

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

vs

NICHOLAS FERNANDEZ,

Defendant.

Open Court
Filed in ~~Clerk's Office~~
This 16th day of December, 2022
Shelley M. Johnson Deputy Clerk
Athens-Clarke County Superior/State Court
SWS 12-17-22

Civil Action No. SU22CR0755

ORDER GRANTING DEFENDANT'S MOTION FOR DISCHARGE AND ACQUITTAL

On November 16, 2021, Defendant was indicted for the non-capital offenses of Trafficking Person for Sexual Servitude, Aggravated Child Molestation (2 counts), Statutory Rape, Kidnapping, and False Imprisonment. On January 9, 2022, Defendant filed a Demand for Speedy Trial pursuant to O.C.G.A § 17-7-170.

The case was scheduled for trial on February 21, 2022. On February 16, 2022, the State filed a Motion to Enter Nolle Prosequi stating they did not have all of their evidence and they were not ready to try the case. Defendant objected to the State's Motion to Enter Nolle Prosequi and announced ready for trial. The Court granted State's Motion to Enter Nolle Prosequi. On September 13, 2022, the State re-indicted Defendant with offenses which were identical to the first indictment.

O.C.G.A. § 15-6-3(42)(A) provides that Athens-Clarke County shall have four terms of court each year and that the terms shall start on the second Monday in January, April, July, and October.

O.C.G.A. § 17-7-170 provides in part:

(a) Any defendant against whom a true bill of indictment or an accusation is filed with the clerk for an offense not affecting the defendant's life may enter a demand for speedy trial at the court term at which the indictment or accusation is filed or at the next succeeding regular court term thereafter; or, by special permission of the court, the defendant may at any subsequent court term thereafter demand a speedy trial. In either case, the demand for speedy trial shall be filed with the clerk of court and served upon the prosecutor and upon the judge to whom the case is assigned or, if the case is not assigned, upon the chief judge of the court in which the case is pending. A demand for speedy trial filed pursuant to this Code section shall be filed as a separate, distinct, and individual document and shall not be a part of any other pleading or document. Such demand shall clearly be titled "Demand for Speedy Trial"; reference this Code section within the pleading; and identify the indictment number or accusation number for which such demand is being made. The demand for speedy trial shall be binding only in the court in which the demand for speedy trial is filed, except where the case is transferred from one court to another without a request from the defendant.

(b) If the defendant is not tried when the demand for speedy trial is made or at the next succeeding regular court term thereafter, provided that at both court terms there were juries impaneled and qualified to try the defendant, the defendant shall be absolutely discharged and acquitted of the offense charged in the indictment or accusation. For purposes of computing the term at which a misdemeanor must be tried under this Code section, there shall be excluded any civil term of court in a county in which civil and criminal terms of court are designated; and for purposes of this Code section it shall be as if such civil term was not held.

In the case at issue, Defendant was indicted on November 16, 2021, during the October 2021 term of court. Defendant filed his Demand for Speedy Trial on January 9, 2022, the last day of the October 2021 term of court. Pursuant to O.C.G.A. §17-7-170, the State had the January and April 2022 terms of Court to try Defendant. The April 2022 term of court ended on July 10, 2022. During all of the terms of Court at issue, juries were impaneled in this jurisdiction. Defendant was not tried during the January or April 2022 terms of court.

"We agree with the trial court that the defendant's demand for a speedy trial attached to his re-indictment on identical charges." Dalton v. State, 263 Ga. 138, 140 (1993). This Court agrees with the Dalton court that state cannot "render a demand for speedy trial meaningless by


seeking a new indictment in an attempt to extend the time in which the defendant's demand for speedy trial can be met." Id.

The State argues that the indictments were not identical as the dates listed in Count 1 were different in the two indictments. However, the Court does not find this persuasive and finds that the date change in Count 1 is just a matter of semantics. It would be a misinterpretation of the law to find that Count 1 is substantively different in the two indictments.

On September 13, 2022, when the State re-indicted Defendant, the speedy trial period had already expired. Thus, the State had no ability to go forward at any point in time during the second case.

Therefore, Defendant's Motion for Discharge and Acquittal is hereby GRANTED.

SO ORDERED, this 16th day of December, 2022.



Lisa Lott
Judge, Superior Court
Western Judicial Circuit