

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA**STATE OF WEST VIRGINIA****V.****CASE NO. 15-M-7****JUDGE PHILLIP M. STOWERS****CALEB TOPARIS****OPINION**

This matter came before the Court May 1, 2015 for the previously-scheduled pretrial conference. The Defendant, Caleb Toparis ("Mr. Toparis"), appeared in-person and by counsel, Robert Kuenzel. The State of West Virginia ("the State") also appeared by counsel, Kristina D. Raynes. During the May 1, 2015 hearing, Mr. Toparis argued his *Motion to Dismiss* on the grounds that the State had violated his speedy trial rights pursuant to W. Va. Const. art. 3, § 14.¹ Upon due consideration of applicable legal authority and the record in this matter, this Court now rules on the *Motion to Dismiss* as examined *infra*.

PROCEDURAL BACKGROUND AND FACTS²

On April 24, 2014, Putnam County Sheriff's Deputy Anthony J. Craig filed a criminal complaint against Mr. Toparis. Subsequently, Putnam County Magistrate Linda Hunt issued a warrant for Mr. Toparis' arrest for domestic assault, domestic battery, and unlawful assault, in violation of W. Va. Code §§ 61-2-28(b), 61-2-28(a), and 61-2-9(a), respectively.

¹ Mr. Toparis raised two additional grounds in his motion: 1) pursuit of justice and 2) confrontation clause. The Court denied the pursuit of justice ground in its *Order* entered May 13, 2015. (Dkt. Line 18). The Court further deferred any ruling on the confrontation issue until trial. See May 1, 2015 Hearing Transcript at p. 11 (Dkt. Line 19).

² Portions of this section were reproduced from the Defendant's Memorandums of Law.

On April 25, 2014, Mr. Toparis presented to the Logan County Magistrate Court after receiving information that the aforementioned warrant had been issued. At that time, the Logan County Magistrate arraigned Mr. Toparis on the charges.

On May 9, 2014, the Magistrate Court of Putnam County conducted a preliminary hearing and found probable cause to hold the felony unlawful assault charge for the Putnam County Grand Jury's consideration. Following the Magistrate Court's finding, Mr. Toparis filed a *Motion to Transfer to Circuit Court* regarding his two misdemeanor charges. The three charges were then collectively bound over as Case Number 14-B-91.

On February 27, 2015, this Court first learned that this case was pending after the State filed an *Information* containing only the misdemeanor charges of domestic battery and domestic assault. (Dkt. Line 1). Pursuant to this Court's March 10, 2015 *Order*, the parties appeared for a status hearing on March 27, 2015. (Dkt. Line 2). During that hearing, the pretrial conference was set for May 1, 2015, and the trial was set for June 8, 2015; neither party requested pretrial or trial dates within one year of Mr. Toparis presenting to the Logan County Magistrate on April 25, 2014 on the arrest warrant. Mr. Toparis subsequently filed the instant *Motion to Dismiss*. (Dkt. Line 13).

PRELIMINARY DISCUSSION OF LAW

In his *Motion to Dismiss*, Mr. Toparis argues that the State violated his speedy trial rights provided by W. Va. Const. art. 3, § 14. Mr. Toparis argues that, pursuant to a series of Supreme Court decisions, the State was required to bring him to trial within one year of the arrest warrant being served upon him. The State contends that the cases are distinguishable from the facts in the instant case, as discussed *infra*.

W. Va. Const. art. 3, § 14 provides that trials of crimes and misdemeanors shall be held “without unreasonable delay.” The West Virginia Legislature has provided a statutory definition to the constitutional term “without unreasonable delay” in the circuit courts in W. Va. Code § 62-3-21 which provides, in pertinent part:

Every person charged by presentment or indictment with a felony or misdemeanor, and remanded to a court of competent jurisdiction for trial, shall be forever discharged from prosecution for the offense, if there be three regular terms of such court, after the presentment is made or the indictment is found against him, without a trial, unless the failure to try him was caused by his insanity; or by the witnesses for the state being enticed or kept away, or prevented from attending by sickness or inevitable accident; or by a continuance granted on the motion of the accused; or by reason of his escaping from jail, or failing to appear according to his recognizance, or of the inability of the jury to agree in their verdict....

However, “W. Va. Code § 62-3-21 by its very terms, is limited to prosecutions in circuit court upon grand jury indictments.” *State ex rel. Stiltner v. Harshbarger*, 296 S.E.2d 861, 863 (W. Va. 1982). Accordingly, in *Stiltner*, the Supreme Court sought to “give a precise definition to W. Va. Const. art. 3, § 14 [speedy trial rights] in the context of misdemeanor prosecutions upon warrants in magistrate courts.” *Id.* at 863.

Rather than crafting a speedy trial definition wholly from scratch, the Supreme Court created one by analogy to W. Va. Code § 62-3-21. *Stiltner* noted that “W. Va. Code 62-3-21 defines ‘speedy trial’ for circuit court proceedings as requiring that an accused be brought to trial within three terms of court after indictment.” *Id.* at 864. *Stiltner* further noted that “most West Virginia Circuit Courts have three terms of court a year.”³ *Id.* Furthermore, the *Stiltner* Court believed it could be “reasonably inferred that the Legislature considered a one-year delay the

³ In *State ex rel. Miller v. Fury*, 309 S.E.2d 79, 82 n.4 (W. Va. 1983), the Supreme Court clarified that “*Stiltner* reasoned that one term is approximately four months or one hundred and twenty days.”

outer limit of the right to a speedy trial.” *Id.* (emphasis added). Accordingly, the *Stiltner* Court held that “a trial on a warrant issued in Magistrate Court must be begun within a year of the date of the issuance of the warrant.”⁴ *Id.* at 862.

As a preliminary matter, this Court notes that it respectfully disagrees, in part, with Justice Neely’s reasoning in *Stiltner*. The *Stiltner* decision and its progeny clearly indicate that the State has *one year* to bring a defendant to trial after a criminal warrant is served on the defendant from magistrate court. Although this one-year rule was crafted by way of analogy to the three-term rule of W. Va. Code § 62-3-21, this Court believes *Stiltner* misapplied the intent of that statute.

Stiltner holds that “the outer limit of our guarantee against ‘unreasonable delay’ is a year....” *Id.* at 865 (emphasis added). However, in Syllabus Point 1 of *State ex rel. Spadafore v. Fox*, 186 S.E.2d 833 (W. Va. 1972), the Supreme Court provided guidance on how courts should calculate the three-term rule:

Under the provisions of Code 62-3-21, as amended, the three unexcused regular terms of court that must pass before an accused can be discharged from further prosecution are regular terms occurring *subsequent to the ending of the term at which the indictment was returned*. The term at which the indictment was returned can not be counted as one of the three terms.

(Emphasis added). In other words, the State must bring the accused to trial before the conclusion of *three complete terms of court* subsequent to but not including the term of indictment.⁵ The one-year rule espoused by *Stiltner*, by definition, *includes* in its calculations the term during which the arrest warrant is served. Hence, *Stiltner* defines the time for a speedy trial in a

⁴ In *Miller*, the Supreme Court noted it “in effect, incorporated the speedy trial law as it applied to felony cases to misdemeanor cases....” 309 S.E.2d at 81.

⁵ *Spadafore* is a seminal case regarding how the three-term rule should be calculated and has been continuously cited by subsequent decisions interpreting W. Va. Code § 62-3-21. See, e.g., *State ex rel. Sutton v. Keadle*, 342 S.E.2d 103, 110 n.3 (W. Va. 1985).

misdemeanor case to be shorter than that of a felony indictment. Such a rule clearly contravenes the guidelines set forth in *Spadafore* for determining what period of time constitutes three terms of court for purposes of W. Va. Code § 62-3-21.

However, despite its respectful disagreement with *Stiltner*, pursuant to the principle of stare decisis and the hierarchy of courts established by the W. Va. Const. this Court lacks the authority to challenge *Stiltner* and the subsequent decisions upholding it.⁶ “The principle of stare decisis ... is firmly rooted in our jurisprudence.” *Dailey v. Bechtel Corp.*, 207 S.E.2d 169, 173 (W. Va. 1974). Stare decisis “is a policy which promotes certainty, stability and uniformity in the law. It should be deviated from only when urgent reason requires deviation.” *Id.* (citations omitted). “Mere disagreement as to how a case was decided is not a sufficient reason to deviate from a judicial policy promoting certainty, stability and uniformity in the law.” *Id.*

Therefore, utilizing the framework provided by *Stiltner* and other applicable law, this Court must determine three things: 1) the date by which the State was required to bring Mr. Toparis to trial; 2) *if* the State failed to bring Mr. Toparis to trial within the required time, whether the State established good cause for delay; and 3) whether Mr. Toparis forfeited his right to be tried within one-year by waiving the misdemeanor charges to circuit court. These issues will be addressed in turn, *infra*.

DECISION AND ORDER

As discussed in-depth *supra*, *Stiltner* held that “a trial on a warrant issued in Magistrate Court must be begun within a year of the date of the *issuance of the warrant*.” 296 S.E.2d at 862 (emphasis added). However, in *State ex rel. Miller v. Fury*, the Supreme Court noted that “it is

⁶ See, e.g., *State ex rel. Johnson v. Zakath*, 400 S.E.2d 590 (W. Va. 1990).

obvious that the time does not begin to run until the defendant is *served with the warrant*.” 309 S.E.2d 79, 82 n. 5 (W. Va. 1983) (emphasis added). Although *Miller* involved a dispute under the one hundred and twenty day rule for trials in magistrate court, the Supreme Court noted that it has “traditionally held under the three-term rules exceptions ... that where the defendant is not subject to service, then the time period is tolled.” *Id.* (citations omitted). Therefore, the State was required to bring Mr. Toparis to trial within one year of the date on which he was *served* with the arrest warrant.

The facts of the instant case present a unique scenario under the guidelines established by *Miller*. As noted *supra*, the Putnam County Magistrate issued an arrest warrant for Mr. Toparis on April 24, 2014. Rather than being *served* with the warrant, Mr. Toparis *voluntarily presented* to the Logan County Magistrate on the next day, April 25, 2014. Under the facts of this case, this Court holds that Mr. Toparis’ voluntary presentment to the Logan County Magistrate Court commenced the running of the one-year rule. Accordingly, this Court holds that the State was required to bring Mr. Toparis to trial by April 25, 2015, one year after he presented to the Logan County Magistrate.⁷

Having now determined that the State failed to bring Mr. Toparis to trial by the required date of April 25, 2015, this Court must next consider whether the State established good cause for delay. In *Stiltner*, the Supreme Court noted that “the Legislature has enumerated in [W. Va. Code § 62-3-21] certain circumstances that justify postponement of a trial beyond three terms of court....” 296 S.E.2d at 864. Accordingly, by analogy, the *Stiltner* Court extended that reasoning

⁷ This Court declines to rule on whether the State was required to bring Mr. Toparis to trial within 120 days of his arrest. As the Supreme Court noted in *State ex rel. Brum v. Bradley*, “[t]he one-term rule is not a right of constitutional dimension.” 590 S.E.2d 686, 689 (W. Va. 2003) (citations omitted). Thus, a case dismissed under the *one-term rule* could be dismissed *without prejudice*. See *id.* Here, a violation of the constitutional *one-year rule* would result in dismissal *with prejudice*, thereby causing a ruling on the one-term rule to be moot.

to cases initiated by warrant in magistrate court “where any of those circumstances exists in the trial of a misdemeanor, delay beyond a one-year period is also justified.” *Id.*

In the instant case, the State did not contend that any of the circumstances constituting good cause for delay under W. Va. Code § 62-3-21 was present. “[A]fter one year lack of good cause for delay ... should be presumed from a silent record.” *Id.* Due to the State’s silence, lack of good cause for delaying this matter beyond one year is presumed.

Finally, after finding no good cause for delay, this Court must address the State’s argument that Mr. Toparis forfeited his right to be tried within one-year by moving to transfer the misdemeanor charges to circuit court. During the May 1, 2015 hearing, the State argued that “as to the speedy trial argument the State believes that the cases that the defense cite[d] are distinguishable in the fact that these were magistrate cases....” Transcript at p. 6, lines 12-15. The State further argued that the facts of this case are different because Mr. Toparis’ charges “weren’t dismissed on the State’s motion. They weren’t dismissed on the Court’s motion. They were waived over to the jurisdiction of the circuit court by the defendant in a written waiver.” *Id.* at p. 6, lines 16-20.

The State correctly asserts that the instant case is distinguishable from *Johnson* in that Mr. Toparis’ charges were never dismissed by the State or the Court. However, this Court finds this distinction is not relevant to the facts of this case, and finds that the holdings of *Stiltner* and *Johnson* control in this matter as discussed below.

In *Johnson*, the defendant was arrested in November 1988 on a misdemeanor charge of aiding and abetting credit card fraud, released on bond, and presented for trial in Kanawha County Magistrate Court in January 1989. 400 S.E.2d at 592. The State and its witnesses did not appear and *the Magistrate Court dismissed the charges without prejudice. Id.* More than a year

later, in February 1990, the defendant was indicted by the grand jury on the same charge. *Id.* The defendant then brought an original proceeding in prohibition seeking to prevent his prosecution in the Circuit Court of Kanawha County, West Virginia. *Id.*

Before *Johnson* was decided, *Stiltner* made it clear that “a trial on a warrant issued in Magistrate Court must be begun within a year of the date of the issuance of the warrant.” *Stiltner*, 296 S.E.2d at 862 (emphasis added). In other words, when a misdemeanor matter is initiated through a warrant in magistrate court, the State has one year to bring the defendant to trial. It is of no consequence whether the matter is later transferred to circuit court. In fact:

[e]ven though W. Va. Code § 50-5-7 gives exclusive jurisdiction to a magistrate court once the defendant is charged by warrant in that court ... this does not mean that the circuit court has no initial jurisdiction over misdemeanor offenses. Concurrent jurisdiction still exists under Article VIII, section 6 of the West Virginia Constitution and Code 51-2-2.

Johnson, 400 S.E.2d at 593 (citations omitted). Despite acknowledging magistrate courts and circuit courts’ concurrent jurisdiction over misdemeanor matters, *Johnson* found that the one-year rule established in *Stiltner* applied rather than the three-term rule of W. Va. Code § 62-3-21. Therefore, “the State would not be able to revive the charge by bringing a new indictment” in circuit court after one year from the execution of the original warrant. 400 S.E.2d at 594.

Here, as in *Johnson*, the case was without question initiated by a warrant in Putnam County Magistrate Court. Although Mr. Toparis filed a motion to transfer the misdemeanor charges to circuit court, the one-year rule was still in effect.⁸ Subsequently filing the *Information* against Mr. Toparis did not extend the time for trial under the purview of W. Va. Code § 62-3-

⁸ Although the State might contend that Mr. Toparis delayed this matter by moving this case to circuit court, this Court would not be swayed by any such argument. Mr. Toparis simply exercised his rights under the Rules of Criminal Procedure for Magistrate Courts and did so without delay. See *Motion to Transfer to Circuit Court* (filed on the same day as the Magistrate Court preliminary hearing). A defendant’s legitimate, timely exercise of a procedural right should not be construed to defeat a statutory, constitutional, or jurisdictional right.

21. Accordingly, as noted *supra*, the State was required to bring Mr. Toparis to trial within one year after said warrant was served, and that one-year period has expired.

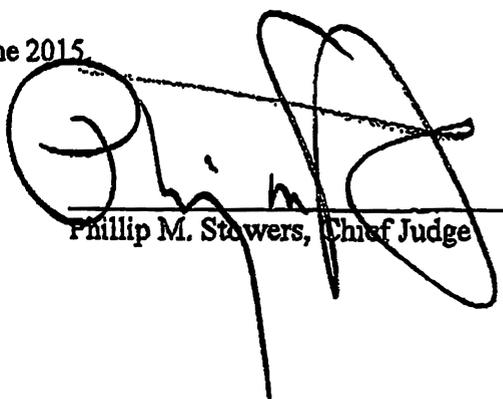
Accordingly, for the foregoing reasons, this Court **ORDERS** that this matter be **DISMISSED WITH PREJUDICE**.

The Circuit Clerk is directed to send certified copies of this *Order* to the parties of record, including:

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ORDERED this 4th day of June 2015.



Phillip M. Stowers, Chief Judge