

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES L. REEL

STATE OF SOUTH CAROLINA

THE COURT OF GENERAL SESSIONS

COUNTY OF EDGEFIELD

ELEVENTH JUDICIAL CIRCUIT

2018 FEB 13 AM 10:31

THE STATE

INDICTMENT NUMBERS:

2016-GS-19-0233

2016-GS-19-0234

vs.

ORDER

DANIEL JOSEPH NEWTON,  
Defendant.

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR DENYING THE  
DEFENDANT'S RIGHT TO THE UNITED STATES CONSTITUTIONAL GUARANTY  
AND SOUTH CAROLINA CONSTITUTIONAL GUARANTY TO SPEEDY TRIAL**

**FACTUAL HISTORY**

On November 19, 2002, Newton was arrested along with three other co-defendants by the Sheriff's Office of Columbia County, Georgia. The four defendants were involved in the robbing and kidnapping of a victim in Columbia County, Georgia, culminating in the murder of the victim in Edgefield County, South Carolina. Mr. Newton was 16 years of age at the time of the offenses.

On November 22, 2002, the Edgefield County Sheriff's Office issued warrants for Mr. Newton for the offenses of kidnapping and murder for the crimes committed in Edgefield County. Mr. Newton remained in the detention center of Columbia County, Georgia until January 9, 2004, when he pled guilty as an adult to the offenses of kidnapping, aggravated assault, robbery, theft by taking, and burglary. As a result of his guilty pleas to these offenses, he received a life sentence in the Georgia Department of Corrections. Under Georgia law, a defendant who receives a life sentence is always eligible for parole. A sentence of life without parole has never existed in the State of Georgia.

The State of South Carolina has known since the Defendant's arrest in Georgia on

November 19, 2002 that the Defendant has been continuously incarcerated since his arrest in the Columbia County, Georgia Detention Center and the State of Georgia Department of Corrections. The Defendant has never taken any action to delay or prevent the State from securing his presence in South Carolina. During this entire 15 year time period, the solicitor assigned to the case was Ervin Jerome Maye, who was then an employee of the former Circuit Solicitor, Donald V. Myers.

The only reason that the State gives for its failure to prosecute Mr. Newton within a constitutionally reasonable timeframe is that it was under the belief that when a defendant receives a life sentence in the State of Georgia that the defendant would be incarcerated for the rest of the defendant's natural life. This is incorrect.

Upon realizing its mistake, the State sought to prosecute Mr. Newton for the two Edgefield County charges approximately 15 years later. It was not until January 27, 2016, upon his extradition from the State of Georgia, that Mr. Newton was served with the two warrants for kidnapping and murder that were issued on November 22, 2002.

Assistant Solicitor Ervin Maye alleged that the reason that the Defendant had not been tried on the murder and kidnapping charges in South Carolina was that the State believed that a life sentence in Georgia meant that the Defendant would never be eligible for parole in Georgia. Deputy Solicitor Maye informed the Court that the victim's son informed him that the Defendant and his Co-Defendant, Shannon Devon Patton, would be serving life without parole, and the instant case was only prosecuted after receiving information from the victim's son that the Defendant's sentence provided him the possibility of parole.

Defendant's attorney produced an Exhibit at the Defendant's hearing before this Court of an Acknowledgement of Rights Form of Daniel Joseph Newton's sentencing in Georgia, which evidenced a plea agreement between him and the State of Georgia, indicating that he was entering a guilty plea to a life sentence with the possibility of parole. Assistant Solicitor Ervin Maye could not produce any evidence that he attempted to obtain evidence from former Augusta Judicial Circuit District Attorney Daniel J. Craig, who prosecuted the Defendant's case in Georgia, nor any evidence from the Georgia Department of Corrections or Georgia Parole Board to show that a life sentence in Georgia meant a convicted defendant would not be eligible for parole.

#### CONCLUSIONS OF LAW

"The remedy for a speedy trial violation is dismissal of the charges. A speedy trial means a

trial without unreasonable and unnecessary delay. The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard. An abuse of discretion occurs when the court's decision is based on an error of law or upon factual findings that are without evidentiary support. An accused's speedy trial right begins when he is indicted, arrested, or otherwise officially accused." State v. Langford, 400 S.C. 421 (2012).

"To trigger a speedy trial analysis, the accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from presumptively prejudicial delay, since by definition, he cannot complain that the government has denied him a "speedy" trial if it has, in fact prosecuted his case with customary promptness. Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness." Doggett v. U.S. 505 U.S. 647 (1992). "Once the accused has met this initial burden, a court must look to four factors, among the totality of the circumstances, to decide whether the defendant's right to a speedy trial has been denied." Barker v. Wingo, 407 U.S. 514 (1972). These factors are: (1) Length of delay; (2) the reason for the delay; (3) the accused assertion of his right to a speedy trial; and (4) whether the delay prejudiced the accused." Barker at 531-32. In addition, see Barker, holding a twenty-three-month delay was presumptively prejudicial.

"The State has the burden for justifying the delay. Factors that the court must weigh are (1) a deliberate attempt to delay trial as a means to hamper the defense weighs heavily against the State; (2) negligence or overcrowded dockets weigh less heavily against the State, but are ultimately its responsibility, (3) a valid reason, such as a missing witness, justifies an appropriate delay; and (4) delays occasioned by the accused weigh against him." Langford, 400 S.C. at 443. The State failed to present any valid reasons justifying the delay.

It is undisputed in the instant case that the Defendant took no action to delay his case. The Defendant has never taken any action to suppress his prosecution in South Carolina. The only reason offered for the delay of trial of the Defendant was the erroneous belief, without legal justification or the exercise of due diligence, that Deputy Solicitor Ervin Maye asserted that the life sentence the Defendant received in Georgia would be one without the possibility of parole.

"Whether a defendant previously asserted the right to a speedy trial is not alone dispositive of whether he is entitled to relief. The accused's assertion of the right, however, is entitled strong evidentiary weight in determining whether the accused is being deprived of the right." See Barker,

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407 U.S. at 533. Although the assertion of the speedy trial right is not alone dispositive, this Defendant clearly desired to be brought to South Carolina for a prompt resolution of his charges. In addition, this Defendant's Motion to Dismiss pursuant to S.C. Code § 17-11-10 clearly informed the State that the Defendant desired a prompt resolution of his pending charges.

Judge Edgar Dickson heard the Defendant's Motion to Dismiss for Denial of his Speedy Trial Demand Pursuant to S.C. Code § 17-11-10 in October 2016. After the hearing, Deputy Solicitor Ervin Maye, Co-Defendant's counsel, Charles H.S. Lyons, III, and the Defendant's counsel, Bennett Elliot Casto, agreed and stated to Judge Dickson in open court that the Defendants' cases would be tried during the January 2017 Term of Court. However, the State did not call the Defendants' cases for trial during the January 2017 Term of Court, nor did Deputy Solicitor Ervin Maye give any reason for failing to try the Defendants during the January 2017 Term.

"The United State Supreme Court also recognizes that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or even identify. This is so because times erosion of exculpatory evidence and evidence can rarely be shown. When the Government persistently fails to try an accused and the delay is excessive, the accused need not show actual prejudice in order to prevail in his speedy trial claim. While presumptive prejudice cannot alone support a speedy trial claim, it is part of the mix of relevant facts, and its importance increases with the length of time." Doggett v. U.S. 505 U.S. 647 (1992).

In addition, the Defendants point to evidence of actual prejudice in that the lead Investigator, Don Bullock, in the Edgefield County case has died and is not available for cross examination. Nor can the Defendants challenge the more than 100 items of physical evidence Investigator Don Bullock received regarding its condition or relevance. This evidence was collected by him at the Edgefield County Sheriff's Office. Investigator Bullock died in 2009, and the State had at least five years before his death to prosecute the Defendant.

The case of State v. Hunsberger, 418 S.C. 335 (2016) is particularly instructive in the instant case. Hunsberger, holds that 'actual prejudice occurs when the trial delay has weakened the accused's ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence.' Hunsberger held that a 10-year delay between the defendant's arrest and trial was presumptively prejudicial. Hunsberger is similar in facts to the instant case in that defendant Hunsberger was also convicted for murder which occurred in Edgefield County, but the victim was

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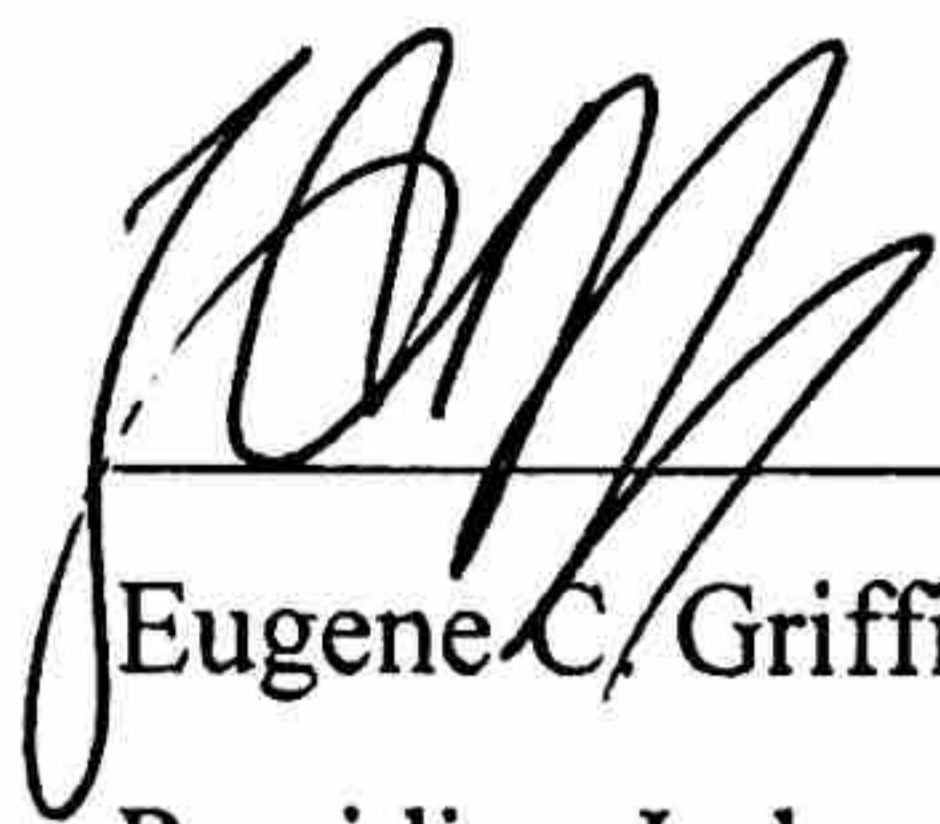
originally abducted and assaulted in Augusta, Georgia. The Hunsberger Court held that the defendant in that case was denied a speedy trial.

In conclusion, the State chose intentionally not to try the Defendants based upon a reason that was completely erroneous and unreasonable. The State made no efforts to contact the Georgia Department of Corrections, the Georgia Department of Pardons and Parole, nor the local prosecutor in Georgia, who prosecuted the case, concerning the parole eligibility of the Defendant. Additionally, the State had possession in its own files of information that the Defendants were in fact serving a life sentence in Georgia with the possibility of parole. It also appears that the Defendant asserted his demand for trial.

The Defendant's delay of trial has been 15-years without any valid reason for delay and is presumptively prejudicial. The Defendant took no actions to prevent the State of South Carolina from prosecuting his case. Based upon the foregoing, the Court grants the Defendant's Motion to Dismiss based upon the denial by the State of South Carolina of the Defendant's right to a speedy trial under the United States Constitution and South Carolina Constitution.

NOW, THEREFORE, IT IS ORDERED that the above captioned charges against the Defendant, Mr. Daniel Joseph Newton, be dismissed with prejudice. Additionally, Mr. Newton is to be released to the Georgia Department of Corrections to carry out his sentence in that state.

AND IT IS SO ORDERED.

  
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Eugene C. Griffith  
Presiding Judge for the 11th Judicial Circuit

Edgefield, South Carolina  
Dated: Feb 13<sup>th</sup>, 2018