

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

OCTOBER 1995 SESSION

<p>FILED</p> <p>December 13, 1995</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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<p>STATE OF TENNESSEE,</p> <p style="padding-left: 40px;">Appellee,</p> <p>V.</p> <p>STERLING E. WILLIAMS, SR.,</p> <p style="padding-left: 40px;">Appellant.</p>	<p>)</p> <p>) C.C.A. No. 02C01-9503-CC-00088</p> <p>)</p> <p>) Madison County</p> <p>)</p> <p>) Hon. Whit LaFon, Judge</p> <p>)</p> <p>) (Speeding)</p> <p>)</p> <p>)</p>
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FOR THE APPELLANT:

Sterling E. Williams, Sr.
Pro Se
 Post Office Box 9893
 Jackson, MS 39286-0893

FOR THE APPELLEE:

Charles W. Burson
 Attorney General & Reporter

George Linebaugh
 Counsel for the State
 Criminal Justice Division
 450 James Robertson Parkway
 Nashville, TN 37243-0493

James G. (Jerry) Woodall
 District Attorney General

Lawrence "Nick" Nicola
 Asst. Dist. Attorney General
 P.O. Box 2825
 Jackson, TN 38302

OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
 Judge

OPINION

The Circuit Court at Madison County convicted appellant, Sterling Williams, of speeding and fined him \$5.00 plus costs. Williams has appealed pro se and raises the following issues: 1) whether he was denied the right to a speedy trial, 2) whether the state's method of assessing fines and court costs violates the due process clause, and 3) whether the trial court erred in disallowing the appellant's request to question a witness about radar.

We affirm the judgment of the trial court.

On February 5, 1993, the appellant was cited for speeding. He appeared in court on his scheduled court date and pled not guilty. When general sessions court found the appellant guilty, he appealed and requested a jury trial in circuit court. His trial was set for September 17, 1993; however, on September 13, 1993, the appellant filed a motion for a continuance, alleging a conflict with his schedule. Apparently without considering the motion, the court dismissed the case by order dated July 11, 1994, based on the appellant's failure to appear. After discovering the mistake, the court entered an order withdrawing the order of dismissal. The court continued the case until February 3, 1995, by order dated October 31, 1994. On February 3, 1995, the appellant filed a motion to dismiss, based on the court's delay in considering his motion to continue. He argued that the state failed to timely prosecute his case because the clerk failed to file his motion and the prosecutor failed to inform the court that the state had agreed to a continuance. He argued that he was prejudiced by the financial burden of defending and preparing the case and by travel expenses for himself and his wife who was to be a witness in the case. The court denied the motion and, following a bench trial, found the appellant guilty of speeding 69 miles per hour (mph) in a 65 mph zone.¹ Appellant was fined five (\$5.00) dollars. The

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The appellant was originally cited for speeding 76 mph in a 65 mph zone, but the court found him guilty of the "lesser included offense."

court entered judgment on February 6, 1995, and the appellant filed his appeal on March 24, 1995. The appellant has at all times proceeded pro se.

At the outset we note that the appellant has failed to file a timely notice of appeal. T.R.A.P. 4(a). In criminal cases, however, the notice is not jurisdictional and this Court may, in the interest of justice, waive the filing requirement. We waive this requirement.

The appellant first asserts that he was denied the right to a speedy trial. Without question, criminal defendants are constitutionally and statutorily entitled to a speedy trial. U.S. Const. amend. VI; Tenn. Const. art. I, § 9; T.C.A. § 40-14-101 (1990). There is no set time limit within which the trial must commence; rather, consideration must be given to the circumstances of each case. The Tennessee Supreme Court has adopted the balancing test set forth in Barker v. Wingo, 407 U.S. 514 (1972) as the method for determining whether a defendant's right to a speedy trial has been violated. State v. Baker, 614 S.W.2d 352, 353 (Tenn. 1981); State v. Bishop, 493 S.W.2d 81, 83-85 (Tenn. 1973). If, after conducting this balancing test, it is concluded that the defendant was in fact denied a speedy trial, constitutional principles require that the conviction be reversed and the criminal charges dismissed. Bishop, 493 S.W.2d at 83.

In conducting this balancing test, we are required to examine the conduct of both the prosecution and the appellant, focusing primarily on: (1) the length of the delay; (2) the reason for the delay; (3) whether appellant asserted his right to a speedy trial; and (4) whether appellant was prejudiced by the delay. Bishop, 493 S.W.2d at 84; State v. Vance, 888 S.W.2d 776, 778 (Tenn. Crim. App. 1994). The salient factor is whether the defendant was prejudiced by the delay. Vance, 888 S.W.2d at 778. The most important inquiry regarding prejudice is whether the delay impaired the defendant's ability to prepare a defense. Id. A

delay as long as two years standing alone will not support a finding of a speedy trial violation. Id.

We now consider these factors in the context of this case. The appellant alleges a delay of approximately two years. While we do not condone the manner of the court in handling appellant's motion, we attribute the cause of the delay to the appellant. The appellant filed a motion for a continuance four days prior to trial. Without receiving the court's order on his motion, the appellant failed to appear on his trial date or send anyone on his behalf. This type of behavior undermines the stability of the judicial system. The fact that appellant represented himself makes no difference in this regard. The appellant asserted his right to a speedy trial.

The appellant was not prejudiced by the delay. The considerations applicable to the prejudice issue include undue and oppressive incarceration, anxiety accompanying public accusation and impairment of ability to prepare his defense. State v. Kolb, 755 S.W.2d 472, 475 Tenn Crim. App. 1988). The appellant was not incarcerated. He did not suffer public accusation. The delay did not impair the appellant's ability to prepare his defense. It does not appear that any of the evidence was lost. After due consideration, we find that the appellant was not denied the right to a speedy trial.

In his second issue, the appellant attacks the state's method of assessing fines and costs. We find this issue to be meritless.

The appellant has waived his third issue. The appellant is charged with the responsibility of preparing the record on appeal. Failure to do so constitutes waiver of the issue. State v. Ballard, 855 S.W.2d 557, 560-61 (Tenn. 1993). The appellant failed to file a statement of the evidence to allow us to determine

what occurred in the trial court with regard to his third issue. Consequently, we do not have enough information to address it.

AFFIRMED

PAUL G. SUMMERS, JUDGE

CONCUR:

JOE B. JONES, JUDGE

WILLIAM M. BARKER, JUDGE