2011 IL App (1st) 101308-U

SIXTH DIVISION
November 23, 2011

No. 1-10-1308

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 5853
	)	
SPENCER ROBINSON,	)	Honorable
	)	Thomas M. Tucker,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 ***Held***: Where defendant clearly and convincingly attempted to assert his right to discharge his attorney and proceed to an immediate trial, delays in the speedy trial term should not have been attributed to him. Due to a violation of the statutory right to a speedy trial, we reverse and remand with directions to enter an order discharging defendant.

¶ 2 Following a jury trial, defendant Spencer Robinson was convicted of burglary and sentenced to 12 years in prison. Defendant appealed, and we remanded for the limited purpose of allowing him an opportunity to relitigate his speedy trial motion and his motion to quash arrest and suppress evidence, either with assistance of counsel or after proper admonishment and

waiver of counsel. *People v. Robinson*, No. 1-07-1895, order at 11-12 (2009) (unpublished order under Supreme Court Rule 23). On remand, the trial court denied defendant's motion for a speedy trial, and defendant withdrew his motion to quash and suppress. Defendant appeals from the denial of his speedy trial motion.

¶ 3 On appeal, defendant contends that he was denied his statutory right to a speedy trial where he clearly and convincingly attempted to assert his right to discharge his attorney and proceed to an immediate trial.

¶ 4 Defendant was arrested on February 8, 2006. His trial commenced 405 days later, on March 20, 2007. The parties agree as to which continuances are attributable to which side before June 29, 2006, and after December 27, 2006. The time frame at issue in this appeal is the 181 days between those dates. Because this appeal concerns defendant's efforts to discharge the public defender, represent himself and demand an immediate trial, we will set forth in detail what defendant said to the court between June 29 and December 27, 2006.

¶ 5 On June 29, 2006, defendant appeared in court with a public defender, Diana Garcia. Defendant addressed the court, stating that he no longer needed Garcia, was ready for trial and was prepared to argue his case and defend himself. The trial court continued the case, attributing the delay to defendant.

¶ 6 When the case was next called, on July 7, 2006, defendant told the trial court that he had filed a motion for counsel other than the public defender. After the trial court rejected the motion, explaining that the government only provides public defenders as free attorneys, defendant stated that he would represent himself and that he had "put in" a motion for a speedy trial. After the trial court refused to allow defendant to proceed *pro se*, defendant asserted that he did not want Garcia to represent him. The case was continued to July 20, 2006.

¶ 7 On that date, the trial court assigned defendant a different attorney from the public defender's office, Rick Fadell. Fadell told the court that defendant had informed him he wished to proceed *pro se*, and the trial court denied the request. Fadell then stated that he would file an answer and set the case for trial. When the trial court asked, "What date you want?" defendant answered, "As soon as possible." The case was continued to August 7, 2006.

¶ 8 On August 7, 2006, after asking defendant his name, the trial court directed defendant to "just stand there quietly," which he apparently did. The trial court then granted Fadell leave to file a motion to quash arrest and suppress evidence, and the motion was set for September 14, 2006.

¶ 9 The parties next appeared in court on October 24, 2006. On that date, as the trial court was beginning to say something about resetting the matter for hearing, defendant interrupted, stating, "I would like to ask. I filed a motion for speedy trial. I got a copy of it." The trial court asked defendant whether he was suggesting the State had exhausted its time, but defendant's reply was non-responsive to that question. The trial court set a date for a hearing on the motion to quash arrest and suppress evidence for November 6, 2006.

¶ 10 On November 6, 2006, the parties and a police officer appeared in court. The public defender was not present. When the trial court asked defendant whether he was representing himself, defendant answered, "I would like to tell you about the things that happened the last time. I was here. My term was running. He got upset [and] told me he was going to take himself off the case. He ain't representing me to the fullest." Defendant stated that he did not have a lawyer, that the police officer in court was not the arresting officer, and that he was prepared and ready to argue his case. The trial court granted a continuance so that defendant could talk with the appointed assistant public defender, Rick Fadell.

¶ 11 When the parties next met, on November 9, 2006, Fadell informed the trial court that defendant indicated to him he wished to proceed *pro se*, to which the trial court answered that the request was denied. Defendant protested that he had a motion and asked, "What about speedy term?" The trial court answered that it would consider the issue on December 27, 2006. The common law record includes a copy of a "motion for a bar association attorney" file stamped on November 9, 2006. A "motion and demand for a fair and speedy trial" appears to have been file stamped on the same date.

¶ 12 On December 27, 2006, the parties appeared before a different trial court judge. Defendant asked whether he could speak with the trial court. When the court acquiesced, defendant stated, "I filed several motions, filed a motion for speedy trial and motion to suppress and quash and it's been six months ago and I haven't heard anything from them." Then, in answer to the trial court's questions, defendant stated that he did not want to have Fadell represent him and did not want to represent himself. When the trial court stated that defendant could have the public defender, defendant stated, "I don't want him. I can represent myself." At this juncture, the trial court admonished defendant about his right to counsel. Defendant related to the court that Fadell had lied to him. Defendant said, "I do not wish to have him do anything else for me but to leave me alone." From that point, the trial court addressed defendant instead of Fadell. Defendant stated that he was ready to proceed, indicated that he was demanding trial, and stated, "May I also my time has expired on the case." On motion of the State, the trial court set the case for motion and jury trial on January 8, 2007, so that the original trial court judge could hear the case.

¶ 13 On January 8, 2007, the parties appeared before the original judge. Defendant, *pro se*, stated that he wanted a jury trial date as soon as possible and agreed to February 5, 2007. He then stated, "I would like to request that I file this here motion for speedy trial and for a motion

to suppress and squash. I already filed them already." After the State pointed out that a hearing on the motion would have to take place before the trial, the hearing was set for February 5, 2007.

¶ 14 On February 5, 2007, defendant argued his motion for a speedy trial. Among other things, he stated that he filed the motion before the public defender filed the motion to quash and suppress, that he fired the public defender, that he "was trying to fire him all the time," that he asked the court several times to "get rid" of the public defender, and that he never agreed to any continuances. The trial court denied the motion. Thereafter, the trial court heard and denied the motion to quash arrest and suppress evidence. On March 6, 2007, defendant presented a motion for appointment of a bar association attorney, which was denied by the trial court.

¶ 15 Defendant's jury trial commenced on March 20, 2007. The details of the trial were presented in our decision remanding the case and will not be repeated here. See *Robinson*, order at 3-5. The jury found defendant guilty of burglary and the trial court entered judgment on the verdict. Based on defendant's earlier convictions, the trial court imposed a Class X term of 22 years' imprisonment. After defendant filed a motion for reconsideration of sentence, the trial court reduced the sentence to 12 years in prison.

¶ 16 Defendant appealed, contending that he did not knowingly and intelligently waive his right to be represented by counsel during pretrial proceedings. He also challenged his sentence as a Class X offender. We remanded to the circuit court for the limited purpose of allowing defendant an opportunity to relitigate his speedy trial motion and his motion to quash arrest and suppress evidence, either with assistance of counsel or after proper admonishment and waiver of counsel. *Robinson*, slip op. at 11-12.

¶ 17 On remand, the trial court denied defendant's motion for a speedy trial. In the course of doing so, the trial court found that even though defendant had filed a motion for a speedy trial, he had also filed a motion to quash and suppress and a motion for appointment of counsel other

than the public defender, and those motions stopped his speedy trial request. After consulting with counsel, defendant withdrew his motion to quash arrest and suppress evidence. Defendant now appeals from the denial of his speedy trial motion.

¶ 18 Under section 103-5(a) of the Code of Criminal Procedure of 1963, every person in custody "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 2006). Any delay that is caused or contributed to by the defendant tolls the speedy-trial period until the expiration of the delay, at which point the period resumes running. *People v. Murray*, 379 Ill. App. 3d 153, 158 (2008). It is the State's duty to bring a defendant to trial within the 120-day statutory period, but the defendant bears the burden of establishing that any delays were not attributable to his conduct. *Murray*, 379 Ill. App. 3d at 158. When a defense attorney requests a continuance on behalf of his client, the resulting delay will be attributed to the defendant unless the defendant has clearly and convincingly asserted his right to discharge the attorney. *People v. Kaczmarek*, 207 Ill. 2d 288, 297 (2003); *People v. Mayo*, 198 Ill. 2d 530, 537 (2002). A trial court's determination of who is responsible for a delay is entitled to much deference and will be sustained absent a clear showing of an abuse of discretion. *People v. Myers*, 352 Ill. App. 3d 684, 688 (2004).

¶ 19 On appeal, defendant contends that he was denied his right to a speedy trial where he clearly and convincingly attempted to assert his right to discharge his attorney and proceed to an immediate trial. Defendant maintains that his right to a speedy trial was violated because 405 days elapsed before he went to trial and "at least" 272 of those days where trial was delayed were not attributable to him. He argues that he cannot be charged with delay resulting from his attorney's filing of a motion to quash and suppress, since he was trying to discharge the attorney,

or for delay resulting from the trial court's repeated denying and ignoring of his requests to proceed *pro se* while his attorney acquiesced to continuance after continuance.

¶ 20 In making his arguments, defendant relies primarily on *People v. Pearson*, 88 Ill. 2d 210 (1981). In *Pearson*, the defendant contended on appeal that his right to a speedy trial was violated because the trial court repeatedly continued his case over his protests. See *People v. Pearson*, 88 Ill. App. 3d 616, 617-18 (1980). On at least three different dates before trial, the defendant had made statements to the court about being ready for trial and not agreeing with his attorney's requests for continuances. Specifically, on those respective dates the defendant had stated (1) "I don't have no attorney. I am ready for trial"; (2) "I'm ready for trial. Forget the motion"; and (3) "[Y]ou are not my attorney. And I am ready for trial." *Pearson*, 88 Ill. App. 3d 616, 617-18. Our supreme court found that a "fair appraisal" of the proceedings on those three dates revealed that the defendant clearly and convincingly attempted to assert his right to discharge his attorney and proceed to an immediate trial. *Pearson*, 88 Ill. 2d at 215. The supreme court held that where a defendant objects to his attorney's actions by employing terms such as those used by the defendant in *Pearson*, any continuance thereafter granted may not be attributed to the defendant. *Pearson*, 88 Ill. 2d at 215.

¶ 21 We agree with defendant here that a fair appraisal of the record reveals that he clearly and convincingly attempted to assert his right to proceed *pro se* to an immediate trial. On at least six different dates before being granted the right to represent himself, defendant made statements to the effect that he did not need an attorney, did not want the public defender to represent him, was ready for trial, was prepared to defend himself and wanted to represent himself. On at least four of those dates, defendant invoked the concept of a speedy trial, stating that he had "put in" a motion for a speedy trial, that he wanted a trial as soon as possible and reminding the trial court that his "term was running" and that he had filed a speedy trial motion.

As in *Pearson*, we find that, based on the record presented, "[t]here can be no question but that the defendant was asserting his readiness to proceed." *Pearson*, 88 Ill. 2d at 215.

¶ 22 The State argues that the record is not clear defendant was insistent on proceeding without counsel at his pretrial hearing, as defendant requested counsel other than the public defender both orally and in a written motion. We are not convinced that these isolated requests for alternate counsel outweigh defendant's repeated and insistent requests to proceed *pro se* to an immediate trial. While defendant did ask for an attorney other than the public defender on July 7, 2006, we note that as soon as the trial court rejected the idea, defendant quickly abandoned it in favor of seeking to represent himself. Also, although the common law record includes a motion for a bar association attorney file stamped on November 9, 2006, defendant's comments in court that day focused on the issue of a speedy trial.

¶ 23 In our view, despite these two requests, the record still reflects that defendant was clearly and convincingly attempting to assert his right to proceed *pro se* to an immediate trial. This is not a case like *Mayo*, referenced by the State, where the defendant was allowed to proceed *pro se*, later asked for and was granted the appointment of an attorney, and then, after a few status dates, made a statement in court that he wanted an attorney but within minutes said he did not need the help of the public defender and was "ready at this time." *Mayo*, 198 Ill. 2d at 532-33. In *Mayo*, our supreme court found that the defendant's change in thought, coupled with his earlier equivocation, caused enough uncertainty to justify a continuance that would be attributed to the defendant. *Mayo*, 198 Ill. 2d at 540. In contrast, defendant here did not clearly state he wished to have an attorney and then minutes later express a desire to proceed *pro se*, nor did he represent himself on an earlier court date and then ask the court to reappoint counsel. *Mayo* is distinguishable.

¶ 24 After a thorough review of the record, we conclude that the contested delays should not have been attributed to defendant. Setting aside the delays that were properly attributed to him, defendant was not brought to trial within 120 days of being placed in custody. Accordingly, his right to a speedy trial was violated, and the trial court abused its discretion in finding otherwise. The remedy for a violation of the statutory right to a speedy trial is discharge from custody. 725 ILCS 5/103-5(d) (West 2006); *People v. Exson*, 384 Ill. App. 3d 794, 803 (2008).

¶ 25 For the reasons explained above, we reverse the judgment of the circuit court of Cook County and remand the cause with directions to enter an order discharging defendant.

¶ 26 Reversed and remanded with directions.