

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 25, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-1848-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 97-CF-297**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHARLES E. SNODGRASS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Wood County: DUANE POLIVKA, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Charles Snodgrass appeals from a judgment of conviction and an order denying his postconviction motion. The issues are whether the search warrant was supported by probable cause, whether his right to a speedy trial was violated, and whether he was properly sentenced as a repeater. We affirm.

¶2 Snodgrass was convicted of one count of burglary while armed with a dangerous weapon and one count of first-degree sexual assault of Dana N. by use of a dangerous weapon, both as a repeater. The allegation was that on July 2, 1996 Snodgrass broke into Dana N.'s apartment in the middle of the night and sexually assaulted her while armed with a knife.

¶3 Snodgrass argues that the search warrant to obtain physical evidence from him, in connection with the assault of another female (G.M.P.), including samplings of hair, saliva and fingernail clippings, was not supported by probable cause.<sup>1</sup> In reviewing a search warrant, we determine whether the magistrate had a substantial basis to conclude that probable cause existed, and we accord great deference to the magistrate's determination. *State v. Ward*, 2000 WI 3, ¶¶21, 231 Wis. 2d 723, 604 N.W.2d 517. The warrant affidavit set out facts showing that a crime had been committed and that evidence of the crime would be obtainable from Snodgrass. It stated that G.M.P. reported that she had been sexually assaulted in August 1996; that Snodgrass matched G.M.P.'s description of the assailant; that a probation search of Snodgrass's residence had discovered a checkbook reported stolen from a residence near G.M.P.'s on the same day as the assault and a pair of cutoff men's shorts matching G.M.P.'s description of what her assailant wore; and that a bartender said Snodgrass was at a bar within two blocks of G.M.P.'s residence at the approximate time of the assault. We conclude that the magistrate had a sufficient basis to conclude that this evidence, though circumstantial, showed probable cause to search.

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<sup>1</sup> The samples taken incident to this search were used to identify Snodgrass as the perpetrator in Dana N.'s assault.

¶4 Snodgrass argues that the charges against him should have been dismissed because his right to a speedy trial was violated. He was placed on a probation hold in August 1996. The charges were not filed until December 1997. Trial was eventually held in February 2000, after postponement of earlier trial dates for a variety of reasons.

¶5 We agree with the State's argument that the pre-charging delay is not at issue in this case. The right to a speedy trial does not attach until the defendant is arrested or charged with a crime. *State v. Borhegyi*, 222 Wis. 2d 506, 510-11, 588 N.W.2d 89 (Ct. App. 1998). The State argues that Snodgrass's incarceration at the time charges were filed in December 1997 was the result of a sentence in an unconnected case. Snodgrass agrees, but argues that his probation hold and revocation in that case were due to the facts that would eventually form the basis of the charges in this case. However, he does not cite any portion of the record that supports this assertion. A defendant can argue that pre-charging delay has violated his right to due process, but to prevail he must demonstrate that the State deliberately delayed filing charges to obtain a tactical advantage and that this delay caused him actual prejudice in presenting his defense. *State v. Monarch*, 230 Wis. 2d 542, 551, 602 N.W.2d 179 (Ct. App. 1999). Snodgrass has not made these showings.

¶6 As to the post-charging delay, the parties agree that the applicable factors are the length of the delay, the reason for the delay, whether the defendant asserted the right to a speedy trial and whether the delay resulted in any prejudice to the defendant. *State v. Leighton*, 2000 WI App 156, ¶6, 237 Wis. 2d 709, 616 N.W.2d 126. Prejudice is assessed in light of the defendant's interest in preventing oppressive pretrial incarceration, minimizing the accused's anxiety and concern, and limiting the possibility that the defense will be impaired. *Id.* at ¶22.

Without attempting to specifically identify here the reason for each of the delays, we are satisfied that the portions attributable to the State were not excessive. Moreover, Snodgrass has not demonstrated any prejudice to his defense. Accordingly, we conclude that his right to a speedy trial was not violated.

¶7 Finally, Snodgrass argues that his status as a repeater was not adequately proven. He argues that although the State attached a certified copy of the earlier judgment of conviction to the complaint, the judgment was never offered into evidence so that he had an opportunity to object to its authenticity or accuracy. The transcript of sentencing shows otherwise, however. There, the State offered a copy of the certified judgment of conviction as an exhibit, and when the court asked Snodgrass's counsel for comment on that document, counsel had none.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

