

NOTICE

Decision filed 08/24/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 IL App (5th) 090085-U  
NO. 5-09-0085  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 05-CF-1079
	)	
NATHANIEL L. HILL,	)	Honorable
	)	Ann Callis,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE DONOVAN delivered the judgment of the court.  
Justices Spomer and Stewart concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court properly excluded evidence of the victim's prior nonviolent crimes in finding defendant guilty of first-degree murder. Additionally, defendant's speedy-trial rights were not violated for delays occasioned by defense counsel in spite of defendant's desire for a speedy trial, when defendant only objected to counsel's trial strategy and not counsel's representation.
- ¶ 2 Nathaniel L. Hill, defendant, was convicted after a bench trial of first-degree murder and was sentenced by the circuit court of Madison County to 60 years' imprisonment. Defendant appeals his conviction. We affirm.
- ¶ 3 Defendant and his brother were found guilty of the murder of two men, Derek Pitts and Vincent Rollins. One was beaten to death and the other died from a shotgun blast to the head. Both of the victims were rolled up in carpeting and bound and dumped in a ditch. After the discovery of the decomposing bodies a month later, suspicion focused on defendant and his family. Both of the victims were known drug users, and the house of defendant's

parents was known for frequent drug usage and "partying." Both victims were regular visitors to the house. The reason for the murders is unclear, however. The State asserted that defendant and his brother killed the men because defendant thought they had gotten involved in his personal business. Defendant, on the other hand, claimed he killed the men in self-defense because they were trying to rob him to get money to buy additional drugs. The court found defendant guilty of the first-degree murder of Rollins upon concluding that the State's evidence was more credible, and the court sentenced him to 60 years' imprisonment. The court specifically found that the State had proven beyond a reasonable doubt all the elements of a strong probability of first-degree murder and that defendant was not justified in using the force he had used. The court also found that defendant failed to prove by a preponderance of the evidence either of the mitigating factors which would have reduced the offense to second-degree murder.

¶ 4 Defendant argues on appeal that the court erred in attributing to defendant delays that were caused by defense counsel's numerous motions for continuance when defendant had made clear his opposition to those continuances. He further contends on appeal that the court erred in refusing to allow him to support his claim of self-defense with evidence that the victims had previously robbed and stolen from people to support their crack cocaine addictions.

¶ 5 In order to address defendant's first argument, we list in detail the relevant procedural history beginning with defendant's arrest on April 25, 2005, and the appointment of a public defender to represent him. Approximately a month later, defendant filed a request to represent himself, at which time the public defender appointed to represent him was discharged. On June 6, at defendant's request, the court appointed another public defender to assist defendant with his case. On August 30, defendant filed *pro se* a motion for a speedy trial. The last paragraph of the motion stated that his 120-day period should begin with the

date of the motion and that he would not agree to any delays or continuances. On September 8, the court entered an order continuing the case to September 19, with the delay attributable to defendant. On September 30, the court entered another order noting that the case was continued from September 19 to November 14 on the motion of defendant, with delay attributable to defendant. On November 14, the court entered an order stating that case was continued to January 23, 2006, again with delay attributable to defendant. In the meantime, on November 22, 2005, defendant filed a *pro se* motion to dismiss the indictment, alleging that his right to a speedy trial had been violated. On March 7, 2006, the court noted that the cause was before the court for the lack of a trial setting. Based on the representations of counsel and the record, the matter was continued by agreement from January 23 to April 10, with the delay attributable to defendant as signed by defense counsel. On March 23, defendant filed a *pro se* motion to dismiss counsel, claiming that his appointed counsel had provided ineffective assistance by failing to satisfy his speedy-trial requests. On March 30, defendant filed *pro se* another motion for a speedy trial, claiming that he had repeatedly objected to delays in his case. On April 10, the court entered an order continuing the trial to June 5 on the motion of defendant, with delay attributable to him as signed by defense counsel. On April 12, defendant filed another *pro se* motion to dismiss the indictment, claiming that his constitutional right to a speedy trial had been violated. He further stated he was entering his fourth period of 120-day "speedy trial liability," and he asserted, "I hope this will be my last period that I have to suffer through and endure." On June 5, the court entered an order continuing the trial to June 19 on the motion of defendant, attributable to defendant again signed by defense counsel, and on June 19, the court continued the trial to July 17 by agreement, with delay attributable to defendant. On June 22, defendant appeared in court with defense counsel to inform the court he wanted to represent himself again. The court granted defendant's motion. On August 1, defendant once again filed a motion to dismiss the

charges against him based on the violation of his statutory right to a speedy trial despite his repeated assertions of this right. The court subsequently held a hearing on his motions to dismiss on August 18. At the hearing, former defense counsel testified that all the continuances were on his motion and were chargeable to defendant. He acknowledged receiving letters from defendant in which defendant expressed his desires for a speedy trial, but he informed defendant that as long as he remained his attorney, he would be the one to decide whether to seek continuances. The court denied the motion to dismiss the charges and scheduled a jury trial for September 11, 2006. After numerous other motions and proceedings, defendant's request for the appointment of yet another attorney to represent him was granted, and defendant waived his right to a jury trial. Defendant subsequently requested and agreed to several continuances while acting *pro se* and acquiesced in numerous other continuances filed by three additional successively appointed attorneys until the final date of his trial.

¶ 6 Delay occasioned by a defendant tolls the 120-day speedy-trial period provided under section 103-5(a) of the Code of Criminal Procedure of 1963, which begins to run automatically when a defendant is in custody. 725 ILCS 5/103-5(a) (West 2004); see also *People v. Myers*, 352 Ill. App. 3d 684, 687, 816 N.E.2d 820, 823 (2004). A delay is attributable to a defendant whenever his act causes or contributes to the delay. *Myers*, 352 Ill. App. 3d at 687, 816 N.E.2d at 823. Continuances requested or agreed to by defense counsel are attributable to the defendant and suspend the speedy-trial period. *People v. Kaczmarek*, 207 Ill. 2d 288, 296, 798 N.E.2d 713, 719 (2003). All the continuances at issue here were requested or agreed to by defendant, and therefore the trial court properly attributed the delay to him. See *Kaczmarek*, 207 Ill. 2d at 296, 798 N.E.2d at 719. The court rejected defendant's arguments that he did not personally agree to the continuances, and the court found that his speedy-trial rights were not violated. See *People v. Hall*, 194 Ill. 2d 305,

327-28, 743 N.E.2d 521, 535-36 (2000) (the trial court did not abuse its discretion by charging delay to the defendant when the continuances were on the motion of the defendant even though he did not personally agree to them). We note that generally the court's determination of whether a delay is attributable to a defendant is entitled to great deference and should be sustained unless there is a clear showing of an abuse of the court's discretion. *People v. Mayo*, 198 Ill. 2d 530, 535, 764 N.E.2d 525, 529 (2002). We see no such abuse here.

¶ 7 Defendant argues the continuances were not properly charged to him, however, because he repudiated them. "In criminal proceedings, an attorney is authorized to act for his client and determine for him procedural matters and decisions involving trial strategy and tactics." *People v. Bowman*, 138 Ill. 2d 131, 141, 561 N.E.2d 633, 638 (1990). Counsel's decision to continue a case is a matter of trial strategy. *Bowman*, 138 Ill. 2d at 145, 561 N.E.2d at 640. A defendant is bound by the actions of his attorney unless the defendant clearly and convincingly asserts his right to discharge the attorney and proceed to an immediate trial. *Kaczmarek*, 207 Ill. 2d at 297, 798 N.E.2d at 719. From the record it is clear that defendant sent numerous *ex parte* communications to the court disagreeing with the continuances. Defendant, however, only objected to defense counsel's trial strategy in doing so, not to his representation. Acquiescence to representation is acquiescence to decisions regarding strategy. See *Bowman*, 138 Ill. 2d at 141, 561 N.E.2d at 638. We therefore agree with the State that the trial court properly charged the delays to defendant whenever his counsel requested or agreed to continuances in this instance. We further note that, given that the speedy-trial issue has no merit, defendant cannot show ineffective assistance of counsel. See *People v. Peco*, 345 Ill. App. 3d 724, 735-36, 803 N.E.2d 561, 570 (2004) (counsel was not ineffective for failing to raise a meritless speedy-trial argument in a posttrial motion).

¶ 8 Defendant also argues on appeal that the court erred in refusing to allow defendant to support his claim of self-defense with evidence that the victims had previously robbed and stolen from people to support their crack cocaine addictions. It is true that a defendant has the right to present a defense, but it is also true that the court is vested with broad discretion in ruling on the admissibility of that evidence. *People v. Hayes*, 353 Ill. App. 3d 578, 583, 819 N.E.2d 341, 346 (2004). Defendant's proposed evidence was the subject of a motion *in limine* filed by the State seeking to bar the defense from introducing any act of misconduct on the part of the victims in the case that did not amount to a final conviction for a crime of violence. The defense in turn filed a motion to introduce evidence of the victims' alleged addictions and prior thefts. At the hearing on the motions, the court ruled that it would not allow evidence of the victims' prior thefts but would allow evidence of their prior violent acts. At the trial defendant offered no proof of the victims' prior violent acts. We conclude that the court's ruling was proper under the circumstances presented. Evidence of a victim's violent character is admissible when a defendant presents evidence that he acted in self-defense. Conversely, evidence of a victim's nonviolent character is inadmissible even when that evidence consists of proof that the victim committed nonviolent crimes. *People v. Cook*, 352 Ill App. 3d 108, 127, 815 N.E.2d 879, 895 (2004). Proof of the victims' prior nonviolent crimes would not tend to prove or disprove their violent character or reputation. See *People v. Lynch*, 104 Ill. 2d 194, 200, 470 N.E.2d 1018, 1020 (1984). Defendant was allowed the chance to present evidence supporting his self-defense theory. The evidence that the victims had committed prior thefts would not have made defendant's story any more believable, however. The court already heard evidence that the victims frequently visited the basement of the home of defendant's parents, where the murders occurred, looking for and ingesting drugs, and that the victims used crack on the day of the murders. The court's ruling was not an abuse of discretion in this instance. Additionally, the evidence shows that defendant's

self-defense theory would have failed regardless of whether the evidence had been admitted. Defendant described a struggle with Rollins in which a gun was discharged, thereby killing Pitts with a shotgun blast to the head as he sat in a recliner. The forensic evidence revealed no blood in the recliner. In fact, blood splatter indicated that Pitts had been shot when his head was no more than a foot or two off the floor. Given this evidence, in conjunction with numerous other evidentiary inconsistencies with defendant's version of the day's events, even if the court had heard evidence that the victims had committed thefts, defendant still would have been convicted of first-degree murder.

¶ 9 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 10 Affirmed.