No. 31561– ***State ex rel. Brum v. Bradley, Magistrate of Wood County***

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

McGraw, Justice, dissenting:

At the time Dr. Brum was charged with committing a crime, the magistrate court should have been operating under the so-called 120 day rule. As the majority noted:

> In syllabus point 2 of *State ex rel. Stiltner v. Harshbarger*, 170 W. Va. 739, 296 S.E.2d 861 (1982), we adopted a 120 day rule for magistrate courts by analogy to W. Va. Code § 62-3-1 and held that a criminal trial in magistrate court should occur within 120 days of issuance of the warrant unless good cause as defined by W. Va. Code § 62-3-1 exists.

The "good cause" suggested by a magistrate in this case was simply that the court docket was too crowded; that excuse is not good enough for me, nor should it be for the people of West Virginia.

I by no means condone the actions Dr. Brum is alleged to have committed in this case, and believe that, if he did these things, he should be punished. However, the state must follow the rules, including applicable time limits, when prosecuting any defendant. I understand that our magistrate courts, like all our courts, are overburdened and that our magistrates work diligently to discharge their duties under the law. But if our system is so clogged that defendants, who are still citizens protected by our laws and Constitution, are unable to receive trials within the time limits required by law, then all branches of government must work together to remedy this problem.

If the Court wishes to change the 120 day rule, it should do so openly, and prospectively, so that it does not impact defendants like Dr. Brum, who were charged when the 120 day rule was clearly in effect. Otherwise, "[j]ustice delayed is justice denied." *State v. Bail*, 140 W. Va. 680, 88 S.E.2d 634 (1955). Therefore, I must respectfully dissent.