

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2010-KA-0101**
VERSUS *
KIRK SEVERIN * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 470-260, SECTION "K"
Honorable Arthur Hunter, Judge
* * * * *

CHIEF JUDGE JOAN BERNARD ARMSTRONG
* * * * *

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Charles R. Jones,
and Judge Terri F. Love)

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**CONVICTION AND SENTENCE VACATED AND
REMANDED**

The defendant, Kirk Severin, appeals his conviction and six year sentence for simple burglary. We vacate and remand.

In the defendant's sole assignment of error, he asserts that his conviction and sentence should be overturned because of the State's failure to timely prosecute him within two years of institution of prosecution, in violation of La. C.Cr.P. art. 578(A)(2). The underlying facts of the charge against him are not relevant to this issue.

The defendant was arrested on February 20, 2007. On April 23, 2007, the State timely charged him with simple burglary, in violation of La. R.S. 14:62. The docket master reflects that the defendant was arraigned and pled not guilty on April 25, 2007.

On June 26, 2007, the defendant filed a pro se writ to this Court in case No. 2007-0774. Therein, the defendant asserted, among other things, that he had requested a speedy trial at arraignment. This Court granted the writ and remanded for hearing of the motion for speedy trial at the next status hearing, scheduled for hearing on August 10, 2007. *State v. Severin*, 2007-0774 (La. App. 4 Cir. 7/19/07), unpub. On August 10, 2007, the defendant was not brought to court, and the

status hearing was reset for August 13, 2007. On August 13, 2007, the trial court denied the defendant's motion for speedy trial. This Court denied a subsequent writ. *State v. Severin*, 2007-1057 (La. App. 4. Cir. 9/14/07), *unpub.*

According to the docket master, the defendant failed to appear in court for status hearings on October 17, 2007, November 30, 2007, January 11, 2008, and January 25, 2008. There are no entries between January 25, 2008, when an alias *capias* was issued, and April 23, 2009, when the trial court set a hearing for the next day. According to the defendant's brief to this Court, the defendant remained incarcerated at this time, but was not taken to court.

The trial court appointed the Orleans Public Defenders Office as counsel on April 24, 2009. A Motion to Quash the bill of information, alleging the State had failed to prosecute the defendant for two years, in violation of La. C.Cr.P. art. 578(A)(2), was filed on May 7, 2009, over two years after the State filed the bill of information on April 23, 2007. The trial court denied the motion to quash at a June 8, 2009 hearing. On the same date, the defendant pled guilty to the charge against him, reserving his right to appeal the denial of his motion to quash pursuant to *State v. Crosby*, 338 So.2d 584 (La.1976).

In addition to the foregoing chronology of events, the record contains documentation from the Louisiana Department of Public Safety and Corrections ("DOC") showing that the defendant was incarcerated from December 12, 2007, to January 23, 2009, at the Avoyelles Correctional Center. Prior to that he was incarcerated in Jefferson and Orleans Parish Prisons from February 21, 2007, to September 25, 2007. He was then transferred to Hunt Correctional facility, before going to Avoyelles Correctional Center on December 12, 2007. On January 23, 2009, the defendant was transferred to Orleans Parish Prison. Altogether, there is

documentation in the record showing that the defendant was continuously incarcerated from February 21, 2007 to January 23, 2009, and beyond. The State's brief acknowledges that there is no evidence in the record to prove otherwise.

ERRORS PATENT

We have reviewed the record carefully for errors patent and have found none.

THE DEFENDANT'S SPEEDY TRIAL ARGUMENT

The defendant argues that the trial court erred in denying his motion to quash the bill of information because the State failed to try him within two years of institution of prosecution, in violation of La. C.Cr.P. art. 578(A)(2). The State admits that the time limitation found in La. C.Cr.P. art. 578(A)(2) had accrued at the time that Severin filed his motion to quash the bill of information, and that it cannot show an interruption or suspension of the prescriptive period.

Once a defendant shows that the state has failed to bring him to trial within the time periods specified in La. C.Cr.P. art. 578, the State bears "the heavy burden of demonstrating that either an interruption or a suspension of the time limit tolled prescription." *State v. Morris*, 99-3235, p. 1 (La. 2/18/2000), 755 So.2d 205.

The State concludes its brief by conceding the merits of the defendant's case:

Because at the time of the filing of the defendant's motion to quash the time limitation of C.Cr.P. art. 578 had accrued, the burden is on the State to show an interruption or suspension of the prescriptive period.

On the facts of this case, the State cannot demonstrate an interruption or suspension of the prescriptive period.

CONCLUSION

Accordingly, the defendant's assignment of error has merit.

For the foregoing reasons, we vacate the defendant's conviction and sentence and remand to the trial court for the purposes of ordering his immediate release if he is still incarcerated.

**CONVICTION AND SENTENCE VACATED AND
REMANDED**