

CHARLES TIMOTHY EMERY *v.* STATE OF ARKANSAS

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489 S.W. 2d 17

Opinion delivered January 15, 1973

CRIMINAL LAW—RIGHT TO A SPEEDY TRIAL—WAIVER BY ENTRY OF GUILTY PLEA.—A guilty plea entered by accused after filing a motion to dismiss for failure to prosecute within statutory limits but before the motion was ruled on by the court voluntarily waived accused's alleged right to speedy trial.

Appeal from Pulaski Circuit Court, First Division,
William J. Kirby, Judge; affirmed.

William McArthur, for appellant.

Ray Thornton, Atty. Gen., by: *Lonnie Powers*, Asst. Atty. Gen., for appellee.

CONLEY BYRD, Justice. Appellant Charles Timothy Emery filed a motion to dismiss the charges of burglary and grand larceny against him for failure to prosecute within the time limits set out in Ark. Stat. Ann. § 43-1708 (Repl. 1964), but before the motion was ruled on by

the court, he entered a plea of guilty. After sentence, he filed a post conviction petition to set aside his convictions on the basis that his constitutional right to a speedy trial had been violated. The trial court denied his post conviction petition on the basis that his guilty plea voluntarily waived his alleged right to a speedy trial. We agree. See *McDonald v. State*, 253 Ark. 23, 484 S.W. 2d 345 (1972), and *People v. DeCola*, 15 Ill. 2d 527, 155 N.E. 2d 622 (1958).

Furthermore, we have not found in the record where a delay of more than two terms has occurred except upon the application of appellant or because of his absence.

Affirmed.
