

NOTICE
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2013 IL App (4th) 121044-U
NO. 4-12-1044
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
September 23, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
LUIS ANTONIO AGUIRRE,)	No. 12CF6
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was not denied his right to a speedy trial.
- ¶ 2 Defendant, Luis Antonio Aguirre, was charged by information with four counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(3) (West 2010)), and later indicted for the same charges. Later, five charges of aggravated criminal sexual abuse (720 5/11-1.60(d) (West 2010)), as well as one count of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2) (West 2010)), were added to the charges against defendant. He was appointed counsel and bond was set at \$150,000. Defendant was never able to post bond and remained in jail throughout these proceedings.
- ¶ 3 Defendant asked for continuances at the first two status hearings. At the third status hearing, defendant announced ready for trial. The trial court interpreted this statement as a

demand for trial on the next available calendar and set a trial date for the next month's trial calendar. The State moved for a continuance. Defendant objected to the continuance, but the court granted the State's motion. The court set the case for trial two months into the future.

¶ 4 Prior to the trial date, the State moved for a continuance again, which was granted. Defendant believed the new trial date was beyond the 120-day speedy-trial term and filed a motion for discharge due to the violation of his speedy-trial rights. At the hearing on his motion, defendant argued when he first announced ready for trial, it was actually in the middle of a trial calendar, and his case could have been set for trial that week as the next available trial date rather than in the next month. Therefore, his days for a speedy trial should be calculated from April 6 when he answered ready for trial or April 9 when the case could have been set, rather than the next jury date in May when the trial court would have set his trial but for the State's motion to continue. If the speedy-trial calculations were made from the earlier date, the 120 days of his speedy-trial term had expired and he should be discharged from custody.

¶ 5 The trial court found defendant did not request his case be set for the trial calendar already in progress at the time he stated ready for trial. The court had three other jury trials already scheduled for trial at that time and, in its discretion in managing its trial calendar, set defendant's case for what it concluded would be the next available date in the month following the status hearing where defendant announced ready for trial. The court found the speedy-trial dates were tolled until the following month when they resumed being counted to the speedy-trial deadline. The court found there were still 17 days available to the State to try defendant. Defendant's motion for discharge was denied. He appeals, and we affirm.

¶ 6

I. BACKGROUND

¶ 7 On January 2, 2012, defendant was arrested and charged with four counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(3) (West 2010)). On January 4, 2012, a probable cause hearing was held and bond was set at \$150,000. On January 11, 2012, a four-count bill of indictment for the same offenses superseded the initial charges. On January 30, 2012, the State filed a motion to compel deoxyribonucleic acid (DNA) testing of defendant.

¶ 8 On February 8, 2012, a status hearing was held. We believe the status hearing is a form of pretrial conference. Defendant requested a continuance for a further status hearing to allow time to address discovery compliance issues. The trial court admonished defendant his request for a continuance would toll his speedy-trial rights and then granted a continuance for another status hearing on February 27, 2012. On February 27, defendant requested another continuance and another status hearing was scheduled for April 6, 2012.

¶ 9 On April 6, 2012, defendant announced he was ready for trial. The State immediately moved for a continuance on the grounds the alleged victim was pregnant and not scheduled to give birth until early May. The State indicated DNA evidence could be relevant for trial. Before asking if defendant objected, the court suggested setting the case on the June jury trial calendar. This would give the victim time to recover and full DNA testing could be accomplished. The court then asked defense counsel if he had any objection to a June trial setting. Counsel responded defendant objected to the State's request for continuance. The court stated it would show defendant's demand for trial on the next available calendar, "which would be May 8," and the State's motion for continuance was granted over defendant's objection. The court scheduled the case for final pretrial conference on June 14, 2012, and a jury trial setting on June 18, 2012. The court noted this scheduling would "preserve" defendant's "speedy trial term

at least for that delay through June."

¶ 10 On May 16, 2012, a hearing was held on the State's motion to compel DNA testing of defendant. The trial court granted the motion over objection and confirmed the case was set for pretrial conference on June 14.

¶ 11 On May 25, 2012, the State filed a motion to continue asking the June 18 trial date be continued due to delays in receiving DNA test results. At the June 14 pretrial hearing, the trial court took up the State's motion. Defendant noted he objected to the State's continuance back in April and continued to object to a continuance. The trial court granted the State's motion and stated under its informal calculations defendant was still 44 days short of the 120-day speedy trial term for an incarcerated defendant. The court scheduled the case for another final pretrial hearing on July 12, 2012, and for jury trial commencing July 16, 2012. Defendant indicated he believed the trial court erred in its speedy-trial calculations. The court suggested defendant file a motion for discharge.

¶ 12 On July 10, 2012, defendant filed a motion for discharge due to speedy-trial violation. The trial court set the motion for hearing at the July 12 pretrial hearing. Also on July 10, the State received DNA test results showing defendant was the father of the child to which the alleged victim had given birth in late April 2012. On July 12, 2012, the State filed an additional six-count information against defendant. Defendant was arraigned on those charges at the pretrial hearing that same day.

¶ 13 Defendant's motion for discharge argued he had been continuously in custody since January 4, 2012, and the only delay attributable to him was the period from February 8 to April 6, 58 days. Defense counsel objected to the trial court's docket entry from the April 6

hearing which tolled his speedy-trial rights until May 8 and found the delay would be attributable to defendant. Defendant noted he announced ready for trial on April 6 and objected to the State's motion to continue. Defendant argued the trial could potentially have started on the following Monday, April 9, which was a regularly scheduled jury term. Thus, he should not have been charged with any trial delay to May 8, but only until April 9.

¶ 14 The trial court found jail records indicated defendant was first in custody on January 2. His speedy-trial date is calculated from that day. The speedy-trial period was tolled from February 8 to April 6 due to defendant's motions to continue. At the time of the April 6 status hearing, a jury term was in progress that week and the next week. However, the court had three jury trials scheduled for the next week and, therefore, scheduled defendant's case to the May 8 trial term as the next available date. The case was continued to June on the State's motion to continue over defendant's objection. The court stated the record did not indicate defendant demanded an April 9 trial date so the case was set for the next available date and the trial term remained tolled until that date, May 8. By tolling the speedy-trial term for the 32 days between April 6 and May 8, the court found only 103 days of defendant's 120-day speedy trial term had run as of the hearing on July 12, 2012, and the motion for discharge was denied.

¶ 15 On July 16, 2012, defendant filed a motion to continue the trial setting, which was granted over the State's objection. Defendant's speedy-trial term was tolled at this time and did not resume through his sentencing in this case.

¶ 16 On August 14, 2012, defendant filed a motion to reconsider the denial of discharge, a motion to dismiss counts V through X for speedy-trial violation and an amended motion to discharge for speedy-trial violation. On August 24, 2012, the trial court held a hearing

on defendant's motions. Defendant's motions were denied and the court scheduled a third final pretrial conference for October 4, 2012, and a jury trial to begin October 9.

¶ 17 On October 4, 2012, in lieu of the pretrial hearing, the parties proceeded with a stipulated bench trial. The State moved for dismissal of counts I through VIII, which the trial court granted. In the parties' stipulation, defendant expressly renewed his request for discharge for speedy-trial violations. The court denied his renewed motion. After considering the stipulated facts, the court found the evidence sufficient to prove defendant guilty beyond a reasonable doubt of the offenses of aggravated criminal sexual abuse and aggravated criminal sexual assault as charged in counts IX and X. The court entered a judgment of conviction on those counts.

¶ 18 The trial court proceeded to an immediate sentencing hearing following the stipulated bench trial. The court concurred with the parties' recommendation for sentencing and sentenced defendant to mandatory consecutive terms of four years and seven years in the Illinois Department of Corrections on counts IX and X, respectively. This timely appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant argued the trial court erred in denying his motion for discharge on speedy-trial grounds. He contends the court erred in calculating the time tolled from speedy-trial calculations as including the 32 days from April 6 to May 8, 2012. A jury trial setting was possible beginning April 9 and the delay to May 8 should not have been charged to defendant. Defendant further argues the court erred in placing the burden on him to specifically request a trial setting of April 9. Without this specific request, the court believed it was justified in finding the May 8 setting to be the next available trial setting when defendant announced ready

for trial on April 6 and did not request the April 9 date, and the court's calendar was already full with three jury trials scheduled for April 9.

¶ 21 The speedy-trial statute provides every defendant in custody for an alleged offense shall be tried within 120 days from the date he was taken into custody unless a delay is caused by him. 725 ILCS 5/103-5(a) (West 2012). Delay is considered to be agreed to by a defendant unless he objects to the delay by making a written demand for trial or an oral demand for trial on the record. 725 ILCS 5/103-5(a) (West 2012). Any such delay occasioned by a defendant will temporarily toll the running of the 120-day speedy-trial period. 725 ILCS 103-5(f) (West 2012). If a defendant is not tried within 120 days of continuous incarceration, he is entitled to be discharged from custody. 725 ILCS 5/103-5(d) (West 2012); *People v. Campa*, 217 Ill. 2d 243, 251-52, 840 N.E.2d 1157, 1163 (2005).

¶ 22 On a motion for discharge on grounds of a speedy-trial violation, the defendant has the burden of establishing a violation of his right to a speedy trial. *People v. Reimolds*, 92 Ill. 2d 101, 106, 440 N.E.2d 872, 875 (1982). The decision as to accountability for delay is within the discretion of the trial court and should not be disturbed absent a clear abuse of discretion. See *People v. Palacio*, 240 Ill. App. 3d 1078, 1086, 607 N.E.2d 1375, 1379 (1993).

¶ 23 Defendant's announcement he was ready for trial on April 6, 2012, was not expressed in words including the terms "speedy trial." However, there are no "magic words" for demanding a speedy trial orally on the record (see *People v. Huff*, 195 Ill. 2d 87, 92, 744 N.E.2d 841, 843 (2001)). The trial court properly considered defendant's announcement he was ready for trial as a request for trial at the next available date and calculated the days counted toward defendant's speedy-trial rights from that next available date.

¶ 24 Defendant did not request a specific date for trial. He announced he was ready for trial and objected when the State requested a continuance. It was then up to the trial court to set the case for trial at the earliest or next available date. A trial court has discretion to set the court schedule. See *People v. Cordell*, 223 Ill. 2d 380, 390, 860 N.E.2d 323, 330 (2006), citing *Kula v. Sitkowski*, 395 Ill. 167, 171, 69 N.E.2d 688, 689 (1946) (a trial court is vested with judicial discretion in the arrangement of cases on a trial calendar and in determining their priority).

¶ 25 Defendant argues he was entitled to the next trial setting theoretically possible and he should not have been charged with any delay occasioned by the failure of the trial court to set his case on that date. He contends it is not part of his burden on a motion for discharge to show he had calculated the earliest trial date possible on the court's calendar and specifically requested that date in order to get the benefit of speedy-trial calculations from that date and not from the date the court determines is the next available date.

¶ 26 We disagree. It is not an onerous burden on a defendant to request the earliest trial date theoretically possible on a trial court's calendar when enforcing his speedy-trial rights. With or without such a request, it is not an abuse of discretion for the court to schedule the defendant's trial for the next *available* date. Even if defendant specifically requested an April 9 trial date, the court was entitled to manage its own schedule and set a reasonable date for trial in the near future. As the court noted here, while it was theoretically possible to have scheduled defendant's trial for April 9, a jury week beginning three days after the April 6 status hearing, it had three jury trials scheduled for that same week. In managing the trial calendar, setting defendant's trial for May 8 was choosing the next available date—a date when the case might actually be reached for trial. Because the speedy-trial days had earlier been tolled due to

defendant's continuance to the status hearing on April 6, those days did not begin to be counted again until the date the case was next set for trial, May 8.

¶ 27 Defendant contends the sequence of events on April 6 are determinative. It appears the court granted the State's motion to continue right after defendant answered ready for trial. The court set a June trial date. Then, the court made reference to a May 8 trial date. We believe the record shows a May 8 trial date was the first practicable trial date available to defendant, had the State not moved to continue.

¶ 28 Defendant emphasizes sequence, but we recognize context. In context, the trial court impliedly said, "the earliest trial date I could give the defendant is May 8, but since the State's motion to continue is well taken, it is necessary to set the case on June 18." Defendant caused delay until April 6, and that delay would have extended to May 8. Thus, the time delay between April 6 and May 8 is attributable to defendant. That is a reasonable interpretation of both sequence and context.

¶ 29 The trial court did not abuse its discretion in its handling of the scheduling of defendant's case for trial and in calculating the days for purposes of defendant's right to a speedy trial.

¶ 30 III. CONCLUSION

¶ 31 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 32 Affirmed.