecution after a successful appeal, thus "undermin[ing] . . . policy interests that have been preserved by the Supreme

Court[]" in other contexts, including "society's interest in prosecuting persons accused of crimes, 'rather than granting them immunization because of legal error at a previous trial' and making it more probable that appellate courts will overturn convictions when necessary." 2009 WL 3839012, at *39 (quoting *United States v. Ewell*, 383 U.S. 116, 121, 86 S. Ct. 773, 15 L. Ed. 2d 627 [1966]).

Finally, we observe that considering the time that accumulated while Ford stood convicted fails to service the chief purpose of the speedy trial right. The Supreme Court has explained:

"The Sixth Amendment right to a speedy trial is . . . not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." *United States v. MacDonald*, 456 U.S. 1, 8, 102 S. Ct. 1497, 71 L. Ed. 2d 696 (1982).

This passage indicates that the time during which convicted defendants are readying their appeals and working towards release is not the focus of the speedy trial right. It is the time defendants labor under an "unresolved criminal charge" that is the focus of this constitutional guarantee.

For these reasons, we conclude Ford's constitutional right to a speedy trial detached upon his conviction in 1993 and remained so at least until that conviction was vacated in December 2016.

Notably, the *Betterman* Court explicitly declined to consider whether the speedy trial right "reattaches upon renewed prosecution following a defendant's successful

appeal, when he again enjoys the presumption of innocence," as has happened in Ford's case. *Betterman*, 578 U.S. at 441 n.2.

But we need not resolve this question today. Ford's argument relies entirely on an analysis that includes the nearly 24 years that accumulated while he stood convicted. He has made no claim that the delay that accumulated outside of those 24 years violated his constitutional right to a speedy trial. Consequently, his appeal ends with our conclusion that his speedy trial right remained detached while he stood convicted. Ford has failed to establish a constitutional speedy trial violation.

Affirmed.

STANDRIDGE, J., not participating.