

May 26, 2016

Dear Judge Peeples,

Thank you for the extensive amount of time that you have personally spent consulting with members of the Court of Criminal Appeals to ascertain whether the court would recommend a guideline for disposition of criminal cases in the trial courts. As I will explain further below, this Court believes that a guideline setting forth a specific period of time would be detrimental to criminal trial courts.

By way of background, I note that this Court spent a considerable amount of time on this inquiry. As you know, on multiple occasions over the past few months, members of the Court have communicated by email, by telephone, and in person engaging in a spirited debate about the pros and cons of a guideline. At two meetings, this Court's criminal rules advisory committee requested input from its members. Furthermore, some research has been conducted with respect to existing law that applies to the timely disposition of criminal cases.

Like most things in life, there are pros and cons to a guideline for the disposition of criminal trial cases. On the one hand, a guideline of a specific period of time would most conform to the format of rules that set forth guidelines that apply to other types of cases in Texas. Furthermore, a guideline would be a rule of thumb that judges could easily remember and aim to comply with. On the other hand, criminal cases, unlike other types of cases, are subject to the federal Constitution's and state Constitution's requirement of a speedy trial. *See* U.S. Const. amend. VI; Tex. Const. art. I, § 10. This type of constitutional violation is determined based on a case-by-case assessment of factors, and there is no definite time at which a violation occurs. A federal constitutional violation may occur in as little as one year or less or in as long as several years.¹ Thus, if trial judges were given a guideline of a year or a year-and-

¹ To trigger an analysis of whether a defendant's Sixth Amendment right to a speedy trial was violated, the defendant must "allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay[.]" *Doggett v. United States*, 505 U.S. 647, 651-52 (1992). The Supreme Court in *Doggett* noted that "lower

a-half for the disposition of criminal trial cases, for example, that guideline could mislead a judge into error by giving him false assurance that he had that amount of time to dispose of a case, when instead compliance with the federal Constitution might require a shorter amount of time. Furthermore, criminal cases, unlike other types of cases, already have a number of statutes, some of which I discuss in the next paragraph, that require compliance within definitive periods of time.

Weighing the benefits of a definitive guideline against the possible harm from it, the Court collectively agreed that a guideline with a specified period of time would be more likely to cause harm than good. We recommend against it. The Court does suggest possible general language to replace the incorrect reference in the current guidelines, such as, “Criminal cases should be resolved in timely compliance with state and federal constitutions and statutes.” Furthermore, the Court did discuss the possibility that a comment to the guidelines might be of benefit. The comment could cite to the federal Constitution, the state Constitution, and Code of Criminal Procedure Articles 17.151 (providing for release on bail or bond if the state is not ready for trial within certain length of time); 32.01 (requiring for information or indictment within certain length of time); 32A.01(a) (mandating criminal trials precede civil trials and trials for defendants in jail to precede those for defendants who are on bond); 32A.01(b) (requiring trial involving child-victims to precede those involving adult-victims).

courts have generally found post-accusation delay ‘presumptively prejudicial’ at least as it approaches one year.” *Id.* at 671, n. 1. When the accused has made the threshold showing that the delay has crossed the threshold and become presumptively prejudicial, the court will engage in a balancing test to determine whether the defendant’s rights were violated. There are four factors to be weighed against each other in determining whether the defendant’s speedy-trial rights have been violated: the length of the delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant. *See Barker v. Wingo*, 407 U.S. 514 (1972). If the delay is unreasonable, even a relatively short delay may be found to be a violation of a defendant’s Sixth Amendment right. *See, e.g., United States v. Seltzer*, 595 F.3d 1170 (10th Cir. 2010) (one-year delay found to be a violation); *United States v. Ingram*, 446 F.3d 1332 (11th Cir. 2006) (two-year delay found to be a violation). A defendant’s right to a speedy trial is also protected by the Texas Constitution. Texas follows the Supreme Court’s four-factor balancing test from *Barker* to determine whether a defendant’s constitutional speedy-trial right was violated. *Zamorano v. State*, 84 S.W.3d 643, 647-48 (Tex. Crim. App. 2002). Texas case law reveals no fixed period of time at which a violation of a defendant’s speedy-trial right has occurred. *See, e.g., State v. Rangel*, 980 S.W.2d 840 (Tex. App.—San Antonio 1998, no pet.) (twenty-month delay in DWI case); *State v. Burckhardt*, 952 S.W.2d 100, 102 (Tex. App.—San Antonio 1997, no pet.) (defendant’s speedy-trial right was violated by a fourteen-month delay in DWI case); *State v. Empak, Inc.*, 889 S.W.2d 618 (Tex. App.—Houston [14th Dist.] 1994, pet. ref’d) (defendant’s speedy-trial right was violated by a twenty-eight-month delay in corporate criminal case about water pollution); *Phillips v. State*, 650 S.W.2d 396 (Tex. Crim. App. 1983) (defendant’s speedy-trial right was violated by a seventeen-month delay in rape case).

Again, the Court expresses its gratitude to Chief Justice Hecht, the Supreme Court of Texas, the Supreme Court Advisory Committee, and to you personally for consulting with us in this important project. We stand willing to participate in any future joint efforts.

Sincerely,

Elsa Alcala

Judge, Court of Criminal Appeals

Cc Court of Criminal Appeals
Supreme Court of Texas
CCA Rules Advisory Committee