

**In the
Missouri Court of Appeals
Western District**

trial within the time required by the Uniform Mandatory Disposition of Detainers Law ("UMDDL").¹ Finding no error, we affirm.

Factual and Procedural Background²

On December 2, 2011, the State filed a criminal complaint against Eckert alleging felony victim tampering, which included a probable cause statement and a warrant. When the complaint was filed, Eckert was already in the custody of the Missouri Department of Corrections serving a life sentence for his convictions of forcible rape, first-degree statutory rape, tampering with physical evidence, and two counts of endangering the welfare of a child.

On October 15, 2013, Eckert filed an Inmate's Request for Disposition form ("Request for Disposition"), seeking a final disposition of three counts of felony victim tampering presumably set forth in the criminal complaint.³ Eckert appeared before the court on November 6, 2013, without counsel. His matter was then set for hearing on December 4, 2013. On December 4, 2013, the State filed an information formally charging Eckert with three counts of victim tampering. On the same date, Eckert appeared with an attorney and waived a preliminary hearing, and the matter was bound over for trial on December 10, 2013.

¹Sections 217.450 to 217.485. All statutory references are to RSMo 2012, as supplemented through the date that Eckert filed his Request for Disposition, unless otherwise noted.

²In addition to the record generated from Eckert's underlying post-conviction proceeding, this Court sustained Eckert's motion to include in the record on appeal the record in WD82214 (Eckert's appeal from the initial disposition of his postconviction claim which resulted in a remand for a finding on the issue of abandonment), and the record in WD78163 (Eckert's direct appeal from his victim tampering convictions).

³The complaint has not been made a part of the record on appeal.

On December 10, 2013, Eckert waived formal arraignment, entered a plea of not guilty, and requested a continuance. Over the State's objection, the trial court continued the matter to January 14, 2014 for a plea or trial setting. On January 14, 2014, Eckert requested another continuance and the trial court scheduled a "Plea/Trial Setting" for January 28, 2014.

On January 27, 2014, the day before trial, Eckert's counsel filed a "Motion to Dismiss for Failure to Charge an Offense."⁴ The motion to dismiss questioned whether Eckert could be charged with victim tampering based on letters he wrote *after* he had already been convicted of crimes involving the victim. When the parties appeared for the trial setting on January 28, 2014, the State requested time to file a response to the motion to dismiss as follows:

[The State]: The motion came in yesterday, I've just reviewed it, and I think that rather than stand and give oral arguments I would prefer a brief and the Court to rule on the bench, and then if you -- if the Court requires further oral argument, I would not object to setting a new date, but I would like to brief the motion before it's argued, Your Honor.

[Eckert's counsel]: And I have no objection to that.

[Trial court]: . . . So, do you have any objection to [the court] taking [judicial] notice of those [cases]?⁵

[Eckert's counsel]: I have no objection, Your Honor.

[Trial court]: All right. So[,] I'll take judicial notice of [those cases]
Everybody agreed on that?

⁴There is a docket entry indicating that Eckert also filed a *pro se* "Motion to Dismiss for Failure to State Offense and Other Irregularities" on January 9, 2014; however, this motion was not included in the record on appeal. The record suggests that the motion to dismiss filed by Eckert's counsel on January 27, 2014 was intended to supersede the *pro se* motion.

⁵The State had asked the trial court to take judicial notice of the files in Eckert's underlying criminal case, in Eckert's pending post-conviction claim from that case, and in the pending victim tampering case.

[The State]: Yes.

[Eckert's counsel]: Yes, Your Honor.

[Trial court]: And I believe you'd agreed -- did you have -- I notice in your motion that you . . . accepted the facts in the Statement of Probable Cause for the purposes of the motion.

[Eckert's counsel]: For purpose of this hearing[,] we accept all the statements in the probable cause, Your Honor.

[Trial court]: All right. So[,] I'll take notice of that including the file. And then I will allow the parties -- do you agree we'll allow 30 days for briefing?

[Eckert's counsel]: I do.

[Trial court]: All right.

[The State]: I'm agreeable to the [30-day] response.

[Trial court]: All right. So[,] it's your motion; who's briefing first?

[The State]: Well[,] I'm going to brief first since I carry the burden.

[Trial court]: All right.

[The State]: Some of her brief, it's already present in her motion.

[Trial court]: Okay. So[,] I'll find the State will provide its brief within 30 days and then make a docket entry requiring the defendant to provide any brief that he wants to within 30 days after that.

[Eckert's counsel]: That would be fine with me, Your Honor.

[Trial court]: All right. Did you hear all of this, Mr. Eckert?

[Eckert]: Most of it.

[Trial court]: Okay, here's what's going on, I'll recap. . . . I'm going to take [the motion to dismiss] under -- well it's not really under advisement yet because I'm going to allow briefing, and I'm going to allow the State 30 days to submit its brief, then I'll allow your attorney another 30 days after that to

submit your brief, and then after that it will then be under advisement, and I'll take it into consideration after I receive both of those briefs. Or[,] if either party decides to waive briefing, just let us know, and at that point I'll consider it under advisement and move ahead. Do you have any questions, Mr. Eckert?

[Eckert]: No, sir, I don't.

Following the hearing, the trial court reflected the parties' agreement with the following docket entry:

. . . Defendant's Motion to Dismiss is called up for hearing. Parties agree [the] court may take judicial notice of this file, [Eckert's underlying criminal case, and his pending post-conviction claim relating to that case]. Parties agree that [the court] will issue [a] facts of probable cause statement (for purposes of this motion only). [The] State may submit [a] brief within 30 days; and Defendant 30 days thereafter.

On March 17, 2014, the State filed its brief opposing the motion to dismiss. On April 25, 2014, Eckert filed a response to the State's brief. On May 23, 2014, the trial court entered an order denying Eckert's motion to dismiss, which stated:

On January 28, 2014, [the] State appeared by [Prosecuting Attorney]; Defendant appeared by polycom video appearance and in the Livingston County Courtroom by his [attorney]; the Court took up for hearing the Defendant's Motion to Dismiss; and allowed the parties additional time to brief the issues. Briefing was completed on April 25, 2014.

Having considered the Motion, arguments, and briefs of the parties, Defendant's Motion to Dismiss is overruled and denied.

The trial court also directed the parties to appear on June 10, 2014, and on that date, a trial setting was discussed:

[Eckert's counsel]: We'd like to set this for jury trial.

[Trial court]: All right. How long do you think it will take to try?

[The State]: One day, Your Honor.

[Trial court]: All right. How far out do you wish to set it?

[The State]: Well, Your Honor, we need to set it quickly. This is a case that has had a writ, and although there has been a pending motion that was ruled upon this last month, I think there were some delays in getting it set.

[Trial court]: All right. So sooner rather than later?

[Eckert's counsel]: Yes, Your Honor.

[The State]: I really do think we need to set it in July.

[Eckert's counsel]: I think it's within less -- I believe we have less than 60 days left.

[Trial court]: All right. How about July the 18th?

[The State]: Got it.

[Eckert's counsel]: Yes.

The State filed an amended information on June 18, 2014. The amended information alleged that Eckert committed three counts of felony victim tampering in violation of section 575.270. On July 18, 2014, following a jury trial, Eckert was convicted on all three counts of victim tampering. Eckert's conviction was affirmed on direct appeal. *State v. Eckert*, 491 S.W.3d 228 (Mo. App. W.D. 2016).

Eckert filed a timely *pro se* motion for post-conviction relief pursuant to Rule 29.15.⁶ Appointed counsel filed an untimely amended motion ("Amended Motion"). The motion court denied the claims in the Amended Motion by judgment dated September 19, 2018. In *Eckert v. State*, 591 S.W.3d 903, 905-07 (Mo. App. W.D. 2019), this Court

⁶All Rule references are to *Missouri Court Rules, Volume I--State, 2016*, as supplemented and as applicable at the time Eckert's 29.15 motion was filed, unless otherwise indicated.

reversed the motion court's judgment, and remanded for an independent inquiry into whether Eckert was abandoned by appointed counsel. On remand, the motion court determined that Eckert had been abandoned by appointed counsel, and that the merits of the untimely filed Amended Motion should therefore be considered.

Eckert's Amended Motion argued, *inter alia*, that trial counsel was ineffective for failing "to move to dismiss the charges against [Eckert], because the [State] brought [Eckert] to trial 31 days after the 180-day time period concluded after [Eckert's] filing demanding a trial under the [UMDDL]." Following an evidentiary hearing, the motion court entered its judgment ("Judgment"), which included findings of fact and conclusions of law, denying all of the claims in Eckert's Amended Motion.⁷ With respect to the claim that is at issue in this appeal, the motion court found:

The review of the request for disposition on detainers appears before this court without being raised before. [Eckert] filed his request on October 15, 2013. The trial of [Eckert] was held July 18, 2014. Both Movant and trial counsel [] testified and the court finds that the trial was delayed for several defense requested matters including [Eckert's] request for appointed counsel [Docket entry 11/06/2013] and [Eckert's] motion to dismiss [Docket entry 1/27/2014]. The docket reflects and the Court finds that the Movant made at least one request for continuance in order to be adequately prepared for trial which was objected to by the State [Docket entry 12/10/2013].

(internal citations omitted). The motion court concluded that Eckert had not established that trial counsel's failure to seek dismissal of his charges fell below an objective standard of reasonableness, "nor was [the claim] supported by fact or law" because "Movant

⁷The motion court denied the Amended Motion for the same reasons set forth in its original judgment filed September 19, 2018, explaining that "[n]either [Eckert] nor [the State] adduced any additional information, argument nor evidence as to the underlying amended motion."

requested the time which delayed his trial, filed motions which delayed his trial, and consented to the trial date, and said delays tolled the UMDDL such that the trial fell within the required 180-day time period." The motion court also concluded as to all of the claims asserted in the Amended Motion that Eckert failed to prove that he had been prejudiced by the allegedly deficient performance of trial counsel as he "failed to prove there is a reasonable probability that the outcome of the trial would have been different, but for any (or all) the alleged failures or inadequacies."

Eckert appeals.

Standard of Review

"Appellate review of the [motion] court's action on [a] motion filed under . . . Rule 29.15 shall be limited to a determination of whether the findings and conclusions of the [motion] court are clearly erroneous." Rule 29.15(k). "A judgment is clearly erroneous when, in light of the entire record, the court is left with the definite and firm impression that a mistake has been made." *West v. State*, 605 S.W.3d 607, 610 (Mo. App. W.D. 2020) (quoting *Shockley v. State*, 579 S.W.3d 881, 892 (Mo. banc 2019)).

Analysis

Eckert's single point on appeal argues that the motion court committed clear error when it denied his claim that trial counsel was ineffective for failing to move to dismiss the victim tampering charges due to a violation of the UMDDL. Specifically, Eckert alleges that the 180-day time period permitted by the UMDDL should not have been tolled following the January 28, 2014 hearing on his motion to dismiss, and that the correct

calculation establishes that his July 18, 2014 trial occurred 46 days after the permitted 180-day time period, as properly tolled, expired.⁸

"To be entitled to post-conviction relief for ineffective assistance of counsel, a movant must show by a preponderance of the evidence that his or her trial counsel failed to meet the *Strickland* test in order to prove his or her claims." *Davis v. State*, 486 S.W.3d 898, 905-06 (Mo. banc 2016) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). "Under *Strickland*, Movant must demonstrate that: (1) his trial counsel failed to exercise the level of skill and diligence that a reasonably competent trial counsel would in a similar situation, and (2) he was prejudiced by that failure." *Id.* (citing *Strickland*, 466 U.S. at 687). Counsel cannot be deemed ineffective for failing to file a non-meritorious motion. *Harris v. State*, 475 S.W.3d 227, 230 (Mo. App. W.D. 2015).

"The UMDDL provides for the prompt disposition of detainees based on untried state charges pending against a prisoner held within the state's correctional system." *State v. James*, 552 S.W.3d 590, 596 (Mo. App. W.D. 2018) (quoting *State v. Pugh*, 357 S.W.3d 310, 313 (Mo. App. W.D. 2012)). "The term 'detainer' is not statutorily defined, but courts have defined it as 'a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent.'" *Id.* (quoting *Pugh*, 357 S.W.3d at 313). A detainer puts "prison officials on notice that the inmate is wanted to

⁸Eckert's claim on appeal that his trial occurred 46 days after the permitted UMDDL time period expired cannot be reconciled with his claim in the Amended Motion that his trial occurred 31 days after the permitted UMDDL time period expired. Eckert has not provided an explanation for the discrepancy. However, the variance is immaterial to our resolution of Eckert's claim that his trial was not timely conducted under the UMDDL.

face pending charges in another jurisdiction upon the inmate's release from prison." *Id.* (quoting *Pugh*, 357 S.W.3d at 313).

Section 217.450 of the UMDDL provides, in pertinent part, as follows:

1. Any person confined in a department correctional facility may request a final disposition of any untried indictment, information or complaint pending in this state on the basis of which a law enforcement agency, prosecuting attorney's office, or circuit attorney's office has delivered a certified copy of a warrant and has requested that a detainer be lodged against him with the facility where the offender is confined. . . .

2. When the director receives a certified copy of a warrant and a written request by the issuing agency to place a detainer, the director shall lodge a detainer in favor of the requesting agency. The director shall promptly inform each offender in writing of the source and nature of any untried indictment, information or complaint for which a detainer has been lodged against him of which the director has knowledge, and of his right to make a request for final disposition of such indictment, information or complaint on which the detainer is based.

If a detainer is lodged,⁹ and if a confined person properly requests a disposition of the detainer, then, within 180-days after receipt of the request for disposition of untried charges for which a detainer has been lodged,¹⁰ "the indictment, information or complaint shall be brought to trial," unless "additional necessary or reasonable time" is granted by the court

⁹The State argues on appeal that Eckert failed to establish that a detainer was lodged against him, an essential predicate to the right to request a disposition of detainer. See *Pugh*, 357 S.W.3d at 313-14 ("Pursuant to [section 217.450.1], for an inmate to invoke the provisions of the UMDDL, a detainer must have been lodged against him" and this Court has held that "no *de facto* detainer arises 'merely from the existence of the warrant' and that '[n]otice of the warrant, by itself, [does] not constitute a detainer.'" (quoting *Greene v. State*, 332 S.W.3d 239, 245-46 (Mo. App. W.D. 2010))). It is true that the record on appeal does not contain a copy of a lodged detainer. However, we note this argument was not raised by the State with the motion court, and as a result, the motion court made no express finding that a detainer had (or had not) been lodged. Because we conclude that Eckert was tried within the 180-day UMDDL time period as tolled, we need not address the State's argument that Eckert had no statutory right to request a disposition of detainer.

¹⁰In addition, certifications as required by sections 217.450 and 217. 455 must also have been received.

"for good cause shown in open court, the offender or his counsel being present." Section 217.460.

However, "[t]he 180-day limit established by the UMDDL is 'not absolute' and there are notable exceptions and tolling provisions to the 180-day requirement of [s]ection 217.450.1." *State v. Jackson*, 155 S.W.3d 849, 852 (Mo. App. W.D. 2005) (citation omitted). "Any delay attributable to a defendant's affirmative action or agreement is not included in the period of limitation, and therefore, a continuance granted at a defendant's request tolls the 180[-]day period." *State v. Henry*, 568 S.W.3d 464, 478 (Mo. App. E.D. 2019) (quoting *State v. Allen*, 954 S.W.2d 414, 417 (Mo. App. E.D. 1997)). Moreover, section 217.460 provides that a determined violation of the UMDDL will not support dismissal of an indictment, complaint, or information unless the court **also** finds "that the offender's constitutional right to a speedy trial has been denied." See also *James*, 552 S.W.3d at 597 ("[T]he plain language of the UMDDL mandates the dismissal of a complaint not brought to trial within 180 days unless the 180-day period is tolled, *and* if the court finds that the offender's *constitutional* right to a speedy trial has been denied." (quoting *State v. McKay*, 411 S.W.3d 295, 302 (Mo. App. E.D. 2013) (emphasis in original))).

Eckert's Request for Disposition was received by the trial court and the prosecutor's office on October 15, 2013. Eckert's case was thus required to be tried by April 13, 2014 in order to comply with the 180-day UMDDL time period. Eckert's case was not tried, however, until July 18, 2014, 276 days after his Request for Disposition, and 96 days beyond the 180-day UMDDL time period.

Eckert concedes that 49 days of this 96-day delay is attributable to the combined effect of his requests for a continuance on December 10, 2013, and January 14, 2014. Eckert further concedes that because tolling of the UMDDL time period by 49 days would have resulted in a deadline for trial that fell on Sunday, June 1, 2014, an additional day of delay is attributable to him such that the total time tolled would be 230 days. By this calculation, Eckert's trial should have commenced on or before June 2, 2014. Because Eckert's trial did not occur until July 18, 2014, Eckert contends his trial was conducted 46 days after the tolled 230-day period expired.

The State argues that the 180-day UMDDL time period also tolled for an additional 115 days chargeable to Eckert because of the motion to dismiss he filed on January 27, 2014. The State contends that Eckert's scheduled trial was unable to proceed on January 28, 2014, and was delayed until at least May 23, 2014, the day the trial court denied Eckert's motion to dismiss. If the UMDDL time period is tolled by this additional 115 days, then Eckert's July 18, 2014 trial occurred well within the UMDDL time period.

Eckert acknowledges that his motion to dismiss was filed, but disagrees that the time permitted to brief the motion, and then for the trial court to decide the motion, is chargeable to him. Specifically, Eckert argues that the 115-day period between January 28, 2014, and the trial court's disposition of the motion to dismiss on May 23, 2014, should not have tolled the UMDDL time period because the trial court's docket entry permitting time to brief the motion to dismiss used the word "may," so that the delay for briefing was "not 'actually necessary' due to his or his attorney's actions."

Eckert relies on *State v. Galvan*, 795 S.W.2d 113, 118-19 (Mo. App. S.D. 1990), where a defendant's trial was scheduled for May 19, 1989, but the defendant filed a motion for continuance on May 1, 1989. "Defendant concede[d] the delay commencing May 1, 1989—the day his application for continuance was granted—[was] chargeable to him. He argue[d], however, that he should be charged with only the period from May 1 to 19, 1989." *Id.* at 118. The Southern District agreed because when the trial court granted the motion for continuance, it did not immediately reschedule the trial but instead waited until July 3, 1989, to do so, and then scheduled the trial for December 13, 1989. *Id.* at 118-19. The Southern District held that where "a delay is actually necessary because of a motion filed by the accused, the delay is excludable" from the UMDDL time period, but because the record lacked "any explanation for the delay except that no earlier date was available on the judge's calendar," only the time prior to May 19, 1989 should have tolled the UMDDL time period. *Id.* (citing *State v. Smith*, 686 S.W.2d 543, 547-48 (Mo. App. S.D. 1985)).

Eckert argues that as in *Galvan*, there is no explanation in the record for the 115-day delay between the motion hearing on January 28, 2014, and the date the trial court denied the motion on May 23, 2014. We disagree. The record does contain an explanation for the delay, and also reflects Eckert's unequivocal agreement to the delay. The State asked for permission to submit a written brief addressing Eckert's motion to dismiss before being required to argue the motion. Eckert's counsel immediately volunteered, "[a]nd I

have no objection to that." Later, the trial court asked, "do you agree we'll allow 30 days for briefing?" and Eckert's counsel responded, "I do."¹¹ Then, the trial court stated:

I'll find the State will provide its brief within 30 days and then make a docket entry requiring the defendant to provide any brief that he wants to within 30 days after that.

Eckert's counsel affirmatively said, "That would be fine with me, Your Honor." That agreement was followed by the trial court's inquiry of Eckert himself, who also expressed his agreement. "Any delay of a prisoner's trial which results from his affirmative action or agreement is not to be included in the period of limitation." *State v. Overton*, 261 S.W.3d 654, 660 (Mo. App. S.D. 2008).

Eckert also relies on *Murphy v. Smith*, 138 S. Ct. 784 (2018), to contend that the delay after he filed his motion to dismiss was not actually necessary because of the word "may" in the trial court's docket entry. In *Murphy*, the United States Supreme Court analyzed the old and new versions of a statute governing the award of attorney's fees in civil rights actions and concluded that Congress replaced discretionary words such as "may" with mandatory words such as "shall" in order "to restrain, rather than replicate, the discretion found" in the original statute. *Id.* at 789. Eckert's reliance on *Murphy* misses the mark. Even accepting that the word "may" signifies a discretionary act or requirement, Eckert's argument ignores that the trial court instructed the parties during the January 28, 2014 hearing that "if either party decides to waive briefing, just let us know, and at that point I'll consider [the motion to dismiss] under advisement and move ahead." Eckert did

¹¹The Amended Motion did not argue that trial counsel was ineffective for effectively agreeing to a continuance of his January 28, 2014 to allow briefing of, and time for the trial court to consider the merits of, his motion to dismiss, which raised a novel substantive issue.

not waive briefing, and instead took full advantage of the time the trial court permitted for briefing, repudiating his argument that a delay to permit briefing was not necessary.

At a minimum, therefore, the 60-day time period permitted by the trial court for the parties to file briefs addressing Eckert's motion to dismiss, which time period was affirmatively agreed to by Eckert, tolled the UMDDL time period from 230 days to 290 days, requiring Eckert's trial to occur on or before August 1, 2014. Because Eckert's July 18, 2014 trial occurred before that date, he was tried within the time permitted by the UMDDL.¹²

Though unnecessary to this conclusion, it is noteworthy that after the trial court denied Eckert's motion to dismiss, and the parties appeared to set a new trial date on June 10, 2014, both the State and Eckert openly addressed the need to secure a prompt trial setting, in plain reference to Eckert's Request for Disposition. During that hearing, when the trial court asked how far out the parties wished to set the matter for trial, the State advised, "we need to set it quickly," and then said "I really do think we need to set it in July." Eckert's counsel then said "I believe we have less than 60 days left," a statement that had no meaning other than to suggest that Eckert's counsel believed that time remained to permit a trial to occur in compliance with the UMDDL. Eckert's counsel then agreed to a July 18, 2014 trial date. It is disingenuous for Eckert to now contend that by the time of

¹²As such, we need not address the effect of the fact that the State's brief addressing Eckert's motion to dismiss was filed 18 days after the 30-day period permitted by the trial court, and Eckert's responsive brief was filed 9 days after the 30-day period permitted by the trial court. Nor are we required to address the fact that the trial court took 28 days to rule on Eckert's motion to dismiss after it was deemed taken under advisement by the completion of briefing, or the fact that after the motion to dismiss was ruled on May 23, 2014, the trial court did not require the parties to appear to set a new trial date until June 10, 2014, another 18-day delay.

the June 10, 2014 hearing, the UMDDL time period had already expired. *See Oden v. State*, 320 S.W.3d 198, 201 (Mo. App. E.D. 2010) ("Movant filed a motion for change of venue, a motion for a continuance, a motion to suppress, and finally, Movant agreed to a trial date. These actions resulted in excludable periods, and the time attributable to the State for bringing Movant to trial was within the 180-day time limit.").

Finally, even if Eckert could establish a UMDDL violation, which he cannot, he would not have been entitled to dismissal of his charges unless he could *also* establish that the UMDDL violation resulted in the denial of his constitutional right to a speedy trial. *James*, 552 S.W.3d at 597. "A defendant's right to a speedy trial comes from the Sixth Amendment to the United States Constitution, which applies to the states via the Fourteenth Amendment." *State v. Davis*, 607 S.W.3d 795, 799 (Mo. App. W.D. 2020) (citing *State ex rel. Garcia v. Goldman*, 316 S.W.3d 907, 910-911 (Mo. banc 2010)). "Article I, Section 18(a) of the Missouri Constitution also guarantees a 'speedy public trial,' and the two provisions 'provide equivalent protection for a defendant's right to a speedy trial.'" *Id.* (quoting *State ex rel. McKee v. Riley*, 240 S.W.3d 720, 729 (Mo. banc 2007)). Determining whether a violation of the constitutional right to a speedy trial has occurred requires us to balance four factors: "(1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right; and (4) the prejudice to the defendant resulting from the delay." *Id.* at 800 (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)).

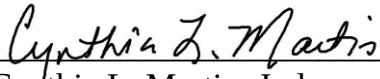
The Amended Motion made absolutely no reference to whether Eckert could establish a violation of his constitutional right to a speedy trial by virtue of a purported violation of the UMDDL. And our review of the record indicates that no evidence was

presented, nor argument made, to the motion court suggesting that Eckert could establish a violation of his constitutional right to a speedy trial by virtue of a purported violation of the UMDDL, a conclusion that is reinforced by the fact that the motion court's Judgment made no findings or conclusions addressing the subject. Although the argument portion of Eckert's brief contends that Eckert's constitutional right to a speedy trial was violated by the purported violation of the UMDDL, this new argument is not preserved for our review, and is not subject to plain error review. *Mallow v. State*, 439 S.W.3d 764, 769-70 (Mo. banc 2014) (holding that grounds for relief not raised in a post-conviction motion are waived, cannot be raised for the first time on appeal, and are not subject to plain error review). Because an essential predicate to Eckert's ability to secure dismissal of his charges was not raised in the Amended Motion, Eckert cannot demonstrate that trial counsel's failure to move to dismiss his charges based on an alleged UMDDL violation resulted in *Strickland* prejudice as a matter of law.

Eckert has not established a UMDDL violation, and failed in any event to allege in the Amended Motion that a UMDDL violation resulted in the violation of his constitutional right to a speedy trial based on an analysis of the *Barker* factors. The motion court did not clearly err in denying Eckert's claim that he received ineffective assistance of counsel because trial counsel did not file a motion to dismiss his victim tampering charges due to a violation of the UMDDL.

Conclusion

The motion court's Judgment is affirmed.



Cynthia L. Martin, Judge

All concur