

NO. A 24-235

IN THE COURT OF APPEALS FOR THE STATE OF NEBRASKA

STATE OF NEBRASKA,
Appellee,
v.
JOHN L. PARKS SR.,
Appellant.

APPEAL FROM THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA

HONORABLE DUANE C. DOUGHERTY, District Court Judge

APPELLANT'S REPLY BRIEF

John L. Parks Sr., Appellant

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ARGUMENTS

I. Under the Barker test, the pre-trial delays are attributable to the State because they are the result of systemic failures by the District Court and the Douglas County Public Defender's Office

The gist of Parks' argument is that systemic failures of the court and the public defender's office robbed him of his rights to a speedy trial. Plain error review of the court's failure to address the motions to depose is appropriate because it represent an egregious inaction that effected his fundamental rights. That failure by the district court should be viewed in light of the *Barker v. Wingo* balancing test, which calls for an ad hoc review of the facts.

The State cites to *Vermont v. Brillon*, arguing that continuances requested by Parks' appointed counsel are attributable to Parks. 556 U.S. 81, 129 S. Ct. 1283 (2009). *Vermont*, however, specifically supports Parks' position that the delay is attributable to the State:

The general rule attributing to the defendant delay caused by assigned counsel is not absolute. Delay resulting from a systemic "breakdown in the public defender system" could be charged to the state.

Id. at 94 (internal citations omitted).

Vermont cited to the case it overruled to illustrate its point:

When, as in this case, a defendant presses for, but is denied, a speedy trial because of the inaction of assigned counsel or a breakdown in the public defender system, the

failure of the system to provide the defendant a constitutionally guaranteed speedy trial is attributable to the prosecution, and not defendant.

State v. Brillon, 2008 VT 35, ¶ 2, 183 Vt. 475, 479–80 (2008), *rev'd and remanded*, 556 U.S. 81 (2009).

That is exactly what happened to Parks, along with a systemic failure by the court to properly protect his fundamental rights. Thus, the “delay” should be attributed to the State. *See People v. Johnson*, 26 Cal. 3d 557, 570 (1980). The Motions to Depose were vigorously opposed by Parks, and caused no delay, as evidenced by the State’s affidavit. (BOE Vol. III, E486). The unauthorized motions to depose and motions for continuances, and the failure of the court to properly administer this case, compromised Parks rights.

II. Parks’ good faith appeal should not result in waiver of his rights

Parks failure to prevail on appeal should not result in waiver. Unlike in *State v. Mortensen*, Parks’ motions for absolute discharge had merit and were not “frivolous.” 287 Neb. 158, 841 N.W.2d 393 (2014). The rule in *Mortensen* should not be absolute, but should account for exceptional cases such as this. In this case, *State v. Baker* should apply. 264 Neb. 867, 872, 652 N.W.2d 612, 617 (2002).

Regardless, Parks’ constitutional right must be analyzed in light of the entire pre-trial ordeal. The technicalities of the statutory speedy trial clock should not act as a shield against the finding of a constitutional violation. *See Appellee’s Brief* at pg. 21.

III. Parks' fundamental rights were undermined by appointed counsel and the trial court

Relief is warranted to prevent manifest injustice, whether it lies in Parks claims of ineffective assistance of counsel, trial court error, or some other assigned error. His appointed and trial counsel violated Nebraska Rules of Professional Conduct § 3-501.2 and § 3-501.4 by refusing to honor Parks express desire to assert his speedy trial rights and/or his statutory and constitutional rights to defend himself. The trial court refused to uphold Parks' fundamental rights. *See* Appellant's Brief at pg. 24-30; Parks languished in oppressive pre-trial incarceration for 7 months before he was ever brought to the District Court. That resulted in a constitutional violation deserving of absolute discharge.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original of the foregoing was E-filed with the Clerk of the Nebraska Court of Appeals, 2413 State Capitol, Lincoln, Nebraska 68509, with notice going to the Office of the Attorney General, 2115 State Capitol Building, Lincoln, Nebraska 68509, this 15th day of March, 2025.

s/Stuart Dornan

CERTIFICATE OF WORD-COUNT COMPLIANCE

The undersigned hereby certifies this brief complies with the typeface requirements of the rule and that the word count using the latest version of Microsoft Word software is 954 words including this certificate.

s/Stuart Dornan

Certificate of Service

I hereby certify that on Saturday, March 15, 2025 I provided a true and correct copy of this *Reply Brief* to the following:

State of Nebraska represented by Austin Nicholas Relph (24718) service method: Electronic Service to **austin.relph@nebraska.gov**

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