

No. 1-10-2945

**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(3)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	09 CR 5637
	)	
NOAH SMITH,	)	Honorable
	)	John A. Wasilewski,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE NEVILLE delivered the judgment of the court.  
Justices Sterba and Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* The 160 day speedy trial period for a defendant released on bond does not begin to run until the defendant demands trial.

¶ 2 Following a bench trial, the trial court found the defendant, Noah Smith, guilty of possession of cocaine and unlawful use of a weapon by a felon. On appeal, Smith argues that his counsel provided ineffective assistance when counsel did not move to dismiss the charges for violation of Smith's right to a speedy trial. We find no ineffective assistance, because the record shows that the

State did not violate Smith's right to a speedy trial.

¶ 3 BACKGROUND

¶ 4 Police officers executed a search warrant for an apartment on the south side of Chicago on February 11, 2009. They found a gun, some narcotics, and Smith and another man in the apartment. Police officers arrested Smith. Prosecutors charged Smith with possession of the narcotics and unlawful use of a weapon by a felon.

¶ 5 On March 4, 2009, Smith, through counsel, made his first demand for trial. Smith pled not guilty at his arraignment on April 10, 2009. Smith posted bond on July 15, 2009, and the jail released him from custody. Smith agreed to a series of continuances that delayed his trial for a year, until April 22, 2010. Smith's counsel then renewed the demand for trial, and the court noted the State caused the delay after April 22, 2010, to the August 9, 2010, date of the bench trial.

¶ 6 The officers who searched the apartment and arrested Smith testified at the trial. One officer testified that at the time of the arrest, Smith admitted that the cocaine belonged to him, and he had held the gun, which belonged to someone else. A certified record showed that a court had previously found Smith guilty of a felony. The trial court found Smith guilty of possession of cocaine and unlawful use of a weapon by a felon. The court sentenced Smith to three years in prison. Smith appeals.

¶ 7 ANALYSIS

¶ 8 Smith raises only one issue on appeal. He argues that his trial counsel provided ineffective assistance because counsel failed to file a motion to dismiss the charges due to the violation of Smith's right to a speedy trial. The State answers that the attorney's decision not to file a speedy trial

motion had no prejudicial effect because the trial court would have denied such a motion. The issue of whether the court should have granted a motion to dismiss the charges hinges on the interpretation of the speedy trial provisions of the Code of Criminal Procedure (Code) (725 ILCS 5/103-5 (West 2008)). Because the case turns on a question of statutory interpretation, we review the trial court's decision *de novo*. *People v. Jones*, 223 Ill. 2d 569, 580 (2006).

¶ 9 The Code provides:

"(a) Every 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 \*\*\*.

The 120-day term must be one continuous period of incarceration. \*\*\*

(b) Every person on bail or recognizance shall be tried \* \* \* within 160 days from the date [the] defendant demands trial unless delay is occasioned by the defendant \* \* \*.

For purposes of computing the 160 day period under this subsection (b), every person who was in custody for an alleged offense and demanded trial and is subsequently released on bail or recognizance and demands trial, shall be given credit for time spent in custody following the making of the demand while in custody." 725 ILCS 5/103-5 (West 2008).

¶ 10 Because the jail released Smith on bond in July 2009, he acknowledges that he does not meet the criteria for dismissal of the charges under subsection (a) of the speedy trial provision. He seeks discharge under subsection (b). That subsection establishes that his 160-day speedy trial term begins to run "from the date [he] demands trial." Here, Smith demanded trial on March 4, 2009. He counts 37 days from the trial demand to the arraignment on April 10, 2009, plus 109 days from the scheduled trial date of April 22, 2010 to the trial on August 9, 2010. The State agrees with these calculations. Those two periods total 146 days of delay chargeable to the State.

¶ 11 Smith contends that the court must also count against the State the time between the arrest and the initial demand for trial. Here, that period lasted 21 days, from February 11, 2009, to March 4, 2009. If that time counts against the State for purposes of the speedy trial provision, the State delayed 167 days before bringing Smith to trial, and the court should have granted a motion to dismiss the charges if Smith's attorney had filed such a motion. See 725 ILCS 5/103-5(d) (West 2008).

¶ 12 However, the statute cannot support Smith's interpretation. Subsection (b) of the speedy trial provision unequivocally provides that for purposes of computing the 160-day period, the time begins to run not at the time the State takes a suspect into custody, as provided for in the 120-day period in subsection (a), but rather at the time the defendant initially demands trial. 725 ILCS 5/103-5(a), (b) (West 2008).

¶ 13 Smith argues that requiring a defendant to file a speedy trial demand on the day of his arrest to trigger the 160-day period places too great a burden on the defendant. He should present his argument to the General Assembly. We cannot depart from the plain language of subsection (b).

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See *People v. Marshall*, 242 Ill. 2d 285, 292 (2011). The contrasting provisions for the start of the period under subsection (a), and the start of the period under subsection (b), show a legislative intent to establish that the 160-day period in subsection (b) does not automatically start on the date of the arrest. See *In re K.C.*, 186 Ill. 2d 542, 549-50 (1999). We find that if trial counsel had filed a motion to dismiss the charges on speedy trial grounds, the trial court should have denied the motion. Accordingly, we find that defense counsel did not provide ineffective assistance when counsel chose not to file such a motion.

¶ 14

#### CONCLUSION

¶ 15 Because the record shows that the State did not violate Smith's right to a speedy trial, Smith's counsel did not provide ineffective assistance when counsel chose not to file a motion to dismiss the charges based on the speedy trial provision of the Code. Accordingly, we affirm the trial court's judgment.

¶ 16 Affirmed.