

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 31, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP0036-CR

Cir. Ct. No. 2003CF003539

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES L. WILSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIAM W. BRASH, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Charles Wilson appeals from the judgment of conviction entered against him, and the order denying his motion for postconviction relief. He argues that the circuit court erred when it denied his motion for postconviction relief. In the motion, he argued that his constitutional

right to a speedy trial was violated, and that the delay was caused by the State. Because we conclude that the State was not responsible for most of the delay, we affirm.

¶2 On June 19, 2003, Wilson was charged with aggravated battery. A trial was initially scheduled for August 13, 2003. At that time, the State told the court that it had not been able to get the victim's medical records from the hospital. The court found that the failure to get the records was not the State's fault, and granted an adjournment. Wilson then entered a speedy trial demand, and the court set the trial for November 3, 2003. On October 16, 2003, defense counsel moved to withdraw because of a breakdown of communications with Wilson. New counsel moved for additional time to prepare, and made a new speedy trial demand. The court set a new trial date of January 21, 2004.

¶3 The day before trial, Wilson filed a motion *in limine* to exclude evidence of conversations he had with the victim and the victim's son. The State intended to present the recordings at trial and had not transcribed all of the recordings. The trial court determined that it needed the transcripts to rule on the defense motion. The court then once again adjourned the trial to March 17, 2004, to allow the State time to have the recordings transcribed. The trial actually began on that date, and Wilson was convicted.

¶4 Afterwards, Wilson moved for postconviction relief alleging that the nine-month delay violated his constitutional right to a speedy trial. The circuit court, in a thorough and well-reasoned opinion, denied the motion. The court found that there was a delay of nine-months between the time Wilson was arrested and the time the trial was held. The court further found that Wilson did not make his first speedy trial demand until two months after he was arrested, and that the

State was responsible for only about three months of the delay between that time and the time the trial was actually held. Specifically, the court found that the only part of the delay that could be considered the State's fault, was the delay caused by the State's failure to have the transcripts of the telephone conversations prepared. The court also found that the delays caused by the hospital's inability to find the victim's medical records, and the delay caused when defense counsel withdrew and new counsel was appointed, were both reasonable and necessary and not the State's fault.

¶5 When determining whether the State has violated a defendant's right to a speedy trial, the court considers four factors. *Norwood v. State*, 74 Wis. 2d 343, 352-53, 246 N.W.2d 801 (1976) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). These factors are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right to a speedy trial; and (4) the prejudice to the defendant. *Id.* at 353. While all four factors are important, the court must first consider the length of the delay and whether the delay was presumptively prejudicial. *Id.* If it is not, then the court does not consider the other factors. *Id.* The determination of whether a delay is presumptively prejudicial depends on the circumstances of each case. *Id.* When reviewing speedy trial claims, we apply the clearly erroneous standard to the facts found by the trial court and independently determine whether the constitutional standard has been violated. *State v. Leighton*, 2000 WI App 156, ¶5, 237 Wis. 2d 709, 616 N.W.2d 126.

¶6 In this case, the circuit court found that only three months of the delay could be attributed to the State's actions. As the circuit court found, there is nothing in the record to suggest that the State did this intentionally or to hamper the defendant's defense. Rather, it appears that the State had not transcribed the

conversations because of the sheer volume of the recordings. While the delay was arguably long, the reasons for most of the delay cannot be attributed to the State. Consequently, we agree with the circuit court's conclusion.

¶7 Addressing the other factors, the circuit court also found that it was undisputed that Wilson asserted his right to a speedy trial, but that he did not establish that he was sufficiently prejudiced by the delay. Wilson argued that he was prejudiced because he was incarcerated for nine months prior to trial. In light of the other circumstances, however, and particularly the fact that Wilson was responsible for much of the delay, we conclude that the State did not violate Wilson's right to a speedy trial. For the reasons stated, we affirm the judgment and order of the circuit court.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

