

NOTICE
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2012 IL App (4th) 110120-U

Filed 8/24/12

NO. 4-11-0120

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
JERMAINE D. SAMUELS,)	No. 08CF293
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court reversed, concluding defendant was denied his statutory right to a speedy trial under section 103-5(a) of the Code of Criminal Procedure of 1963.
- ¶ 2 Following a jury trial, defendant, Jermaine Samuels, was convicted of unlawful possession with the intent to deliver between 30 and 500 grams of cannabis (720 ILCS 550/5(d) (West 2010)), driving with a suspended license (625 ILCS 5/6-303 (West 2010)), and driving without proof of insurance (625 ILCS 5/3-707(a) (West 2010)). The trial court sentenced defendant to a five-year prison term to be served consecutively to a federal sentence imposed in another case. Subsequently, defendant filed a motion for a new trial, alleging that the court erred in denying his pretrial motion to dismiss based on the violation of his constitutional and statutory speedy-trial rights. The court denied the motion.

¶ 3 On appeal, defendant argues that his statutory and constitutional rights to a speedy trial were denied. We reverse, finding defendant's statutory right to a speedy trial was violated.

¶ 4 I. BACKGROUND

¶ 5 On November 15, 2008, following a traffic stop, defendant was arrested and brought to the Livingston County jail in Pontiac, Illinois.

¶ 6 On November 17, 2008, the State filed an information charging defendant with unlawful possession with the intent to deliver between 30 and 500 grams of cannabis. 720 ILCS 550/5(d) (West 2008). That same day, defendant was arraigned via live video feed from the Livingston County jail. At that time, there was a valid federal arrest warrant for defendant in Iowa for conspiracy to distribute cocaine. The trial court found probable cause to detain defendant, set defendant's bond, and continued the matter for a preliminary hearing. Defendant did not post bond.

¶ 7 On December 10, 2008, defendant failed to appear at the preliminary hearing. The prosecutor informed the trial court that defendant was in federal custody. Earlier in the week, the prosecutor received a phone call from Melissa Zaehringer, an assistant United States Attorney for the Eastern District of Iowa, informing him that defendant was in the Knox County jail in Galesburg, Illinois, on a federal warrant. According to the prosecutor, the assistant United States Attorney did not know how defendant was transferred to federal custody. Upon defense counsel's request, the court continued the case to December 31, 2008.

¶ 8 On December 23, 2008, the prosecutor sent a letter to the United States Attorney's office inquiring as to the proper process to facilitate a court appearance by defendant in Livingston County. In response to the letter, the prosecutor received a phone call from Assistant

United States Attorney Zaehringer. During the call, she indicated that it is the United States Attorney's office position not to transport defendant to Livingston County until the conclusion of its federal case.

¶ 9 On December 31, 2008, defendant failed to appear for the preliminary hearing because he was still in federal custody. The prosecutor informed the trial court that the United States Attorney's office refused to transport defendant back to the Livingston County jail until the conclusion of his federal case. He also stated that the federal authorities advised him to obtain a detainer on defendant awaiting the conclusion of the federal case. However, no detainer was ever filed. During the hearing, the court asked the prosecutor to explain why the State gave defendant to the federal authorities. The prosecutor stated, in relevant part, the following: "I don't think we had a choice. I think they just came and took him is kind of what my understanding of how it happened ***." The court set a status hearing for March 18, 2009.

¶ 10 On March 17, 2009, the prosecutor sent an e-mail to Assistant United States Attorney Donald Allegro asking the United States Attorney's office's position concerning the transfer of defendant to Livingston County. Approximately a week later, Assistant United States Attorney Zaehringer replied stating: "It is our position that we would prefer to keep [defendant] here in the custody of the United States Marshal Service until the completion of our case. The reason being is that we must comply with the Interstate Agreement on Detainers and there are time constraints that must be complied with."

¶ 11 On March 18, 2009, defendant failed to appear at the status hearing. The prosecutor informed the trial court that the United States Attorney's office's position on defendant's transfer had not changed. Over defense counsel's objection, the court scheduled a

status hearing for that summer.

¶ 12 The next hearing was held on June 3, 2009. Defendant did not appear in court. At the hearing, defense counsel objected to any continuance or further delay in trial, asserting defendant's right to a speedy trial. On the State's motion, the case was continued to July 8, 2009.

¶ 13 On July 8, 2009, defendant failed to appear for the scheduled status hearing. At the hearing, the prosecutor again advised the trial court that defendant was being held by federal authorities. The prosecutor further stated that he was still figuring out how to procure defendant's presence. Defense counsel objected to any further delay in trial and moved for a preliminary hearing. He also requested that the court issue a writ of *habeas corpus* compelling defendant's presence. The court agreed to the request and set a preliminary hearing date of August 12, 2009.

¶ 14 On July 13, 2009, the trial court entered an order for writ of *habeas corpus ad testificandum*, ordering the sheriff of Knox County to transfer defendant to the Livingston County courthouse on August 12, 2009. On August 12, 2009, defendant did not appear in court and the case was continued to December 16, 2009.

¶ 15 On December 16, 2009, defendant again failed to appear in court. That same day, defense counsel filed a written demand for speedy trial pursuant to section 103-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5 (West 2008)) and announced defendant was ready for trial. After two more continuances, a hearing was held on March 9, 2010. Defense counsel advised the court that defendant had been sentenced in federal court and was serving a life sentence in Terre Haute, Indiana. Upon the State's request, the court set a status hearing for March 30, 2010. In agreeing to the status hearing date, defense counsel stated that he was "not

waiving or entering into an agreement to continue" the case.

¶ 16 On March 30, 2010, defendant did not appear at the status hearing. That same day, the State filed a petition for writ of *habeas corpus ad prosequendum* requesting that the trial court issue an order commanding the warden of the penitentiary in Terre Haute to bring defendant to the Livingston County courthouse on April 20, 2010. The court entered the order issuing the writ.

¶ 17 On April 19, 2010, the State filed another petition for writ of *habeas corpus ad prosequendum* requesting that the trial court issue an order commanding the warden of the penitentiary in Terre Haute to transfer defendant on May 3, 2010. That same day, the court entered the order issuing the writ.

¶ 18 On May 4, 2010, defendant appeared in court for the preliminary hearing. According to the docket entry for that day, defendant appeared in the custody of federal authorities via transport by the sheriff of Livingston County. At the hearing, defendant entered a plea of not guilty. During the hearing, the court asked how defendant came to be in federal custody. In response, the prosecutor stated that federal authorities picked up defendant without any contact with the State's Attorney's office. After the proceeding, defendant was returned to the Livingston County jail.

¶ 19 On June 10, 2010, a jury trial was held. Defendant made an oral pretrial motion for discharge based on a violation of his statutory and constitutional speedy-trial rights. The trial court denied the motion, because it determined that defendant had been in the custody of Livingston County for no more than three months. In making its decision, the court determined that defendant was in federal custody from December 10, 2008, to May 4, 2010. Following the

close of evidence, the jury found defendant guilty of unlawful possession with the intent to deliver between 30 and 500 grams of cannabis, driving with a suspended license, and driving without proof of insurance.

¶ 20 On June 17, 2010, defendant filed a motion for a new trial. Defendant claimed that the trial court erred by denying his motion to dismiss for violating his constitutional and statutory speedy-trial rights. On August 9, 2010, the trial court sentenced defendant to a five-year prison term to be served concurrently to a federal sentence imposed in another case.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant argues that his statutory and constitutional rights to a speedy trial were violated. In response, the State argues that defendant waived his right to discharge on speedy-trial grounds. The State also argues, in the alternative, that defendant's statutory and constitutional rights to a speedy trial were not violated, because the speedy-trial period was tolled while defendant was in federal custody.

¶ 24 A. Waiver

¶ 25 Under sections 114-1(a)(1) and (b) of the Code of Criminal Procedure of 1963 a defendant claiming a violation of his or her right to a speedy trial is required to file a written motion seeking discharge before conviction; otherwise, “the grounds therefor * * * are waived.” 725 ILCS 5/114-1(a)(1), (b) (West 2010). On June 3, 2010, the day of his jury trial, defendant made an oral pretrial motion to dismiss based on a speedy-trial violation. However, defendant never filed a written motion for discharge as required under section 114-1(a). Despite defendant's failure to file a written motion for discharge, we will review defendant's claim under

the plain-error doctrine because a speedy trial is a substantial, fundamental right. *People v. Gay*, 376 Ill. App. 3d 796, 799, 878 N.E.2d 805, 808 (2007).

¶ 26 B. Speedy Trial

¶ 27 "The right to a speedy trial is guaranteed by the Federal and Illinois Constitutions (U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8)." *People v. Staten*, 159 Ill. 2d 419, 426, 639 N.E.2d 550, 554 (1994). In Illinois, a defendant also has a statutory right to a speedy trial. 725 ILCS 5/103-5 (West 2008). "The speedy-trial statute enforces the constitutional right to a speedy trial, and its protections are to be liberally construed in favor of the defendant. [Citation.]" *People v. Zeleny*, 396 Ill. App. 3d 917, 919-20, 920 N.E.2d 1129, 1131 (2009). "[T]he statutory right to a speedy trial is not the precise equivalent of the constitutional right." *Staten*, 159 Ill. 2d at 426, 639 N.E.2d at 554.

¶ 28 Defendant's statutory speedy-trial argument claim is based on section 103-5(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(a) (West 2008)). Section 103-5(a) provides that "[e]very person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he was taken into custody unless delay is occasioned by the defendant[.]" 725 ILCS 5/103-5(a) (West 2008). If a defendant is not released on bail and remains in custody, then the 120-day statutory period begins to run automatically from the day defendant is taken into custody. *People v. Mayo*, 198 Ill. 2d 530, 536, 764 N.E.2d 525, 529 (2002). "A defendant not tried within the statutory period shall be discharged from custody and have the charges dismissed. [Citations.]" *Mayo*, 198 Ill. 2d at 536, 764 N.E.2d at 529. The standard of review is *de novo*, because the construction and application of the speedy-trial statute to undisputed facts raises questions of law. *People v. Stanitz*, 367 Ill. App. 3d 980,

983, 857 N.E.2d 288, 290 (2006).

¶ 29 The State has a duty to bring the defendant to trial within the statutory period." *Mayo*, 198 Ill. 2d at 536, 764 N.E.2d at 529. However, defendant bears the burden of showing that his or her right to a speedy trial has been violated. *People v. Patterson*, 392 Ill. App. 3d 461, 467, 912 N.E.2d 244, 250 (2009). " 'This burden includes a demonstration that [defendant] caused no delay, which fact must be affirmatively established by the record.' " *Patterson*, 392 Ill. App. 3d at 467, 912 N.E.2d at 250 (quoting *People v. Boyce*, 51 Ill. App. 3d 549, 554, 366 N.E.2d 914, 918 (1977)). Defendant occasions delay if he or she requests a continuance, agrees to a continuance, or defendant's actions otherwise cause or contribute to a delay. *Patterson*, 392 Ill. App. 3d at 467, 912 N.E.2d at 250. Any period of delay occasioned by defendant tolls the statutory period. *Mayo*, 198 Ill. 2d at 537, 764 N.E.2d at 530.

¶ 30 Relying on *Stanitz*, defendant argues that he has been in the State's custody since his arraignment on November 17, 2008, because the State voluntarily released him to the federal authorities. Defendant further argues that since he never left the State's custody he was not brought to trial within the 120 days of his arrest as required under section 103-5(a).

¶ 31 In *Stanitz*, on July 26, 2004, defendant was charged by information with attempting to obtain a drug prescription using a false name. At some point before September 30, 2004, he was arrested and held in the DuPage County jail. An order appointing defendant a public defender noted that defendant was "in custody." *Stanitz*, 367 Ill. App. 3d at 981, 857 N.E.2d at 288-89. He was never released on bail. On September 30, 2004, defendant made a speedy-trial demand. On January 18, 2005, federal authorities removed defendant from the DuPage County jail to a facility in Chicago to await trial on a federal charge. Defendant was not returned to

DuPage County until May 2005. *Stanitz*, 367 Ill. App. 3d at 981-82, 857 N.E.2d at 288-89.

¶ 32 On appeal, the State argued that the speedy-trial period was tolled when federal authorities placed defendant in the custody of Cook County pending the disposition of his federal charge. The Second District found that the speedy-trial period set forth in section 103-5(a) was not tolled, because the State voluntarily surrendered defendant to federal authorities. *Stanitz*, 367 Ill. App. 3d at 989, 857 N.E.2d at 294-95. The court reasoned that the State could not evade its speedy-trial obligations by surrendering defendant to federal authorities. The court stated, in relevant part, the following:

"If the State is free to choose whether to surrender a defendant to federal authorities, then its decision to do so should not enable it to evade its responsibility to try the defendant within the statutory period. Moreover, any delay occasioned entirely by the State's own choice cannot reasonably be said to have been 'occasioned by the defendant.' [Citation.]" *Stanitz*, 367 Ill. App. 3d at 986, 857 N.E.2d at 292.

¶ 33 This case is analogous to *Stanitz*. Like the defendant in *Stanitz*, defendant was in State custody when federal authorities were allowed to take him into custody. The defendant never posted bond. Moreover, in both instances, the State, not defendant, choose to relinquish custody of defendant to federal authorities. In its brief, the State argued that it had no choice in surrendering defendant to federal authorities. On review of the record, we find insufficient evidence to support the State's claim, because the State's argument is almost entirely based on its own claims of involuntariness. Although, the State requested on multiple occasions that the

United States Attorney's office transfer defendant back to Livingston County, the requests were made after defendant's statutory right to a speedy trial began to run. The speedy-trial period began to run automatically from the day defendant was taken into custody, November 15, 2008. See *People v. Hampton*, 394 Ill. App. 3d 683, 686, 916 N.E.2d 104, 108 (2009). Moreover, no formal demand was necessary for the speedy-trial period to start running. *Hampton*, 394 Ill. App. 3d at 686, 916 N.E.2d at 108. As the court found in *Stanitz*, the State's decision to surrender defendant to federal authorities cannot reasonably be charged to defendant, because the delay was occasioned by the State's choice. *Stanitz*, 367 Ill. App. 3d at 986, 857 N.E.2d at 292.

¶ 34 In this case, defendant is responsible for occasioning a small portion of the delay. Upon defense counsel's request, the case was continued from December 10, 2008, to December 31, 2008. However, the State remains responsible for occasioning the majority of the over 500-day delay. The State's voluntary surrender of defendant to federal authorities did not toll the speedy-trial period while defendant was in the Knox County jail and federal prison, and, as a result, the speedy-trial period expired. Accordingly, defendant was denied his right to a speedy trial under section 103-5(a).

¶ 35 We decline to discuss whether defendant's constitutional right to a speedy trial was violated, because dismissal is the remedy for both a statutory and constitutional violation. *People v. Ladd*, 185 Ill. 2d 602, 607, 708 N.E.2d 359, 361 (1999) (remedy for a violation of section 103-5(a) is dismissal of the charges); *Strunk v. United States*, 412 U.S. 434, 440 (1973) (remedy for a constitutional violation is dismissal).

¶ 36 III. CONCLUSION

¶ 37 For the foregoing reasons, we reverse the trial court's judgment.

¶ 38 Reversed.