

Dwight David LOWE v. STATE of Arkansas

CR 86-66

716 S.W.2d 1

Supreme Court of Arkansas
Opinion delivered September 22, 1986

APPEAL & ERROR — CRIMINAL CASE — JOINT PETITION TO DISMISS — COURT UNWILLING TO ACCEPT LITIGATING PARTIES' DECISION ON MERITS. — Where the appellate court could not determine if any excludable periods tolled the speedy trial rule, it was unwilling to accept a decision on the merits made by the litigating parties in their joint petition for dismissal, and the parties were ordered to brief the issues.

Joint Motion to Dismiss Appeal; denied.

Jones, Tiller & Walker, by: *Marquis E. Jones*, for appellant.

Steve Clark, Att'y Gen., by: *William F. Knight*, Asst. Att'y Gen., for appellee.

PER CURIAM. The appellant and the Attorney General's Office filed a joint petition seeking a dismissal of the charges against the appellant. In the petition, the parties state that appellant was arrested on May 20, 1984; charged with theft of property on June 6, 1984, and released on bond on June 8, 1984. He filed a motion to dismiss the charges on January 31, 1986, which was denied on February 4, 1986. The parties claim that appellant's right to a speedy trial has been violated and, accordingly, the trial court should be reversed and the charges should be dismissed.

[1] We deny the parties' petition. Without briefs on the issue we cannot determine if any excludable periods toll the speedy trial rule and we are unwilling to accept a decision on the merits made by the litigating parties. A litigant can waive the right to appeal or withdraw an appeal, but it is the function of this court to resolve legal issues on appeal and it is not permissible for the parties to usurp that function.

Accordingly the petition is denied and the parties are

ordered to brief the issues.
