

1991 S.C. Op. Atty. Gen. 95 (S.C.A.G.), 1991 S.C. Op. Atty. Gen. No. 91-36, 1991 WL 474766

Office of the Attorney General

State of South Carolina

Opinion No. 91-36

May 24, 1991

*1 The Honorable M.O. Alexander
Member
House of Representatives
404B Blatt Building
Columbia, South Carolina 29211

Dear Representative Alexander:

You have asked what length of time must pass before a person accused of a crime has been denied the right to a speedy trial. You also ask what remedy is available in the event the right has been denied.

The Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution provide that one accused of a crime shall enjoy the right to a speedy trial. The purpose of the constitutional guarantee of the right to a speedy trial is

... to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but never the less substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.

State v. Chapman, 289 S.C. 42, 344 S.E.2d 611, 612 (1986). Generally, in determining whether the right to a speedy trial has been violated, a balancing test is used weighing the following factors:

- (1) The length of delay;
- (2) The government's reason for delay;
- (3) The time and manner of the defendant's assertion of his rights; and
- (4) The prejudice suffered by the defendant.

State v. Chapman, *supra.*; *State v. Tyson*, 283 S.C. 375, 323 S.E.2d 770 (1984); *State v. Waites*, 270 S.C. 104, 240 S.E.2d 651 (1978). South Carolina has declined to establish a specific period of time beyond which the right to a speedy trial is deemed violated. Whether an accused's right to a speedy trial has been violated will depend upon the individual circumstances of each case. *State v. Waites*, *supra.*; *State v. Monroe*, 262 S.C. 346, 204 S.E.2d 433 (1974); *State v. Ham*, 259 S.C. 118, 191 S.E.2d 13 (1972). See also *State v. Culbreath*, 282 S.C. 38, 316 S.E.2d 681 (1984) (Criminal Procedure Rule 3, formerly Circuit Court Rule 95, requiring solicitor to act on warrant within 90 days is not jurisdictional and not intended to be criterion for determining whether constitutional guarantee of speedy trial was met).

As guidance, I note that the State Supreme Court has declined to find violations of the right to a speedy trial in instances where the delay was the result of a normal court docket, *State v. Chapman*, *supra.*, where the accused has contributed to the delay, or where the accused failed to prove that the delay resulted in actual prejudice to the defense or that the

delay was attributable to or a result of the willful neglect on the part of the prosecution. *State v. Tyson*, supra; *State v. Waites*, supra; *State v. Allen*, 269 S.C. 233, 237 S.E.2d 64 (1977).

As to your question concerning the remedy available, generally, the relief granted where an accused has been denied the right to a speedy trial is dismissal of the criminal charge. *Strunk v. United States*, 412 U.S. 434 (1973).

*2 Also, I have enclosed for your review S.C. Code § 17-11-10, regarding speedy disposition of pending charges pursuant to the Interstate Agreement on Detainers and § 17-22-90 concerning waiver of the right to speedy trial while an accused participates in a pretrial intervention program. Additionally, the federal Speedy Trial Act of 1974, 18 U.S.C. Sections 3161 et seq., provides for further statutory time limits for federal prosecutions. Lastly, South Carolina Code Section 17-23-90 provides for discharge from imprisonment without bail and not discharge from further prosecution when the conditions of the statute are not timely met. *State v. Campbell*, 277 S.C. 408, 288 S.E.2d 395 (1982).

I hope this information will be of assistance and ask that you contact me if I can provide further clarification.
Sincerely,

Salley W. Elliott
Assistant Attorney General

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