

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 14, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-0310-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PHAROAH VERNON MORRIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: LAURENCE C. GRAM, JR., Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Pharoah Morris appeals a conviction for armed robbery. He contends that he did not receive a speedy trial, in violation of the Wisconsin and United States Constitutions. We disagree, and therefore affirm.

¶2 The State commenced this action in December 1997. The trial was originally scheduled for April 1, 1998, but the trial court granted the State a continuance to locate a missing witness.

¶3 The trial was then scheduled for July 13, 1998, and subsequently postponed until August 5 for reasons again attributable to the State. The court heard pre-trial motions on August 5 and the proceedings were carried over until the next day, at which time Morris replaced his attorney. New counsel was not prepared to go to trial that day and the matter was rescheduled for and finally tried on November 9.

¶4 The Sixth Amendment to the United States Constitution and article I, section VII of the Wisconsin Constitution guarantee a speedy trial, as does WIS. STAT. § 971.10 (1999-2000).¹ Whether a defendant has been denied the right to a speedy trial is a constitutional question that we review de novo. *See State v. Ziegenhagen*, 73 Wis. 2d 656, 664, 245 N.W.2d 656 (1976). Under both the state and federal constitutional provisions, the court must consider four factors in determining whether a defendant has been denied a speedy trial: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted the right to a speedy trial; and (4) whether the delay was prejudicial. *See Doggett v. United States*, 505 U.S. 647, 651 (1992); *Day v. State*, 61 Wis. 2d 236, 244, 212 N.W.2d 489 (1973). The length of the delay is a threshold consideration, and the inquiry goes no further unless the reviewing court concludes that it is presumptively

prejudicial. See *Doggett*, 505 U.S. at 651-52; *Hatcher v. State*, 83 Wis. 2d 559, 566-67, 266 N.W.2d 320 (1978).

¶5 Morris did not suffer from a presumptively prejudicial delay. Generally speaking, delays are presumptively prejudicial when they approach one year, *Doggett*, 505 U.S. at 652, n.1, and no appellate court in Wisconsin has found presumptively prejudicial any significantly lesser delay between arrest and trial. See *State v. Borhegyi*, 222 Wis. 2d 506, 518, 588 N.W.2d 89 (Ct. App. 1998) (describing twelve months between arrest and trial as the bare minimum for presumptive prejudice). Here, the total delay between Morris's arrest and trial approached eleven months. However, all of the delay after August 6, 1998 is directly attributable to Morris, and we do not consider it for speedy trial purposes. See *Norwood v. State*, 74 Wis. 2d 343, 354, 246 N.W.2d 801 (1976). The remaining seven-and-a-half-month delay is not presumptively prejudicial as generally measured, and Morris provides no persuasive reasons to hold otherwise in his case.

By the Court.—Judgment affirmed.

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

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

