

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE, :  
 : I.D. No. 1408011548  
 v. :  
 :  
 JOHN L. WALSTRUM, JR., :  
 :  
 Defendant. :

Submitted: February 27, 2015  
Decided: March 19, 2015

**ORDER**

Upon Defendant's Motion to Dismiss  
*Denied.*

Kathleen A. Dickerson, Esquire, Department of Justice, Dover, Delaware; attorney for the State.

James E. Liguori, Esquire of Liguori & Morris, Dover, Delaware; attorney for the Defendant.

WITHAM, R.J.

*State v. John L. Walstrum, Jr.*  
I.D. No. 1408011548  
March 19, 2015

The issue before the Court is whether the Court may dismiss the charges pursuant to Superior Court Rule 48(b) because the State has delayed the Defendant's prosecution by waiting five (5) months to indict him from his arrest date.

### ***Facts and Procedure***

On February 13, 2015, the Defendant filed a Motion to Dismiss pursuant to Rule 48(b). The Defendant was arrested in August of 2014, and was indicted on February 2, 2015. The charges the Defendant was indicted on are as follows: 3 counts of Sexual Abuse of a Child by a Person in a Position of Trust or Authority, or Supervision in the First Degree; 2 counts of Rape in the Second Degree; Rape in the Fourth Degree; Conspiracy First Degree; and Child Abuse in the Second Degree.

The Defendant argues that because the State waited five (5) months to indict him that his speedy trial rights were violated and the State caused "unnecessary delay." The Defendant's sole reason supporting a dismissal due to a violation of his speedy trial rights is that he has suffered prejudice because now the *victim's* recollection "is even less reliable with the passage of time and his own mental and physical infirmities compounded by the unnecessary passage of time."

The indictment notes that at the time of the indictment, the victim was a child with "significant or developmental disabilities." The Defendant argues that because of the victim's mental deficiencies, his memory of the offense has likely dwindled. The Defendant relies on *State v. Willis*<sup>1</sup> in dismissing his case.

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<sup>1</sup> *State v. Willis*, 2001 WL 789667 (Del. Super. Apr. 24, 2001).

***Standard of Review for 48(b)***

A defendant's speedy trial rights attach upon the date of his arrest or indictment.<sup>2</sup> Four factors must be considered in determining whether there is a speedy trial violation: the length of the delay, the State's reason for the delay, the defendant's assertion of his right, and the prejudice to the defendant.<sup>3</sup> Rule 48(b) allows the Court to exercise its discretion to dismiss an indictment or information for "unnecessary delay."<sup>4</sup> While speedy trial rights are implemented by Rule 48(b), the showing of prejudice required for violation of Rule 48(b) is "broader than normally associated with a Sixth Amendment analysis."<sup>5</sup> Dismissal under Rule 48(b) is typically not granted when the delay is attributable to "unavailability of prosecutors, crowded dockets, inadvertence, or even prosecution negligence."<sup>6</sup> Unnecessary delay warranting dismissal has been found when the delay is attributable to "the deliberate choice of the prosecuting authorities for no valid reason."<sup>7</sup>

Lastly, the Delaware Supreme Court uses the *Barker* balancing test from the United States Supreme Court case to determine whether a Defendant's speedy trial

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<sup>2</sup> *State v. Johnson*, 564 A.2d 364, 367 \*at 368 (Del. Super. 1989) (citing *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972))

<sup>3</sup> *Id.* at 368.

<sup>4</sup> Del. Super. Ct. Crim. R. 48(b).

<sup>5</sup> *Id.* at 370.

<sup>6</sup> *State v. Fischer*, 269 A.2d 244, 247 (Del. Super. 1971).

<sup>7</sup> *Id.*

rights have been violated. Those factors to be balanced are: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) whether the delay prejudiced the defendant.<sup>8</sup>

### ***Discussion***

The Defendant's motion raises the question of reliability on not his own recollection of the crimes he is accused of, but the victim's. Further, *State v. Willis* questioned the integrity of the defendant's own recollection because he had a memory disorder that the State was aware of on the date of his arrest. In this case, the Defendant has not provided any information to show that either the victim or the Defendant have any medically diagnosed problem with their memory and, as such, *Willis* is not factually relevant. A time period of five (5) months is not so unduly prejudicial to a defendant when he does not suffer from memory loss. The Defendant has failed to assert that the four factors in the *Barker* analysis above have, in the aggregate, shown that he has suffered from such a five (5) month delay.

### ***Conclusion***

The Defendant has not provided a persuasive reason for prejudice other than the victim's memory may have dwindled concerning the crimes in question. This is not a sufficient reason. This issue could result in a trial issue that would impact all

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<sup>8</sup> *Weber v. State*, 971 A.2d 135, 161 (Del. 2009) citing *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

*State v. John L. Walstrum, Jr.*

I.D. No. 1408011548

March 19, 2015

witnesses. Therefore the motion to dismiss is **denied**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Kathleen A. Dickerson, Esquire  
James E. Liguori, Esquire