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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ALLEN GONZALES,

Defendant and Appellant.

F062707

(Super. Ct. Nos. VCF195867
& PCM218015)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier, Judge.

Michael Willemsen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon, Carlos A. Martinez, and Kari Ricci, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Kane, J., and Detjen, J.

On December 21, 2007, in Tulare County Superior Court case No. VCF195867, the Tulare County District Attorney (TCDA) filed a felony complaint alleging that appellant, Christopher Allen Gonzales, committed grand theft (Pen. Code, § 484g, subd. (a)). On March 3, 2009, in Tulare County Superior Court case No. PCM218015, the TCDA filed a misdemeanor complaint charging that on February 20, 2009, appellant drove at a time his driving privilege was suspended or revoked (Veh. Code, § 14601.1, subd. (a)).¹

On April 6, 2009, appellant failed to appear in court for arraignment in the misdemeanor case, and four days later the court issued a warrant for his arrest. He was arrested a little less than two years later on March 19, 2011.

On March 22, 2011, appellant entered a plea of not guilty in the felony case. On April 6, 2011, in each case, appellant filed a notice of motion to dismiss the charge on the ground that he had been denied his right under the California and United States Constitutions to a speedy trial. On April 27, 2011, the court denied both motions and thereafter appellant pled no contest in both cases.

On May 26, 2011, the court granted appellant five years' probation in the felony case and three years' summary probation in the misdemeanor case. On June 15, 2011, appellant filed a notice of appeal. Also on that date, the court granted appellant's request for a certificate of probable cause (Pen. Code, § 1237.5).

On appeal, appellant renews his contention that he was denied his right to a speedy trial under the federal and state constitutions. Respondent counters that as a result of his no contest pleas, appellant has forfeited his appellate claims and that, in any event, those claims are without merit. We affirm.

¹ We refer to Tulare County Superior Court case Nos. VCF195867 and PCM218015 as, respectively, the felony case and the misdemeanor case.

DISCUSSION

Forfeiture

Appellant's claim is not cognizable on appeal because he pled no contest to the charges in both cases. A plea of no contest is the legal equivalent of a guilty plea (*People v. Warburton* (1970) 7 Cal.App.3d 815, 820-821), and “the cases are virtually uniform in holding that a claim of speedy trial violation—whether statutory or constitutional—does not survive a guilty plea” (*Ricki J. v. Superior Court* (2005) 128 Cal.App.4th 783, 792). Representative of these cases is *People v. Hayton* (1979) 95 Cal.App.3d 413, where the court reasoned: “The essence of a defendant's speedy trial ... claim in the usual case is that the passage of time has frustrated his ability to establish his innocence. The resolution of a speedy trial or due process issue necessitates a careful assessment of the particular facts of a case in order that the question of prejudice may be determined. [¶] Where the defendant pleads guilty, there are no facts to be assessed. And since a plea of guilty admits every element of the offense charged, there is no innocence to be established.” (*Id.* at p. 419, fn. omitted.) In a similar vein, the court in *People v. Egbert* (1997) 59 Cal.App.4th 503 stated: “[T]he weighing process required to establish a constitutional speedy trial violation necessitates consideration of prejudice to the accused in the particular context of the case. By pleading guilty, a defendant concedes the absence of prejudice, having admitted “all matters essential to the conviction.” [Citations.] Viewed in this way, a guilty plea in both felony and misdemeanor prosecutions forecloses any further inquiry into whether there has been a deprivation of a defendant's speedy trial right.” (*Id.* at p. 511.)

Appellant finds fault with this reasoning and asked that we “reconsider” the cases employing it. He argues that a plea of guilty or no contest does not prove the absence of prejudice because (1) a defendant may plead guilty or no contest because as a result of the delay in prosecution he is unable to produce evidence that would show innocence,

and (2) the other interests served by the speedy trial guarantee are not related to the guilt or innocence of the accused. He bases this second point on the following principles: The United States Supreme Court has identified three interests of defendants that the speedy trial right was “designed to protect”: (1) preventing oppressive incarceration of the defendant while awaiting trial, (2) minimizing the defendant’s anxiety and concern due to the continuing pendency of unresolved criminal charges, and (3) limiting the possibility that the defense will be impaired. (*Barker v. Wingo* (1972) 407 U.S. 514, 532 (*Barker*).) In addition, the high court stated: “[T]here is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused. The inability of courts to provide a prompt trial has contributed to a large backlog of cases in urban courts which, among other things, enables defendants to negotiate more effectively for pleas of guilty to lesser offenses and otherwise manipulate the system. In addition, persons released on bond for lengthy periods awaiting trial have an opportunity to commit other crimes.... Moreover, the longer an accused is free awaiting trial, the more tempting becomes his opportunity to jump bail and escape. Finally, delay between arrest and punishment may have a detrimental effect on rehabilitation.” (*Id.* at pp. 519-520, fns. omitted.)

We assume for the sake of argument that in some cases in which the claim of prejudice does not involve the impairment of a defendant’s ability to prove his or her innocence, a claim of violation of speedy trial rights may survive a plea of guilty or no contest. This, however, is not that case. Here, there is nothing in the record to indicate that appellant pled no contest because he was unable to produce evidence of innocence, that he suffered great anxiety or concern, or, given that he was at large during the period in question, that he suffered excessive pretrial incarceration. And, regardless of any societal interests that may have been impaired by the delay in prosecution here, we note that the purpose of a criminal proceeding is to determine guilt or innocence of the

accused. Whatever may be the collateral effects on society at large that may follow from a delay in prosecution, in our view, a defendant who has pled guilty or no contest has forfeited any claim of violation of speedy trial rights.

Appellant also argues that if his plea prevents him from raising his speedy trial claims on appeal, the matter should be remanded to allow appellant to withdraw his plea. He relies on *People v. Lee* (1980) 100 Cal.App.3d 715 (*Lee*). In that case, the defendant pled guilty pursuant to a plea agreement which expressly provided that he could raise his constitutional speedy trial claim on appeal. The court held the defendant's claim was not reviewable on appeal, but remanded the matter to allow the defendant to withdraw his plea, reasoning as follows: "Since we have concluded that defendant's claim is not reviewable on appeal, it was improper for the trial court to approve the negotiated plea bargain purporting to provide the otherwise illusory right of appeal. [Citation.] The resulting failure to properly advise the defendant of the consequences of his conditional plea rendered the plea bargain itself procedurally defective." (*Id.* at p. 718.)

Appellant acknowledges that there was no violation of the plea agreement in the instant case, but argues his case is similar to *Lee* because, he asserts, he believed at the time of his plea that he could raise his speedy trial claim on appeal. He bases this factual claim on the following: The trial court, at the time it advised appellant of the consequences of a no contest plea, failed to advise him that his speedy trial claim would not survive his plea; his attorney, in appellant's request for a certificate of probable cause, stated that appellant "entered his pleas only after the trial court denied his Motions to Dismiss for violation of his speedy trial rights," and that appellant "contends these motions should have been granted"; and the court granted his request for a probable cause certificate.

In our view, *Lee* is distinguishable because appellant, unlike the defendant in *Lee*, did not enter his no contest pleas pursuant to a plea agreement that expressly provided

that he could appeal the denial of his speedy trial motions. The court here did not improperly approve a plea agreement. But, in any event, as we explain below, appellant's claims fail on the merits as to both the felony case and the misdemeanor case.

State Constitutional Speedy Trial Right

“The [California] state ... Constitution[] ... guarantee[s] criminal defendants the right to a speedy trial (... Cal. Const., art. I, § 15, cl. 1)” (*People v. Martinez* (2000) 22 Cal.4th 750, 754 (*Martinez*)). “Under the state Constitution, the filing of a felony complaint is sufficient to trigger the protection of the speedy trial right.” (*People v. Horning* (2004) 34 Cal.4th 871, 895 (*Horning*), italics omitted.) However, “the defendant seeking dismissal must affirmatively demonstrate prejudice [citation].” (*Ibid.*) As appellant concedes, he presented no evidence of prejudice below. Therefore, as to both the felony case and the misdemeanor case, his state constitutional claim fails.²

Federal Constitutional Speedy Trial Right

“The Sixth Amendment to the United States Constitution protects the defendant's right to a speedy trial.” (*Horning, supra*, 34 Cal.4th at p. 891.) Appellant concedes that his federal constitutional claim in the felony case is without merit under existing state Supreme Court precedent and raises this issue only to preserve it for further review. In a felony case, “Under the federal Constitution, ... the filing of a felony complaint is by itself insufficient to trigger speedy trial protection. [Citation.] The United States Supreme Court has defined the point at which the federal speedy trial right begins to operate: ‘[I]t is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular

² Appellant acknowledges that the California Supreme Court has rejected the argument he makes here and that we are bound by holdings of our state high court, under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455. He raises the issue to preserve it for further review.

protections of the speedy trial provision of the Sixth Amendment.”” (*Martinez, supra*, 22 Cal.4th at pp. 754-755, italics omitted.) As indicated above, appellant was arrested in March 2011 and he entered his plea a little over one month later. There has been no violation of his federal constitutional speedy trial right in the felony case.

Appellant’s federal constitutional claim in the misdemeanor case requires a different analysis. “[W]hen an offense is charged as a misdemeanor it is the filing of the complaint (or earlier arrest) which triggers the defendant’s Sixth Amendment right to a speedy trial.” (*Serna v. Superior Court* (1985) 40 Cal.3d 239, 245 (*Serna*)). Here, the complaint was filed on March 3, 2009; appellant was arrested in March 2011; and appellant entered his plea on April 27, 2011, slightly less than two years and three months after the filing of the complaint.

“In deciding whether to grant relief due to unreasonable delay in the prosecution, courts must consider what the high court refers to as the four ‘*Barker*’ factors ([*Barker, supra*,] 407 U.S. 514): ‘whether delay before trial was uncommonly long, whether the government or the criminal defendant is more to blame for that delay, whether, in due course, the defendant asserted his right to a speedy trial, and whether he suffered prejudice as the delay’s result.’ (*Doggett v. United States* (1992)) 505 U.S. [647,] 651 [*Doggett*].)” (*Horning, supra*, 34 Cal.4th at p. 892.)

“‘The first of [the *Barker* factors] is actually a double enquiry. Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from “presumptively prejudicial” delay If the accused makes this showing, the court must then consider, as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim.... [T]he presumption that pretrial delay has prejudiced the accused intensifies over time.’” (*Horning, supra*, 34 Cal.4th at p. 892.)

“[A] delay between the filing of a misdemeanor complaint and the arrest and prosecution

of a defendant which exceeds one year is unreasonable and presumptively prejudicial” (*Serna, supra*, 40 Cal.3d at p. 253.)

The high court has explained that in this context, “[T]he term ... ‘presumptive prejudice’ does not necessarily indicate a statistical probability of prejudice; it simply marks the point at which courts deem the delay unreasonable enough to trigger the *Barker* enquiry [into the remaining relevant factors].” (*Doggett, supra*, 505 U.S. at p. 652, fn. 1.) “[A]ffirmative proof of particularized prejudice is not essential to every speedy trial claim,” because “excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify. While such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria [citation], it is part of the mix of relevant facts, and its importance increases with the length of delay.” (*Id.* at pp. 655-656.)

With respect to the second factor, we look to “whether the government or the criminal defendant is more to blame for that delay....” (*Doggett, supra*, 505 U.S. at p. 651.) “[D]ifferent weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence ... should be weighted less heavily but nevertheless should be considered” (*Barker, supra*, 407 U.S. at p. 531, fn. omitted.)

The fourth factor of the *Barker* analysis, prejudice, is assessed “in the light of the interests of defendants which the speedy trial right was designed to protect.” (*Barker, supra*, 407 U.S. at p. 532.) As indicated earlier, these interests are: (1) preventing oppressive incarceration of the defendant while awaiting trial, (2) minimizing the defendant’s anxiety and concern due to the continuing pendency of unresolved criminal charges, and (3) limiting the possibility that the defense will be impaired. (*Ibid.*) “Of these, the most serious is the last, because the inability of a defendant adequately to

prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past.” (*Ibid.*)

When we apply the *Barker* factors to this case, we conclude appellant is not entitled to relief. First, the delay, though presumptively prejudicial, was not extraordinarily long. (Compare *Doggett, supra*, 505 U.S. at pp. 652, 657 [“extraordinary” delay of eight and one-half years, which included six years attributable to “Government’s inexcusable oversights” constituted violation of Sixth Amendment speedy trial right].) Second, the record establishes, at most, that the government was negligent in not arresting appellant sooner. Third, the record indicates that on February 20, 2009, appellant received a citation for driving without a license; he signed the citation; it notified him that he was to appear in court on April 6, 2009; and he failed to appear. Thus, in February 2009, although the complaint had not yet been filed, appellant was aware that he could be facing charges for the conduct upon which the misdemeanor offense was based. As appellant recognizes, had he appeared in court as directed, the misdemeanor case might have been resolved earlier. Based on these factors, appellant bears some responsibility for the delay.

Finally, we address the prejudice factor. As indicated above, “under the federal Constitution, if the delay is extraordinary, prejudice is presumed. But such presumptive prejudice does not alone entitle a defendant to relief; it is only ‘part of the mix of relevant facts, and its importance increases with the length of delay.’” (*Horning, supra*, 34 Cal.4th at p. 894.) We must also consider whether there is any showing of “particularized prejudice.” (*Ibid.*) Here, as previously noted, appellant was at large during the period of the delay, and therefore there is no question of oppressive pretrial incarceration. In addition, appellant did not assert in the trial court, and does not assert now, that he suffered any great anxiety or concern as a result of the pending charges.

Finally, with respect to the possible prejudice to his ability to defend against the charge, “the most serious of the types of prejudice that delay can cause” (*ibid.*), again, appellant makes no showing of prejudice. Thus, the record is devoid of any showing of “particularized prejudice.” Accordingly, we find no violation of appellant’s federal constitutional speedy trial right in the misdemeanor case.

DISPOSITION

The judgment is affirmed.