

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
RESPONDENT
vs.**

**SYLVESTER R. SISCO, II,
APPELLANT**

DOCKET NUMBER WD72165

DATE: JANUARY 29, 2012

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Sandra Midkiff, Judge

Appellate Judges:

Division One: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Attorneys:

Daniel N. McPherson, for Respondent

Daniel J. Ross, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, RESPONDENT

v.

SYLVESTER R. SISCO, II, APPELLANT

WD72165

Jackson County, Missouri

Before Division One Judges: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Sylvester Sisco appeals from his convictions by jury of one count of murder in the first degree, § 565.020; one count of assault in the first degree, § 565.050; and two counts of armed criminal action, § 571.015. In his sole claim on appeal, Appellant contends that the trial court erred in finding that the State had not violated his right to speedy trial.

AFFIRMED.

Division One holds:

- (1) The trial court cannot be deemed to have erred in refusing to convert the State's entry of a *nolle prosequi* into a dismissal with prejudice since, under Missouri case law, once a prosecutor dismisses a case without prejudice, a court has no authority to convert the dismissal to one with prejudice or force the prosecutor to trial.
- (2) Missouri courts have found that a delay of greater than eight months is presumptively prejudicial. From the date of Appellant's arrest, just short of three years passed prior to Appellant being brought to trial. Accordingly, the delay in bringing Appellant to trial was presumptively prejudicial, and an analysis of the four factors established by the United State Supreme Court in *Barker v. Wingo* (1. the length of delay, 2. the reason for the delay, 3. the defendant's assertion of his right, and 4. the prejudice to the defendant) is required.
- (3) There is no fixed requirement for when the right to speedy trial must be asserted; rather, the circumstances surrounding the assertion or failure thereof comprise a factor to be weighed in speedy trial analysis.
- (4) Viewing all of the *Barker* factors and the totality of the circumstances, while the record could likewise have supported a contrary decision by the trial court, the trial court cannot be deemed to have abused its discretion in

determining that Appellant's right to speedy trial was not, in fact, violated in this case. The State's actions resulted in a delays totaling over four times longer than the presumptively-prejudicial eight-month delay deemed sufficient to trigger speedy trial judicial review. For the first twenty months of that time, however, Appellant did not assert his right to a speedy trial and did not voice any objection to the continuances requested by the State. The trial court could reasonably have determined that Appellant acquiesced in this initial delay. As to the remaining delay, a large portion of it must be weighed against the State, especially the delay caused by the State's dismissal and re-filing of the case, unabashedly seeking to avoid a negative *in limine* ruling and the denial of a further continuance by the trial court. Finally, Appellant failed to provide concrete evidence of prejudice that his defense was compromised by these delays, and while some degree of prejudice to Appellant can be presumed, the weight given any prejudice in this case was for the trial court to assess, as the amount of time passing after the assertion of the right to speedy trial was not so egregious as to conclusively establish sufficient prejudice to warrant dismissal. Thus, the ultimate decision in this case rested squarely within the discretion of the trial court. Under our standard of review, the trial court cannot be deemed to have erred in denying Appellant's motion for dismissal, and the judgment must be affirmed.

Opinion by Joseph M. Ellis, Judge

Date: January 29, 2013

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