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Recent Developments: State v. Henson: Time between a First and Second Arrest Arising out of the Same Criminal Act Is Not Included in Speedy Trial Analysis if Charges Are Dismissed in Good Faith

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State v. Henson:

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In *State v. Henson*, 335 Md. 326, 643 A.2d 432 (1994), the Court of Appeals of Maryland held that when criminal charges are dismissed in good faith by the State and later reinstated, the time period involved in the speedy trial analysis does not begin until the second prosecution has commenced. However, if the dismissal was made in bad faith, the date of the arrest or formal charge in the initial prosecution should be the starting point for the speedy trial analysis.

Respondent Erik Henson ("Henson") was indicted on May 8, 1990, for assault with intent to murder and related charges arising from a shooting on May 11, 1989. He was arrested on February 22, 1992, and subsequently filed a motion in the Circuit Court of Prince George's County to dismiss for lack of a speedy trial. At the hearing on the motion, it was brought to the court's attention that the Respondent had been previously arrested on May 25, 1989, and prosecuted for the same charges. This initial prosecution was terminated on July 26, 1989, when the State dismissed, by *nolle pros*, the charges pending against Henson.

The motions court denied the Respondent's motion and held that the time between the Respondent's arrest on the initial charges and the Respondent's subsequent reindictment following the dismissal of the charges was excluded from the speedy trial analysis. In an unreported opinion, the Court of

Special Appeals of Maryland disagreed with the motions court and held that the Respondent's speedy trial time frame began to run from the date of the initial arrest.

The Court of Appeals of Maryland granted certiorari to determine whether the period between the Respondent's arrest on the initial charges and his subsequent indictment is included in the speedy trial analysis if the State dismissed the charges in good faith. The court of appeals held that the time period is not included in the analysis. Therefore, the court of appeals vacated the court of special appeals' decision and remanded the case with instructions to vacate the judgment and remand the case to the circuit court to determine whether the State had dismissed the initial prosecution in good faith.

The court of appeals began its analysis by defining the constitutional standard applicable in speedy trial cases. The court determined that the factors to be weighed in deciding if a pre-trial delay is prejudicial are: the length of the delay, the reason for the delay, the defendant's assertion of his or her right, and the prejudice to the defendant. *Henson*, 335 Md. 326, 332, 643 A.2d 432, 436 (1994) (citing *Barker v. Wingo*, 407 U.S. 514 (1972)). The length of pre-trial delay determines whether the delay is prejudicial and therefore, the first factor becomes the threshold issue. Since the present delay was less than the 180 day

constitutional limit, the court concluded that the Respondent had not been prejudiced in any way, and the application of the remaining factors was unnecessary.

While the time from the initial arrest or formal charge and the trial is the relevant period for speedy trial analysis, this period may be different if the prosecution is dismissed and later reinstated. *Id.* at 333, 643 A.2d at 436. The court applied *United States v. MacDonald*, 456 U.S. 1 (1982), which concluded that the Speedy Trial Clause does not apply to the time frame between the State's good faith dismissal of the charges and the reinstatement of the charges. *Henson*, 335 Md. at 333, 643 A.2d at 436. By implication, if the State dismissed the charges in bad faith, the period between dismissal and reindictment was included in the computation so that the speedy trial analysis dates back to the initial arrest or filing of charges.

Good faith, as defined by the court, is the lack of intention to "circumvent the speedy trial right." *Id.* at 338, 643 A.2d at 438. A distinction between a good and bad faith dismissal is needed to prevent the State from dismissing the charges solely to avoid a violation of the Respondent's Sixth Amendment right to a speedy trial. When the State has acted in good faith in dismissing the charges, the court reasoned that the period between the good faith dismissal of the prosecution and the reinstatement of the

prosecution should not be considered in the speedy trial analysis. *Id.* at 336, 643 A.2d at 437.

Whether the time between the initial arrest and the dismissal in the district court must be considered in the computation of the speedy trial time frame was the next consideration of the court. *Id.* at 337, 643 A.2d at 438. The Sixth Amendment guarantees that the State will proceed with diligence to assure that the charges will be disposed of in a timely manner. *Id.* at 337, 643 A.2d at 438. As a result, this ensures the protection of a person's specific interests in decreasing the incarceration period before trial, reducing the impairment of liberty if released on bail, and minimizing the disruption of life caused by arrest and criminal charges. *Id.* at 337, 643 A.2d at 438. Since the Respondent's interests are the same before and after the dismissal of the initial charges, his interests are not afforded any additional protection just because they existed before the dismissal. *Id.* at 338, 643 A.2d at 438. As long as the dismissal of the initial charges is in good faith, the intervening time between the initial arrest and dismissal of the charges is not counted in computing whether the speedy trial requirement has been met.

To decide which time frame should be applied in analyzing whether there has been a speedy trial, a determination of good faith is necessary. Since the issue of whether the dis-

missal of the initial charges was made in good faith was not determined by the lower court, the court of appeals remanded the case through the court of special appeals to the circuit court with instructions to decide that issue.

The court of appeals' decision in *Henson* ensures that the State will not dismiss charges and later reinstate them with the sole purpose of avoiding a speedy trial violation. Prior to this decision, the state could have dismissed charges in bad faith when the 180 day limit was approaching and been able to reinstate the charges at a later time without violating the defendant's Sixth Amendment rights. The defendant's right to a speedy trial has been strengthened by *Henson* and is less likely to be threatened by a subsequent prosecution arising out of the same act as the initial prosecution.

- Nicole L. Baines

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