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**DISTRICT II**

October 6, 2021

To:

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

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2020AP1327-CR

State of Wisconsin v. Vincent V. Judd-Rapp (L.C. #2017CF601)

Before Gundrum, P.J., Neubauer and Reilly, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Vincent V. Judd-Rapp appeals from a judgment of conviction and an order denying his postconviction motion. He contends that he was denied his constitutional right to a speedy trial. 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 (2019-20).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In February 2016, the State charged Judd-Rapp with first-degree sexual assault of a child. The case was originally scheduled for trial in January 2017. The State subsequently sought an adjournment due to a witness's unavailability, so the trial was rescheduled for May 2017.

Shortly before the rescheduled trial, the State moved to amend the information, changing both the nature of the assault (from sexual contact to sexual intercourse) and age of the victim (from under 13 to under 12). The circuit court denied the motion in part. In response, the State dismissed the charge and reissued it, along with additional charges. Judd-Rapp did not object to the State's actions.

Judd-Rapp was eventually tried by a jury in December 2017—approximately 22 months after the State filed its initial complaint. The jury found Judd-Rapp guilty of first-degree sexual assault of a child and failure to register with the sex offender registry. It found him not guilty of possession of child pornography. The circuit court imposed an aggregate sentence of forty years of initial confinement and twenty years of extended supervision.

Judd-Rapp filed a postconviction motion, accusing the State of violating his constitutional right to a speedy trial. Following a hearing on the matter, the circuit court denied the motion. This appeal follows.

On appeal, Judd-Rapp renews his claim that he was denied his constitutional right to a speedy trial. He asks that we dismiss the charges against him with prejudice.

“Both the Sixth Amendment to the United States Constitution and article I, section 7 of the Wisconsin Constitution guarantee an accused the right to a speedy trial.” *State v. Urdahl*, 2005 WI App 191, ¶11, 286 Wis. 2d 476, 704 N.W.2d 324. We review de novo whether a

defendant has been denied the constitutional right to a speedy trial, although we defer to the circuit court's findings of facts unless they are clearly erroneous. *Id.*, ¶10.

The right to a speedy trial is not subject to bright-line determinations and must be assessed based on the totality of the circumstances. *Id.*, ¶11. To determine whether a defendant's right has been violated, we must balance four factors: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of the right; and (4) the prejudice to the defendant. *Id.* (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). We consider each one in turn.

The first factor—the length of the delay—is a “triggering mechanism used to determine whether the delay is presumptively prejudicial.” *Id.*, ¶12. A post-accusation delay is considered to be presumptively prejudicial when it “approach[es] one year.” *Id.* It is only necessary to inquire into the other factors when a delay is presumptively prejudicial. *State v. Borhegyi*, 222 Wis. 2d 506, 510, 588 N.W.2d 89 (Ct. App. 1998). Here, the State concedes that the length of the delay in bringing Judd-Rapp to trial is presumptively prejudicial. We agree. Therefore, we examine the remaining factors.

The second factor directs us to consider the reasons for the delay. We assign different weights to different reasons. For instance:

A deliberate attempt by the government to delay the trial in order to hamper the defense is weighted heavily against the State, while delays caused by the government's negligence or overcrowded courts, though still counted, are weighted less heavily. On the other hand, if the delay is caused by something intrinsic to the case, such as witness unavailability, that time period is not counted. Finally, if the delay is caused by the defendant, it is not counted.

*Urdahl*, 286 Wis. 2d 476, ¶26 (citations omitted).

The circuit court found multiple reasons that contributed to the delay in this case. For example, the court noted that its original trial date in January 2017 was “attributable to the heavy calendar of the court.” The court further noted that the subsequent adjournment was due to a witness’s unavailability. Neither of these findings is clearly erroneous, and neither is weighed heavily against the State.<sup>2</sup>

The third factor directs us to consider whether Judd-Rapp asserted his right to a speedy trial. There is no requirement that a defendant demand a speedy trial in order to preserve the right. *Barker*, 407 U.S. at 528. But the failure to do so weighs heavily against the defendant. *Id.* at 531-32. Here, Judd-Rapp did not assert his right to a speedy trial right until he filed his postconviction motion.

The last factor directs us to consider whether Judd-Rapp was prejudiced by the delay in bringing him to trial. In assessing prejudice, we examine the three interests that the right to a speedy trial was designed to protect: “prevention of oppressive pretrial incarceration, prevention of anxiety and concern by the accused, and prevention of impairment of defense.” *Urdahl*, 286 Wis. 2d 476, ¶34.

With respect to the first interest, there is no evidence that Judd-Rapp suffered “oppressive pretrial incarceration” while in custody during the delay. With respect to the second interest,

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<sup>2</sup> Judd-Rapp spends considerable time in his brief complaining about the time it took the State to refile charges against him. However, as indicated above, he did not object to the State’s actions in the circuit court.

there is little doubt that Judd-Rapp experienced pretrial anxiety. However, he has not shown a greater anxiety than that experienced in any serious criminal case with unresolved charges. Finally, with respect to the third interest, Judd-Rapp has not identified any way in which his ability to present a defense was hampered by the delay. No evidence was lost, and no witnesses were made unavailable.

Balancing the above factors, we conclude that Judd-Rapp's right to a speedy trial was not violated. While the length of the delay was presumptively prejudicial, there were valid reasons for most of it. Given these reasons, Judd-Rapp's failure to assert the right before postconviction proceedings, and the lack of prejudice incurred, we are satisfied that the circuit court correctly denied Judd-Rapp's postconviction motion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*