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For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

JASON B. COULTER,	)	S. Ct. Crim. No. 2019-0024
Appellant/Defendant,	)	Re: Super. Ct. Crim. No. 415/2015 (STT)
	)	
v.	)	
	)	
PEOPLE OF THE VIRGIN ISLANDS,	)	
Appellee/Plaintiff.	)	
	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas
Superior Court Judge: Hon. Kathleen McKay

Argued: June 8, 2021
Filed: October 1, 2021

Cite as: 2021 V.I. 17

BEFORE: **RHYS S. HODGE**, Chief Justice; **IVE ARLINGTON SWAN**, Associate Justice
 and **MARIA CABRET**, Associate Justice.

APPEARANCES:

Samuel A. Walker, Esq.
CPLS, P.A.
Orlando, FL
Attorney for Appellant,

Kenneth R. Case, Esq.
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

SWAN, Associate Justice.

¶1 Appellant Jason B. Coulter challenges the Superior Court’s denial of his motion to dismiss the information and criminal charges filed against him, in which he asserted violations of his Sixth Amendment right to a speedy trial. For the reasons elucidated below, we determine Coulter has waived appeal of the Superior Court’s denial of his motion to dismiss.

I. FACTS AND PROCEDURAL HISTORY

¶2 In February 2015, the Superior Court authorized an arrest warrant for Jason Coulter (“Coulter”) because he allegedly murdered his roommate, William Ray Bennett, between November 28, 2014 and November 29, 2014 at their shared apartment in St. Thomas, U.S. Virgin Islands. The information charged Coulter with eleven counts, including first degree murder, in violation of 14 V.I.C. §§ 921 and 922(a)(1); second degree murder, in violation of 14 V.I.C. § 921; using a dangerous weapon during the commission of murder, in violation of 14 V.I.C. § 2251(a)(2)(B); and first degree assault, in violation of 14 V.I.C. § 295(1).

¶3 On July 5, 2015, Orange County sheriffs arrested Coulter in Florida. Subsequently, although Coulter waived extradition to the Virgin Islands and Florida officials notified the People that Coulter was in their custody, the People failed to arrange Coulter’s return to the territory until November 2015.

¶4 In November 2015, following his transfer to the territory, the court held Coulter’s advice of rights hearing and, in December 2015, the court arraigned him. At the time of his arraignment, Coulter invoked his Sixth Amendment constitutional right and requested a speedy jury trial.

¶5 In December 2015, Coulter's case was assigned to Judge Adam Christian, who established a scheduling order that stipulated a discovery completion date of December 31, 2015, a discovery hearing for May 3, 2016, and jury selection for October 3, 2016. However, the People failed to tender to Coulter complete discovery by February 26, 2016. Therefore, Coulter filed a motion to compel discovery or, alternatively, to dismiss the case pursuant to Federal Rule of Criminal Procedure 16. Ultimately, the court denied Coulter's motion to dismiss but granted Coulter's motion to compel discovery and instructed the People to serve initial discovery upon Coulter by May 26, 2016.

¶6 On May 27, 2016, the People served Coulter with initial discovery which violated the court's May 26, 2016 deadline. Because the People failed to serve initial discovery by the May 26, 2016 deadline, Coulter filed a motion for sanctions. However, the trial court record fails to disclose how that court adjudicated Coulter's motion for sanctions.

¶7 In June 2016, the People completed discovery, and the court scheduled a bail hearing for August 2016. Before the bail hearing, Judge James Carroll was assigned to preside over the case because Judge Christian left the judiciary. At the bail hearing, Judge Carroll noted a possible conflict of interest because of an association with Coulter's potential third party custodians. Immediately, the People requested Judge Carroll's recusal from the case, which occurred on August 22, 2016. Following Judge Carroll's recusal, the case was reassigned to Judge Renee Gumbs-Carty. However, citing a potential conflict of interest, Judge Gumbs-Carty eventually recused herself from the case on September 8, 2016. On September 15, 2016, the case was reassigned to Judge Kathleen McKay.

¶8 Following the reassignment, the court established a new scheduling order that mandated a January 24, 2017 pretrial conference, with jury selection on February 13, 2017. At the January 24, 2017 pretrial conference, Coulter requested a continuance because he could not locate a critical witness. The People did not oppose Coulter's request and the court rescheduled jury selection to May 8, 2017. However, on February 24, 2017, Coulter's attorney, the Virgin Islands Office of the Public Defender, moved to withdraw from the case because of disagreements resulting in a deterioration in communications between itself and Coulter.

¶9 On March 20, 2017, the court granted the Public Defender's withdrawal motion and appointed new counsel. Subsequently, at an April 18, 2017 pretrial conference, Coulter's new attorney requested a continuance because he needed more time to comprehend the issues in the case. The People did not oppose defense counsel's motion for continuance. The court granted defense counsel's motion to continue and rescheduled jury selection to August 7, 2017. However, Coulter requested another continuance on July 19, 2017. Again, the People did not oppose Coulter's motion to continue. Thereafter, the court granted the motion for continuance, and rescheduled jury selection to October 23, 2017.

¶10 Unfortunately, two category five hurricanes, Irma and Maria, visited the territory respectively on September 6, 2017 and September 20, 2017. Accordingly, at an October 3, 2017 pretrial conference, the court recognized that it was unlikely that a jury array could be assembled under the circumstances because of the conditions existing in the territory and rescheduled the October 3, 2017 pretrial conference to October 26, 2017 and likewise postponed jury selection to October 30, 2017. However, at the October 26, 2017 pretrial conference, the People informed the court that it could not locate several key witnesses, particularly those who may have departed the

territory because of the existing devastation, chaos, and disarray following the two hurricanes. Therefore, the court again rescheduled jury selection to January 22, 2018.

¶11 On January 8, 2018, the People again moved to continue the case, which Coulter opposed. In its written memorandum supporting the continuance, the People cited its inability to contact key witnesses. In his opposition, Coulter stated that he had been incarcerated since July 2015 and reiterated his demand for a speedy trial. Ultimately, the court ordered a pretrial conference for March 20, 2018 and rescheduled jury selection to April 9, 2018. Simultaneously, the court cautioned the People that it would not grant additional continuances but would dismiss the case without prejudice, if the People moved for another continuance of the case.

¶12 Despite the court's prior warning, the People again moved for another continuance at the final pretrial conference on April 5, 2018. Coulter opposed the People's motion and reiterated his desire for a speedy trial. Rather than grant the People's motion, the court removed the case from the court's calendar and rescheduled the trial's commencement date to November 2018.

¶13 On April 20, 2018, Coulter filed a motion to dismiss the case with prejudice or alternatively, without prejudice. In his motion, Coulter asserted that a violation of a defendant's Sixth Amendment speedy trial rights is evaluated using the four factors adduced in *Barker v. Wingo*, 407 U.S. 514 (1974). The four *Barker* factors are: (i) the length of delay; (ii) the reason for the delay; (iii) the defendant's assertion of his rights; and (iv) the prejudice to the defendant. In his motion, Coulter painstakingly addressed each delay in the case, arguing that the majority of the delays were caused by the People, and ultimately contending that the four *Barker* factors weighed in his favor.

¶14 In its April 24, 2018 opposition to Coulter's motion to dismiss, the People unequivocally contended that the delays were not in bad faith and were without malice. Significantly, the People asserted that the delays that were caused by the hurricanes could not have been anticipated or foreseen. Moreover, the People argued that, during the protracted case history, Coulter only asserted his right to a speedy trial in the motion to dismiss and he did not demonstrate any prejudice from his prolonged incarceration.

¶15 In a June 20, 2018 opinion, the court denied Coulter's motion to dismiss. In the opinion, the court agreed with Coulter that the *Barker* factors were the correct standard for assessing a claimed Sixth Amendment speedy trial violation. However, the court concluded that the most important factor, prejudice to the defendant, did not weigh in Coulter's favor. Specifically, although the court determined Coulter's prolonged imprisonment warranted evaluation of the other three *Barker* factors, it ruled that Coulter could not establish the kind of prejudice that warranted dismissal of this case. Therefore, the court decided the People did not exhibit deliberate conduct or conscious effort to hamper or impede Coulter's defense.

¶16 Eventually, the parties consummated a plea agreement. At an August 9, 2018 hearing, Coulter changed his plea to guilty and accepted the parties' plea agreement. The agreement required Coulter to plead guilty to second degree murder. In exchange, the People agreed to dismiss the other charges in the information and to recommend a 22 year sentence. During the August 9, 2018 hearing, the court directly voir dired Coulter and concluded that he understood the ramifications of changing his plea and he did so voluntarily and knowingly.

¶17 On February 22, 2019, the court held Coulter’s sentencing hearing. At the hearing, the court heard the People’s allocution, a victim impact statement from Bennett’s daughter, and Coulter’s statement. The court proceeded to sentence Coulter to 40 years’ imprisonment and entered a judgment on March 27, 2019 which was later reduced on June 7, 2019 to 30 years.

¶18 On March 7, 2019, Coulter perfected a timely appeal.

II. JURISDICTION

¶19 “The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees, and final orders of the Superior Court.” 4 V.I.C. § 32(a). “An order that disposes of all claims submitted to the Superior Court is considered final for the purposes of appeal.” *Jung v. Ruiz*, 59 V.I. 1050, 1057 (2013) (citing *Matthew v. Herman*, 56 V.I. 674, 677 (2012)). Because the Superior Court’s February 22, 2019 order sentencing Coulter disposed of all claims submitted for adjudication, the order is final and we exercise jurisdiction over Coulter’s appeal.

III. STANDARD OF REVIEW

¶20 We review the trial court’s factual findings for clear error and exercise plenary review over its legal determinations. *Thomas v. People*, 63 V.I. 595, 602-03 (2015) (citing *Simmonds v. People*, 53 V.I. 549, 555 (2010)). “However, in ruling on the correctness of discretionary rulings, such as those granting or denying motions to suppress evidence or for severance, we review only for abuse of discretion.” *Ponce v. People*, 72 V.I. 828 (V.I. 2020) (citations omitted).

IV. DISCUSSION

¶21 Interestingly, Coulter’s notice of appeal cites his sentence as the basis for the appeal. However, Coulter’s appellate brief completely fails to discuss his sentence. Rather, the brief argues the Superior Court erred when it denied his motion to dismiss based on asserted violations of his Sixth Amendment right to a speedy trial. Notably, at the August 9, 2018 hearing, Coulter told the court that he understood that changing his plea to guilty and accepting the People’s plea offer meant he could only appeal his sentence. Coulter’s notice of appeal unambiguously states that the sentence the court imposed was the only issue on appeal. (S.A. 8). Thus, it is flabbergasting and disconcerting that Coulter’s appellate brief is devoid of any argument or a modicum of facts pertaining to his sentence.

¶22 Regardless, it is axiomatic that a defendant is prohibited from challenging any constitutional issue on appeal once he has pled guilty if the issue arose before the court accepted the plea.¹ See *United States v. Chavez-Diaz*, 949 F.3d 1202, 1206 (9th Cir. 2020) (“When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea.”) (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973), and further stating that “it is well settled that an unconditional guilty plea constitutes a waiver of the right to appeal all non-jurisdictional antecedent rulings and cures all

¹ The United States Supreme Court has announced a narrow exception to a defendant’s ability to challenge his guilty plea after it has been accepted by the court. The exception relates to double jeopardy claims and challenges to the constitutionality of statute under which the defendant is convicted. See *Class v. United States*, 138 S. Ct. 798, 803-05 (2018).

antecedent constitutional defects”); *United States v. Reed*, 770 Fed. Appx. 305, 306 (8th Cir. 2019) (speedy trial claims “are foreclosed by [a] guilty plea”).

¶23 However, if the guilty plea is conditional, a defendant may challenge issues preserved in the written plea agreement once the court and government have acquiesced to the agreement. *See United States v. Schaffer*, 586 F.3d 414, 420 (6th Cir. 2009) (“Generally, a valid guilty plea ‘bars any subsequent non-jurisdictional attack on the conviction.’ . . . Pursuant to FED. R. CRIM. P. 11(a)(2), a defendant may, with the approval of the court and consent from the government, enter a conditional plea of guilty ‘reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion.’ This rule places an ‘affirmative duty’ on the defendant to preserve any issues collateral to the determination of guilt or innocence by specifying them in the plea itself. ‘[I]n the absence of a court-approved reservation of issues for appeal, [a defendant pleading guilty] waives all challenges to the prosecution except those going to the court’s jurisdiction.’”) (citations omitted); *United States v. Doherty*, 17 F.3d 1056, 1058 (7th Cir. 1994) (“Federal Rule of Criminal Procedure 11(a)(2) allows a defendant to enter a conditional guilty plea -- that is, to reserve in his guilty plea the right to appeal ‘the adverse determination of any specified pretrial motions.’ . . . The rule requires a conditional plea to be in writing to ‘precisely identify which pretrial issues the defendant wishes to preserve for review.’”)² (citations omitted).

² Although this case arose before the Virgin Islands Rules of Criminal Procedure became effective in December 2017, Coulter’s plea occurred in August 2018 after the rules were enacted and, under Rule 1(c)(2)(B) of the Virgin Islands Rules of Criminal Procedure, which states that the rules apply to all pending matters, the Virgin Islands Rules of Criminal Procedure apply to this case. Accordingly, we cite the relevant portion of the V.I. R. CRIM. P. 11 to demonstrate that it comports with its federal counterpart. “With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. . . .” V. I. R. CRIM. P. 11(a)(2).

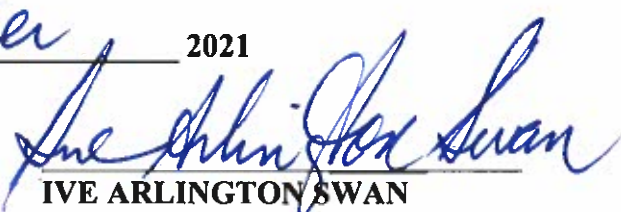
¶24 In this case, Coulter's unconditional plea agreement specifically states that he may only dispute his sentence on appeal. Thus, Coulter's decision to only discuss the Superior Court's denial of his motion to dismiss in his appellate brief leaves us with little recourse except to deem the issue of any alleged speedy trial violation to be waived. Accordingly, we conclude that Coulter waived appellate review of the lower court's denial of his motion to dismiss because of alleged Sixth Amendment speedy trial right violations. *See e.g. United States v. Bell*, 966 F.2d 914, 915-16 (5th Cir. 1992) (explaining that a defendant pleading guilty preserves case dispositive issues for appellate review by accepting a written conditional guilty plea that specifies the issues the defendant intends to appeal). Despite that finding, even if he had preserved the issue for appellate review, we would affirm the Superior Court's denial of Coulter's motion to dismiss based on purported Sixth Amendment speedy trial right violations because the delays in the trial's commencement were attributable to both Coulter and the People and he failed to demonstrate any prejudice from his prolonged incarceration. *See United States v. Brown*, 808 Fed. Appx. 347, 349-50 (6th Cir. 2020) (affirming a plea agreement that waived all grounds for appeal except one was enforceable, and concluding that a delay partially attributable to the defendant, coupled with a lack of evidence showing that the defendant was prejudiced by prolonged incarceration, prevented a ruling that the defendant's speedy trial right had been violated).³

³ Although we stated above that the Virgin Islands Rules of Criminal Procedure and, by extension V. I. R. CRIM. P. 11(a)(2), apply to this matter, we have not had previously had the opportunity to interpret the rule 11(a)(2). Therefore, we review interpretations of federal rule 11(a)(2) because local rule 11(a)(2) mirrors the federal version. *See People v. Ventura*, No. SX-2012-CR-076, 2014 WL 3767484, at *15 (V.I. Super. Ct. July 25, 2014) ("[C]ourts do not state that borrowed rules incorporate the construction given them by the highest court of jurisdiction from which they were borrowed. Instead, courts typically view such earlier constructions of borrowed rules as persuasive, not mandatory.") *See also Harbel Oil Co. v. Steele*, 298 P.2d 789, 792 (Ariz.1956) ("In construing our own rules we recognize and typically give much weight to interpretations made of similar federal rules. . . ."); *Wheat State Tel. Co. v. State Corp. Comm'n*, 403 P.2d 1019, 1022 (Kan.1965) (interpreting state agency rules, borrowed from state civil procedure code which was in turn borrowed from federal rules of civil procedure, according to well-settled meaning given by federal courts); *Frush v. Brooks*, 104 A.2d 624, 626 (Md.1954) ("The Maryland summary

V. CONCLUSION

¶25 For the foregoing reasons, we conclude Coulter waived appellate review of the Superior Court's denial of his motion to dismiss on Sixth Amendment speedy trial grounds because he entered an unconditional guilty plea that precluded appellate review of constitutional pretrial issues that materialized before he entered the plea. However, had we reached the merits of Coulter's appeal, we would affirm the Superior Court's denial of Coulter's motion to dismiss based on purported Sixth Amendment speedy trial violations.

Dated this 1st day of October 2021


IVE ARLINGTON SWAN
Associate Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court

By: 
Deputy Clerk II

Date: 10/1/2021

judgment rules, and especially the requirements of supporting or opposing affidavits, were taken from the Federal Rules of Practice and Procedure, Rule 56, 28 U.S.C.A., so that interpretations of the Federal Rules are especially persuasive as to the meaning of the Maryland rules.”); *Dobbins v. State*, 483 P.2d 255, 258 (Wyo.1971) (“In considering the points raised here perhaps it should first be noted that the foregoing rules were taken from Rules 8(a), 13, and 14, Fed. Rules Cr. Proc. Consequently precedent emanating from the Federal courts on such matters must be given great weight on the question before us.”).