

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0132**

State of Minnesota,
Respondent,

vs.

Jesse Lee Fechner,
Appellant.

**Filed December 26, 2023
Affirmed
Worke, Judge**

St. Louis County District Court
File No. 69DU-CR-18-4072

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Nathaniel T. Stumme, Assistant County Attorney, Duluth, Minnesota (for respondent)

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this direct appeal from the judgment of conviction for first-degree criminal sexual conduct, appellant argues that the district court erred when it granted respondent's peremptory removal request and violated his right to a speedy trial. We affirm.

FACTS

In 2018, respondent State of Minnesota charged appellant Jesse Lee Fechner with one of count first-degree criminal sexual conduct and one of count third-degree criminal sexual conduct for conduct that occurred in 2011. *See* Minn. Stat. §§ 609.342, subd. 1(e)(ii); .344, subd. 1(d) (2010).

Fechner's first court appearance on charges relevant to this appeal was in January 2019, after which Fechner was released on his own recognizance pending trial. Over the next couple of years, Fechner's trial date experienced several delays related to Fechner's multiple unrelated case files that were pending,¹ various administrative delays, and scheduling issues caused by the COVID-19 pandemic.

In April 2021, Fechner was charged with DWI, in violation of his probation on one of the unrelated criminal matters. Following a probation-violation hearing, Fechner was held in custody pending the resolution of the alleged unrelated violation.

On January 12, 2022, a pretrial hearing on the charges relevant to this appeal was held. At Fechner's request, the district court continued the proceedings and recommended that the parties submit availabilities for trial via email due to Fechner's multiple case files. The proceedings were continued without the district court making a substantive ruling.

¹ The three case files included: the criminal sexual conduct relevant to this appeal, a domestic-assault charge, and an alleged probation violation for felony driving-while-intoxicated (DWI) offense. The district court sentenced Fechner to a stayed sentence of 36 months for first-degree DWI, and later revoked the stay for the following probation violations: (1) failure to report a probation violation; (2) failure to cooperate with the search of his person and vehicle; (3) use or possession of mood-altering substances; and (4) failure to provide a urine analysis.

On February 17, 2022, Fechner made a record of his request for a speedy trial. When asked to confirm the judicial assignment of this case, the district court replied that it noticed “that Judge Eichenwald was removed, but [it] did not see Judge Hylden had been assigned.” The district court stated that it will “do horse trading,” if needed to keep the scheduled trial dates. On April 15, Fechner, now acting pro se, submitted a second speedy-trial demand.

The state moved for peremptory removal of the assigned judge on June 15, 2022. The district court granted the removal request. Fechner did not object to the removal.

At a final settlement conference, the district court expressed its concerns about Fechner’s custody status given the number of criminal charges still pending resolution. The district court summarized Fechner’s custody status as:

[released on his own recognizance] on the trial that’s coming up. But there are other files that have either bail or no bail settings set. [The district court’s] understanding is [f]ile . . . 17-3396 . . . was . . . [a] [p]robation violation. [And Fechner]’s [currently] being held without bail pending resolution of the [p]robation [v]iolation in that file.

Regarding Fechner’s probation violation, the district court noted that “Fechner was sentenced on that file to a 36-month stayed sentence.” And that Fechner had been in custody “since April 2021.”

The matter proceeded to trial on July 19, 2022, 109 days after Fechner made his speedy-trial demand. On the second day of trial, one of the state’s witnesses tested positive for COVID-19. The state requested to continue the proceeding. Fechner opposed the

state's motion to continue the trial and objected to allowing the witness to testify over video. The district court granted the continuance.

In August 2022, the three-day jury trial resumed. At the end of the trial, the jury found Fechner guilty of first-degree criminal sexual conduct and third-degree criminal sexual conduct. The district court imposed an executed sentence of 156 months for the first-degree criminal-sexual-conduct conviction but did not adjudicate the third-degree criminal-sexual-conduct conviction as a lesser included offense. This appeal followed.

DECISION

Removal

Fechner argues that the district court erred when it granted the state's removal motion because the removal was procedurally barred. *See State v. Dahlin*, 753 N.W.2d 300, 303 (Minn. 2008).

“A motion to remove a judge is procedural and therefore governed by the Rules of Criminal Procedure.” *State v. Finch*, 865 N.W.2d 696, 700 (Minn. 2015) (quotation omitted). “The interpretation of those rules is a question of law subject to de novo review.” *Id.* (quotation omitted).

Removal of a district court judge is subject to three requirements: (1) the party must serve the notice to remove on the opposing counsel and file the notice to remove “with the district court within seven days after the party receives notice of the name of the presiding judge at the trial or hearing”; (2) notice to remove must be filed prior to the start of the trial or hearing; and (3) notice to remove “is not effective against a judge who [has] already

presided at the trial . . . or . . . hearing if the removing party had notice the judge would preside at the hearing.” Minn. R. Crim. P. 26.03, subd. 14(4).

Here, Fechner has failed to make a record of actual notice of the judge assigned to the matter; therefore, the removal argument fails on the merits as Fechner has failed to show that the state’s motion was untimely. Further, we note that the assigned judge cannot be considered to have “already presided at the trial” because the scheduled omnibus hearing did not result in a substantive ruling; the district court merely continued the proceedings. *See id.*, cmts (stating that “a party is not foreclosed from later serving and filing a notice to remove a judge who simply presided at an appearance under Rule 5 or Rule 8 in the case”). Considering, then, that its motion for removal was timely, the state was entitled as a matter of right to the removal of the assigned judge from any further proceedings in this matter. *Dahlin*, 753 N.W.2d at 303.

Speedy trial

Fechner argues that his right to a speedy trial was violated and that he was prejudiced by that delay, requiring the reversal of his conviction. The state argues that the delays were primarily administrative and nonprejudicial. Because Fechner was in custody for an unrelated offense, he could not be prejudiced by the trial delay.

The United States and Minnesota Constitutions guarantee criminal defendants the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Because the right to a speedy trial is a constitutional right, we review whether a defendant has been denied a speedy trial de novo. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

To determine whether a violation of a speedy-trial right occurred, Minnesota courts analyze four nonexclusive factors established by the Supreme Court in *Barker v. Wingo*: (1) length of the delay; (2) reason for the delay; (3) whether the defendant asserted his or her speedy-trial right; and (4) whether the delay prejudiced the defendant. 407 U.S. 514, 530-33 (1972); *State v. Paige*, 977 N.W.2d 829, 837 (Minn. 2022) (applying *Barker* factors). “None of the *Barker* factors is either a necessary or sufficient condition to the finding of a deprivation of the right of a speedy trial . . . they are related factors and must be considered together with such other circumstances as may be relevant.” *Osorio*, 891 N.W.2d at 628 (quotation omitted). Analyzing the *Barker* factors therefore involves a “difficult and sensitive balancing process in which the conduct of both the [s]tate and the defendant are weighed.” *Id.* (quotations and citations omitted).

Fechner argues that consideration of these factors demonstrates his right to a speedy trial was violated. The state argues that none of the factors weighs in Fechner’s favor, and his speedy-trial right was not violated. We analyze each factor in turn.

Length of delay

A 60-day delay is presumptively prejudicial and requires a weighing of the latter three factors. *State v. Windish*, 590 N.W.2d 311, 315-16 (Minn. 1999); *see also* Minn. R. Crim. P. 11.09(b) (requiring trial within 60 days of speedy-trial demand, unless the district court finds “good cause” for delay). The longer a delay extends beyond that mark, the more the presumption of prejudice “intensifies.” *State v. Jones*, 977 N.W.2d 177, 190 (Minn. 2022) (quotation omitted). The delay is calculated from the point at which the Sixth Amendment right attaches, which is when a formal indictment is issued or when the person

is arrested and held to answer a criminal charge. *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986).

Here, Fechner (1) was charged on December 12, 2018, (2) his speedy-trial demand was submitted on April 15, 2022, and (3) the trial took place on August 2, 2022. Because the delay was approximately 1,329 days from the charging date and 109 days from the speedy-trial demand, review of the remaining three factors was triggered.

Cause of delay

A “deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government,” but a “more neutral reason such as negligence should be weighted less heavily but nevertheless should be considered since the ultimate responsibility . . . must rest with the government.” *Osorio*, 891 N.W.2d at 628.

This factor weighs slightly against the state. The first trial delay following Fechner’s speedy-trial demand occurred on June 2, 2022. The state noted that it would not be prepared to try the case on the originally scheduled trial date and acknowledged that it was not aware of the speedy-trial demand. The record indicates that this delay was attributable to the state and the multiple case files associated with Fechner. This type of delay weighs less heavily against the state. *See id.* Accordingly, the 109-day delay from Fechner’s speedy-trial demand to the July 19 trial date is attributable to the state and afforded light weight.²

² We note further delay to the trial date occurred due to Fechner’s absence pending his completion of a treatment program.

The second trial delay is attributable to neither party, as it occurred when one of the state's witnesses contracted COVID-19 and was unavailable to testify. Fechner contends that this should weigh heavily against the state as it is a result of the previous delay³ and represents a purely strategic choice. Fechner objected to the state's request for a continuance; however, he also objected to allowing the state's witness to testify over a video alternative. As such, the delay caused by the state's witness contracting COVID-19 is neutral and does not weigh against either party. *See Paige*, 977 N.W.2d at 839 (explaining that delays arising from external factors, such as a witness's unavoidable unavailability or a judge's death, do not weigh against the state).

Assertion of the right

We consider not only whether a defendant demanded a speedy trial, but also the “frequency and force” of the demand. *Paige*, 977 N.W.2d at 840. “[T]he frequency and force of a demand must be considered when weighing this factor [because] the strength of the demand is likely to reflect the seriousness and extent of the prejudice which has resulted.” *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989).

Here, Fechner submitted a pro se demand for a speedy trial on April 15, 2022. He also objected to each of the state's continuance requests. But Fechner only expressly invoked a speedy-trial demand in one of his objections and did not mention it in any of the

³ Fechner asserts that because the previous delay was attributable to the state, it had “opened the door to subsequent delays.” Fechner cites to no legal authority to support his argument. *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) (“Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred.”).

scheduling conferences leading up to trial. This factor does not weigh against the state, as it does not suggest Fechner experienced an excessive or particularly serious form of prejudice from the delays to his trial.

Prejudice

This court considers three interests when determining whether a defendant suffered prejudice: “(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired.” *State v. Taylor*, 869 N.W.2d 1, 20 (Minn. 2015) (quotation omitted). The third interest, preventing impairment of the defense, is the “most serious.” *Id.*

The first two interests are not implicated when the defendant is already in custody for another reason, as is the case here. *Id.* Fechner, however, argues that his custody amounted to a set of special circumstances that require a departure from existing law and that the first two factors be analyzed, despite his custody status.⁴ In raising this assertion, Fechner points to quotes from the district court at a scheduling conference, stating that Fechner’s custody status was “concerning” and “wrong.” However, if Fechner was being held in custody for a probation violation, that offense would result in a sentence of 36 months. The district court determined that Fechner be credited for time served. Despite the length of the delay to adjudicate the probation violation, there is no reason to depart

⁴ *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (explaining that this court “is bound by supreme court precedent and the p[recedential] opinions of the court of appeals”), *rev. denied* (Minn. Sept. 21, 2010).

from existing caselaw, and Fechner has not otherwise shown that his custody caused prejudicial harm above the kind foreseen in *Taylor* to his case.

Aside from general concerns about being in custody, Fechner points to no evidence on the record that indicates prejudice on his behalf. Here, the first two interests are not implicated because Fechner was already in custody for an unrelated probation violation.⁵ See *Taylor*, 869 N.W.2d at 20. Further, while Fechner argues that his custody status presents a unique circumstance, the district court imposed a 36-month sentence for his probation violation prior to the trial. Because Fechner’s argument is not supported by facts on the record regarding the third *Taylor* prong or why the delay prevented him from presenting his defense, the final *Barker* factor does not weigh in favor of Fechner.

Balancing

Fechner has demonstrated a basic element of a speedy-trial violation—that his trial was delayed beyond 60 days from the speedy-trial demand. However, other factors balance against that consideration. Fechner sought continuances, prioritizing other considerations over speed, which caused delays. He has not shown that he suffered any impairments to

⁵ Importantly, although Fechner was on probation when he was charged with this offense, the criminal conduct occurred before his probationary period began and thus cannot be considered a probation violation. See Minn. R. Crim. P. 27.04 (to initiation a probation-revocation proceeding “a summons or warrant” must be issued by the district court that is “based on a written report . . . showing probable cause to believe a probationer violated probation”). Additionally, Fechner’s probation violation was adjudicated on July 20, where the presiding judge sentenced him to 36 months, with credit for the time served.

his defense because of the delay. Therefore, the delay does not implicate Fechner's right to a speedy trial.

Affirmed.