

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 MICHAEL GARY CLONCH, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. S-2007-668

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

AUG - 1 2008

**SUMMARY OPINION**

MICHAEL S. RICHIE  
CLERK

**C. JOHNSON, VICE-PRESIDING JUDGE:**

Michael Gary Clonch was charged in the District Court of Cleveland County with First Degree Rape (Count I) and Exhibiting Obscene Material to a Minor (Count II), both After Former Conviction of a Felony, in Case No. CF-2004-55. After Preliminary Hearing, the Information was subsequently amended to charge Count I as Second Degree Rape and Count II as Lewd Molestation. Prior to trial, defense counsel filed a Motion to Dismiss for Lack of Speedy Trial. After a hearing, the district court granted the motion and dismissed the case. The State appeals from this decision pursuant to 22 O.S.Supp.2002, § 1053.

Appellant raises the following proposition of error:

1. The defendant's right to a speedy trial was not violated in this case.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts and briefs, we affirm the district court's ruling. In appeals prosecuted pursuant to 22 O.S.Supp.2002, § 1053, this Court reviews the trial court's decision for an abuse of discretion. *See State*

*v. Love*, 1998 OK CR 32, ¶ 2, 960 P.2d 368, 369. In determining whether a delay violates a defendant's right to a speedy trial, the Supreme Court has instructed us to balance 1) the length of the delay, 2) the reason for the delay, 3) the defendant's assertion of - or failure to assert - his right, and 4) any prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101 (1972). Review of the record reveals that the trial court weighed each *Barker* factor in favor of the defendant and subsequently found that the defendant was denied his Sixth Amendment right to a speedy trial. We cannot find, based upon the record before this court, that this ruling constituted an abuse of discretion. Accordingly, the ruling of the district court must be affirmed.

#### **DECISION**

The State's requested relief is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY  
THE HONORABLE LORI M. WALKLEY, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

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**OPINION BY C. JOHNSON, V.P.J.**

LUMPKIN, P.J.: DISSENT  
CHAPEL, J.: CONCUR  
A. JOHNSON, J.: CONCUR  
LEWIS, J.: CONCUR IN RESULTS