

SUPREME COURT OF ARKANSAS

No. CR 12-236

BENJAMIN EAGLE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 4, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-08-1155]

HONORABLE HERBERT WRIGHT,
JR., JUDGE

AFFIRMED; COURT OF APPEALS
OPINION VACATED.

PAUL E. DANIELSON, Justice

Appellant Benjamin Eagle appeals from the judgment and commitment order of the Pulaski County Circuit Court convicting him of criminal attempt to commit theft of property and committing a fraudulent insurance act and sentencing him to a total time of 120 months' imprisonment. Our court of appeals reversed his convictions and dismissed his case with a bar to future prosecution. *See Eagle v. State*, 2012 Ark. App. 187. The State petitioned for review, which we granted. When we grant a petition for review, we treat the appeal as if it were originally filed in this court. *See Eastin v. State*, 370 Ark. 10, 257 S.W.3d 58 (2007). Eagle's sole assertion on appeal is that the circuit court erred in denying his motion to dismiss for lack of speedy trial. We affirm Eagle's convictions and sentence.

Because Eagle does not challenge the sufficiency of the evidence against him, only a brief recitation of the facts is necessary. *See, e.g., Banks v. State*, 2010 Ark. 108, 366 S.W.3d 341. Suffice it to say, it was alleged by the State that Eagle had engaged in the act of

submitting fraudulent documentation to an insurance company when seeking monies for lost wages after he had been involved in a vehicular accident. Relevant to the instant appeal, Eagle was arrested on February 7, 2008, and eventually filed a motion to dismiss for lack of speedy trial on October 22, 2010. In the motion, Eagle, at that time represented by counsel, asserted that “[t]o date more than twelve (12) months have passed since his arrest without bringing [him] to trial.” The circuit court heard Eagle’s motion at a hearing on January 18, 2011,¹ and ultimately denied it, with trial remaining set for February 16, 2011. On February 8, 2011, Eagle filed what the circuit court deemed a motion for reconsideration of its denial of his speedy-trial motion. The circuit court then denied that motion by order entered February 15, 2011, in which it found the following periods of time excludable from speedy-trial computation:

1. September 30, 2008, to October 14, 2008, representing a continuance granted at the defendant’s request.
2. October 15, 2008, to January 13, 2009, representing a period of delay caused by newly appointed counsel’s request for time to prepare for trial, with the tolling of speedy trial noted on the docket sheet.
3. January 13, 2009, to September 22, 2010, representing the period of delay resulting from the order that a mental competency examination of the defendant be performed, until the date the defendant was found fit to proceed based on the report of the examination.
4. September 22, 2010, to February 16, 2011, representing a delay necessitated by rescheduling the defendant’s trial due to the order of a mental competency examination of the defendant, to the next available trial date acceptable to the defendant.

The circuit court then calculated that Eagle’s trial was scheduled to take place 1105 days after

¹Eagle proceeded pro se at the hearing. While he moved for “standby” counsel, the circuit court denied his motion.

his arrest, but that 869 days were excludable. Because it found that only 236 days of the State's time to try Eagle had run, it found that its prior denial of Eagle's motion to dismiss was correct and denied his motion for reconsideration. After a jury trial held on February 24, 2011, Eagle was convicted and sentenced as set forth above. He now appeals.

For his sole point on appeal, Eagle argues that the circuit court erred in denying his motion to dismiss for speedy trial. While he concedes to two time periods being excludable, namely September 30, 2008 through September 15, 2010, and January 3, 2011 through January 18, 2011, he challenges the exclusion of any other time periods after the date his Act III evaluation was filed, which was September 15, 2010. He contends that the circuit court's exclusion of the period from September 22, 2010 through February 16, 2011 was erroneous because (1) the delay for mental evaluation ended the date the report was filed; (2) the State failed to meet its burden of showing that the time period was attributable to his delay; and (3) the State failed to argue that the period was excludable before the circuit court.

The State counters that, pursuant to this court's case law, the State's time for speedy trial tolled on the date that Eagle filed his motion to dismiss, October 22, 2010. Using that date to calculate speedy trial, the State urges that after excluding the period from September 30, 2008 through September 15, 2010, only 273 days of its time in which to try Eagle had expired. Therefore, it maintains, Eagle's speedy-trial right was not violated. Eagle disputes the State's assertions, replying that his motion to dismiss did not toll the speedy-trial time because the motion was not a delaying act. Relying on the court of appeals' decision in *Miller v. State*, 100 Ark. App. 391, 269 S.W.3d 400 (2007), Eagle asserts that no actual delay resulted from his filing of his motion to dismiss because at the time of filing, his trial date had already been

set for February 16, 2011, the date which was still in effect at the time the circuit court denied his motion. However, the State's recitation of our precedent is correct.

Pursuant to Rule 28.1 of the Arkansas Rules of Criminal Procedure, a defendant must be brought to trial within twelve months unless there are periods of delay that are excluded under Rule 28.3. *See* Ark. R. Crim. P. 28.1(b), (c) (2008); *Branning v. State*, 371 Ark. 433, 267 S.W.3d 599 (2007). If the defendant is not brought to trial within the requisite time, the defendant is entitled to have the charges dismissed with an absolute bar to prosecution. *See* Ark. R. Crim. P. 30.1(a) (2008); *Branning, supra*. Once a defendant establishes a prima facie case of a speedy-trial violation, the State bears the burden of showing that the delay was the result of the defendant's conduct or was otherwise justified. *See Zangerl v. State*, 352 Ark. 278, 100 S.W.3d 695 (2003). On appeal, we conduct a de novo review to determine whether specific periods of time are excludable under our speedy-trial rules. *See Branning, supra*.

In the instant case, Eagle was arrested on February 7, 2008.² On October 22, 2010, Eagle filed his motion to dismiss for violation of speedy trial. We have held that the filing of a speedy-trial motion tolls the running of the time for a speedy trial under our rules. *See Branning, supra; Zangerl, supra*. Put another way, the relevant time period, for purposes of calculating speedy trial, concludes with the filing of the motion to dismiss, because it is at the time of the filing of the motion that a defendant alleges the State's twelve-month period has run. The State has conceded that Eagle made a prima facie showing of a speedy-trial violation; therefore, the burden shifted to the State to show that the delay was the result of Eagle's

²The time for trial shall commence running from the date of arrest or service of summons. *See* Ark. R. Crim. P. 28.2(a) (2008).

conduct or was otherwise justified.

According to our calculations, from the date of Eagle's arrest, February 7, 2008, to the date he filed his motion to dismiss, October 22, 2010, 988 days had elapsed. Eagle concedes that the circuit court did not err in finding the period of time from September 30, 2008 through September 15, 2010, the date his Act III evaluation was filed, was excludable, and the State did not demonstrate that any other delay prior to the filing of Eagle's motion to dismiss was the result of Eagle's conduct or otherwise justified. Therefore, the sole excludable time period consisted of 715 days.³ Subtracting this excludable time attributable to Eagle from the 988 days that elapsed between Eagle's arrest and the filing of his speedy-trial motion leaves 273 days, which was well within the State's one-year period in which it had to try Eagle. Accordingly, the circuit court did not err in denying Eagle's motion to dismiss, and we affirm.

Affirmed; court of appeals opinion vacated.

Devon N. Holder, for appellant.

Dustin McDaniel, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for appellee.

³While the circuit court excluded time until September 22, 2010, using the date on which it found Eagle fit to proceed, we have held that the period of excludable time runs from the date the exam is ordered through the report's file date, here, September 15, 2010. See *Birmingham v. State*, 346 Ark. 78, 57 S.W.3d 750 (2001).