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**DISTRICT I/IV**

January 15, 2016

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You are hereby notified that the Court has entered the following opinion and order:

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2014AP2460-CR                      State of Wisconsin v. Sidney Thomas, Jr. (L.C. # 2012CF2754)

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

Sidney Thomas appeals a judgment of conviction. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm.

Thomas first argues that he was denied his constitutional right to a speedy trial. Thomas does not identify any location in the record where this issue was decided by the circuit court.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Postconviction motions are required for issues other than sufficiency of the evidence or those previously raised. WIS. STAT. § 974.02(2). We usually do not address issues that are raised for the first time on appeal. *Shadley v. Lloyds of London*, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838. Therefore, it appears that we could reject this argument on this ground alone. However, we briefly address the merits.

The parties agree that the familiar four-factor test regarding speedy trials applies here. See *State v. Urdahl*, 2005 WI App 191, ¶11, 286 Wis. 2d 476, 704 N.W.2d 324. Thomas's brief fails to develop a meaningful argument on the second factor, which is the reason for the delay. The brief asserts that several reasons exist in the record, but does not identify any of them.

As to the fourth factor, prejudice, Thomas does not develop a specific argument that explains how he was prejudiced by the delay. Instead, he relies on case law holding that a delay of more than a year is presumptively prejudicial.

However, in response the State points out that the delay in this case is reduced to less than ten months if the period after the first attempt at a trial is not included. The State correctly notes that the first trial ended during voir dire, when the court dismissed the jury panel in part due to a concern that the panel heard an inappropriate comment by Thomas, which was also the basis for a mistrial motion by Thomas himself. The State argues that this period of time should be excluded from consideration because the delay was partly caused by Thomas himself. Thomas did not file a reply brief, and therefore does not dispute this point.

Once the delay period is reduced below a year by excluding this part of the delay after the first attempt at a trial, Thomas is left with no argument on the prejudice factor. When that absence is combined with his lack of a meaningful argument explaining the reasons for the rest

of the delays, the balancing of the factors compels a conclusion that Thomas's right to a speedy trial was not violated.

Thomas also argues that the circuit court erred by not granting his motion for a mistrial. The first incident from the trial that Thomas discusses on this issue was a question to the victim from counsel for a co-defendant, asking whether the victim would be surprised to learn where certain property was located. However, it does not appear from the record that this question was a basis for Thomas's motion for a mistrial the next day, and therefore we do not further discuss it.

Thomas's motion for a mistrial was based on testimony from a co-defendant that Thomas believed placed Thomas at the scene of the crime. In Thomas's view, this testimony was an indication of an antagonistic defense among the co-defendants, and meant that the cases should be severed.

We reject this argument because it does not appear that the circuit court made a final decision on the mistrial request. The court stated that it was denying a mistrial because it preferred to put the case before the jury, with the case having gotten as far as it had. However, the court stated that it was not making a final determination at that time. Despite that clear statement, Thomas does not tell us whether the court addressed this issue again later, and he did not file a postconviction motion seeking a final determination on this point. Therefore, based on the current record and information before us, we have no circuit court ruling to review, other than the ruling to delay a final decision on the mistrial motion, which we regard as a reasonable exercise of discretion.

IT IS ORDERED that the judgment appealed from is summarily affirmed under WIS.  
STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*