

**State of West Virginia  
Supreme Court of Appeals**

**State of West Virginia,  
Respondent, Respondent below**

**vs) No. 101223** (Harrison County 10-M-AP-6-1)

**Thomas Casablanca,  
Petitioner, Petitioner below**

**FILED**

February 11, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Thomas Casablanca appeals the Circuit Court of Harrison County's July 15, 2010, order denying his petition for appeal from a magistrate court conviction for Driving Under the Influence, First Offense. The State has filed a response to this petition for appeal.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On the early morning of August 31, 2008, Harrison County Deputy Sheriff Pat McCarty stopped petitioner for DUI. Petitioner was issued a citation and taken home. The State reports that petitioner failed to appear in magistrate court on the citation. On March 17, 2009, the State moved to dismiss the citation for non-appearance and sought a warrant for petitioner's arrest. The arrest warrant was issued on March 17, 2009, and was served on July 4, 2009. Petitioner asserts that he was not informed of the re-filed charge until his July 4 arrest and arraignment. On August 31, 2009, petitioner moved to continue his magistrate court trial so that he could obtain counsel. Trial was rescheduled for January 13, 2010. On January 2, 2010, the defense moved to suppress the results of any secondary breath test and the officer's DUI Information Sheet because the State had failed to provide these in discovery. The State acknowledged that it had mistakenly failed to provide complete discovery. The magistrate denied the motion to suppress but granted the State's

motion for continuance so that discovery could be provided. The trial was held on April 9, 2010, where a jury found petitioner guilty.

Petitioner's first assignment of error is that the State failed to provide a speedy trial as required by the West Virginia Constitution and the one year / three term rule of West Virginia Code § 62-3-21. He argues that he was stopped and cited on August 31, 2008, and the arrest warrant was issued on March 17, 2009, but he was not tried until April 9, 2010. He asks this Court to find that the one year time period to prosecute started on March 17, 2009. The circuit court rejected this argument and found that the one year period began running from the date of arrest, July 4, 2009, thus trial could have been held anytime before July 4, 2010. This Court has said that the three terms begin running from "the [execution] of the criminal warrant . . . ." Syl. Pt. 3, as modified, *State ex rel. Stiltner v. Harshbarger*, 170 W.Va. 739, 296 S.E.2d 861 (1982); Syl. Pt. 5, *State ex rel. Johnson v. Zakaib*, 184 W.Va. 346, 400 S.E.2d 590 (1990) (bracketed language in original). We find no error in the circuit court's ruling that the time period begins running from the date of execution of the arrest warrant, not the date of issuance of the warrant.

Petitioner's second assignment of error is that the magistrate erred by continuing the January 13, 2010, trial date. He argues that under Rule 12(b)(2) of the Magistrate Court Rules of Criminal Procedure, a continuance may only be granted upon a showing of good cause and that the prosecutor's failure to provide discovery does not constitute good cause. The circuit court found that the magistrate court did not abuse its discretion in continuing the trial because Rule 29 of the Magistrate Court Rules allows a magistrate to grant a continuance to permit the production of discovery if a party has failed to timely comply with discovery requests. The State stated it was unaware that the defense did not have the entirety of the discovery. We find no error in the circuit court's rejection of this assignment of error.

Petitioner's third and final assignment of error is that this DUI charge should have been joined with another DUI charge against him resulting from a second stop that same morning, August 31, 2008. Petitioner was cited and then taken home around 2:30 a.m. He resumed driving and was stopped by another officer at 4:30 a.m. In a separate magistrate court criminal proceeding, petitioner pled no contest to First Offense DUI for the 4:30 a.m. charge. He asserts that joinder was mandatory under West Virginia Rule of Criminal Procedure 8(a)(2) and argues that when he pled no contest to the second charge, the State did not tell him that it had re-filed the first charge. The circuit court rejected this argument and found that joinder was not required by Rule of Criminal Procedure 8(a)(2) because these two DUI offenses were not based on the "same act or transaction" and were not "connected together or

constituting parts of a common scheme or plan.” We find no error in the circuit court’s ruling. Although both occurred on the same morning, these two charges resulted from two separate episodes of DUI.

For the foregoing reasons, we affirm the conviction.

Affirmed.

**ISSUED:** February 11, 2011

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman  
Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Menis E. Ketchum  
Justice Thomas E. McHugh