

Wallace E. FLOYD v. STATE of Arkansas

CR 83-57

656 S.W.2d 701

Supreme Court of Arkansas
Opinion delivered September 12, 1983

CRIMINAL PROCEDURE — SPEEDY TRIAL — DEFENDANT INCARCERATED FOR ANOTHER OFFENSE MUST BE TRIED WITHIN TWELVE MONTHS. — Where appellant was incarcerated in jail for the charge now pending and later incarcerated in prison pursuant to a conviction on another charge but was not tried for fourteen months and twenty-six days after he was first incarcerated on the pending charge, the time exceeded the twelve month limit and no authorized cause for delay was shown; therefore, the conviction must be reversed and dismissed.

Appeal from Sebastian Circuit Court; *Robert E. Boyer*, Judge; reversed and dismissed.

John W. Settle, for appellant.

Steve Clark, Atty. Gen., by: *Theodore Holder*, Asst. Atty. Gen., for appellee.

ROBERT H. DUDLEY, Justice. The sole issue in this case is whether the appellant, who was incarcerated in prison after being convicted on another charge, was afforded a speedy trial as defined by the Arkansas Rules of Criminal Procedure, Art. VIII, Speedy Trial, Vol. 4A (Repl. 1977 and Supp. 1983).

The time for trial commenced running on August 25, 1981, the date appellant was incarcerated in jail to await trial on this charge. A.R.Cr.P. Rule 28.2. Appellant remained in jail awaiting trial until January 21, 1982 when he was incarcerated in prison pursuant to conviction on another charge. He was not tried on the charge now before us until November 16, 1982, a period of fourteen months and twenty-six days from the date the time commenced to run.

A defendant incarcerated in prison for another offense must be tried within twelve months from the date time commences to run, excluding authorized delays, or else the charge must be dismissed. A.R.Cr.P. 28.1 (b). The state has failed to show any authorized cause for delay. The conviction must be reversed and dismissed.