

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico  
Filed 4/25/2023 8:39 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

  
Mark Reynolds  
**No. A-1-CA-40006**

5 **ISIDORO OJEDA-LIRA,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**

8 **Michael H. Stone, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Charles J. Gutierrez, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Kathleen T. Baldrige, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **DUFFY, Judge.**

20 {1} Defendant Isidoro Ojeda-Lira appeals his conviction for criminal sexual

21 contact of a minor (child under thirteen), contrary to NMSA 1978, Section 30-9-

22 13(C)(1) (2003). On appeal, Defendant argues the district court improperly denied

23 his motion to dismiss for a speedy trial violation. Seeing no error, we affirm.

1 **DISCUSSION**

2 {2} Defendant raises a single issue on appeal: the district court’s denial of his  
3 motion to dismiss on speedy trial grounds. We review this issue in light of the four-  
4 factor balancing test articulated in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), under  
5 which courts balance: (1) the length of the delay, (2) the reason for the delay, (3) the  
6 defendant’s assertion of the right, and (4) prejudice to the defendant. When  
7 reviewing a district court’s denial of a speedy trial motion, we defer to the district  
8 court’s factual findings and review the court’s application of the *Barker* factors de  
9 novo. *State v. Spearman*, 2012-NMSC-023, ¶ 19, 283 P.3d 272.

10 {3} There is no dispute that the length of the delay in this case crossed the  
11 threshold to trigger further inquiry. *See State v. Urban*, 2004-NMSC-007, ¶ 11, 135  
12 N.M. 279, 87 P.3d 1061. Here, the parties agree that the delay amounted to  
13 approximately forty-five months, which is thirty months beyond the presumptive  
14 period for a case of intermediate complexity. *See State v. Garza*, 2009-NMSC-038,  
15 ¶ 2, 146 N.M. 499, 212 P.3d 387 (designating fifteen months as the threshold length  
16 of delay for triggering a speedy trial inquiry for cases of intermediate complexity).  
17 We have previously held that a delay of more than twice the presumptive period  
18 weighs heavily against the State, and so conclude here. *See State v. Deans*, 2019-  
19 NMCA-015, ¶ 9, 435 P.3d 1280.

1 {4} Under the second *Barker* factor, “[t]he reasons for a period of the delay may  
2 either heighten or temper the prejudice to the defendant caused by the length of the  
3 delay.” *Garza*, 2009-NMSC-038, ¶ 25. Defendant argues that of the forty-five  
4 months of delay, approximately seventeen months are neutral based on the natural  
5 progression of the case, slightly over six months weigh against Defendant, and  
6 twenty-two months weigh against the State, although much of that delay was  
7 administrative in nature. *See State v. Ochoa*, 2017-NMSC-031, ¶¶ 22-23, 406 P.3d  
8 505 (stating that administrative or negligent delay weighs against the state, though  
9 less heavily); *State v. Valencia*, 2010-NMCA-005, ¶ 18, 147 N.M. 432, 224 P.3d  
10 659 (describing neutral delay as “periods of time considered ‘inevitable’ and periods  
11 during which the case is moved ‘toward trial with customary promptness’” that “are  
12 not to be weighed against the [s]tate”). The State asserts that approximately eleven  
13 months of the delay are neutral, sixteen months are attributable to Defendant, and  
14 eighteen months weigh against the State, though more than half of that delay was  
15 administrative in nature. Whether we accept Defendant’s apportionment or the  
16 State’s, our conclusion is the same—the reasons for the delay weigh slightly against  
17 the State. *See, e.g., State v. Samora*, 2016-NMSC-031, ¶ 18, 387 P.3d 230 (providing  
18 that where “twenty-five months weigh slightly against the [s]tate, seventeen months  
19 weigh against [the d]efendant, and twenty months weigh neutrally, . . . the parties

1 bear a similar responsibility for the delays, and this factor weighs only slightly  
2 against the [s]tate”).

3 {5} Under the third *Barker* factor, we assess the timing of Defendant’s assertion  
4 of his speedy trial right and the manner in which he asserted it. *See Spearman*, 2012-  
5 NMSC-023, ¶ 31. We weigh “the frequency and force of the defendant’s objections  
6 to the delay” and “analyze the defendant’s actions with regard to the delay.” *Garza*,  
7 2009-NMSC-038, ¶ 32 (internal quotation marks and citation omitted). Here,  
8 Defendant first made a speedy trial demand through his substitute counsel’s entry of  
9 appearance, nearly four and a half years after charges were initially filed against him.  
10 *State v. Moreno*, 2010-NMCA-044, ¶ 33, 148 N.M. 253, 233 P.3d 782 (“[G]enerally,  
11 the closer to trial an assertion is made, the less weight it is given.”). Defendant’s  
12 substitute counsel filed a motion to dismiss shortly after entering his appearance.  
13 The motion to dismiss also asserted Defendant’s speedy trial right. On the whole,  
14 Defendant’s assertion of the right came late in this case and did not constitute an  
15 “impressive or aggressive” assertion. *Spearman*, 2012-NMSC-023, ¶ 33. For these  
16 reasons, we conclude that this factor should weigh only slightly in Defendant’s  
17 favor. *See State v. Maddox*, 2008-NMSC-062, ¶ 31, 145 N.M. 242, 195 P.3d 1254  
18 (weighing factor slightly in the defendant’s favor where “[the d]efendant’s assertions  
19 were neither timely nor forceful”), *abrogated on other grounds by Garza*, 2009-  
20 NMSC-038, ¶¶ 47-48.

1 {6} The final *Barker* factor examines the prejudice caused by the trial delay. Our  
2 analysis here centers on whether Defendant suffered particularized prejudice. *See*  
3 *Garza*, 2009-NMSC-038, ¶ 39 (holding that “generally a defendant must show  
4 particularized prejudice of the kind against which the speedy trial right is intended  
5 to protect”). Three sources of prejudice might arise from a trial delay: (1) oppressive  
6 pretrial incarceration, (2) anxiety and concern of the accused, and (3) impairment of  
7 the defense. *Urban*, 2004-NMSC-007, ¶ 17. Given that Defendant does not argue  
8 that he suffered oppressive pretrial incarceration, we focus our analysis on whether  
9 he endured undue anxiety and concern and whether his defense was impaired. *See*  
10 *Garza*, 2009-NMSC-038, ¶ 35.

11 {7} The defendant must make a particularized showing of prejudice, and “we will  
12 not speculate as to the impact of . . . the degree of anxiety a defendant suffers.” *Id.*  
13 At the hearing on the motion to dismiss for a speedy trial violation, defense counsel  
14 gave the following proffer regarding Defendant’s anxiety and concern:

15 Your honor, if allowed to testify, my client would say that this case has  
16 been pending since four and a half years ago. That as a result of the case  
17 pending, it has created a lot of anxiety and stress in his life. He would  
18 testify, your honor, that it has been problems where he works in the oil  
19 industry in terms of maintaining focus within his employment and also  
20 maintaining healthy relationships with other adults. In terms of his  
21 personal freedoms, the case for four and a half years have limited his  
22 employment opportunities. He has been offered a better job in the state  
23 of Florida, which he has been unable to take. He has been unable to  
24 travel outside of . . . Lea County and the State of New Mexico. And he  
25 would testify that on two occasions where the case got dismissed back

1 in 2016 and 2018 that he felt very happy and he felt that he would put  
2 this torture behind and that he would be able to lead a normal life.

3 Defendant did not produce particularized evidence in the form of affidavits,  
4 testimony, or documentation supporting his counsel’s proffer. *See Spearman*, 2012-  
5 NMSC-023, ¶ 39. Instead, defense counsel merely claimed that Defendant had  
6 suffered prejudice in his work and in his personal relationships. Generally,  
7 “statements of counsel are not evidence.” *State v. Pacheco*, 2017-NMCA-014, ¶ 8,  
8 388 P.3d 307 (internal quotation marks and citation omitted). However, even if we  
9 were to accept these allegations as true, “[s]uch non-specific testimony is insufficient  
10 to distinguish [a d]efendant’s anxiety, concern, and disruption of life from that  
11 befalling any individual awaiting trial on criminal charges.” *State v. Prieto-Lozoya*,  
12 2021-NMCA-019, ¶ 48, 488 P.3d 715; *see Garza*, 2009-NMSC-038, ¶ 35, 146 N.M.  
13 499, 212 P.3d 387 (“[W]e weigh this factor in the defendant’s favor only  
14 where . . . the anxiety suffered is undue.”). *But see State v. Montoya*, 2015-NMCA-  
15 056, ¶ 25, 348 P.3d 1057 (“A defendant is not required to show that he experienced  
16 greater anxiety and concern than that attending most criminal prosecutions. The  
17 operative question is whether the anxiety and concern, once proved, has continued  
18 for an unacceptably long period.” (internal quotation marks and citations omitted)).  
19 Furthermore, Defendant did not claim that he lost his employment as a result of the  
20 pending charges, and as both the State and the district court noted, Defendant never  
21 sought to amend the conditions of his release in order to travel outside of New

1 Mexico. Consequently, Defendant has not established that the delay resulted in  
2 “undue” anxiety or concern. *See Urban*, 2004-NMSC-007, ¶ 18 (stating that the  
3 defendant bears the burden of production on this issue).

4 {8} Defendant otherwise claims he suffered prejudice because the delay caused  
5 by the State impaired his defense. In particular, Defendant points to the State’s late  
6 disclosure of a DNA report because “without the DNA report and its contents, a  
7 defense expert would be hard-pressed to provide an opinion on the DNA evidence  
8 in this case.” However, Defendant first learned of the DNA report in a pretrial  
9 hearing in August 2019. One year later, in August 2020, Defendant announced that  
10 he was still unprepared for trial. At that point, he requested additional time to  
11 interview the victim and retain two expert witnesses—a DNA expert and a  
12 psychologist. By November 2020, Defendant had not yet prepared the witnesses for  
13 trial. When the trial finally occurred in March 2021, more than a year and a half after  
14 disclosure of the report, Defendant did not present any expert witnesses. The record  
15 shows that Defendant had ample time to prepare for trial and that the delays did not  
16 result in impairment to his defense. Ultimately, Defendant has not shown that the  
17 delay in trial resulted in particularized prejudice.

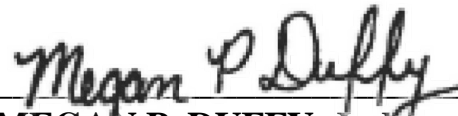
18 {9} When balancing the four *Barker* factors, our Supreme Court has instructed  
19 that a defendant must make an affirmative showing of particularized prejudice unless  
20 the other three *Barker* factors weigh heavily in his favor. *See Garza*, 2009-NMSC-

1 038, ¶ 39. Here, Defendant has not shown that he suffered particularized prejudice  
2 as a result of the delay. As for the other three factors, the length of the delay weighs  
3 heavily in Defendant’s favor, but the fact that Defendant was responsible for at least  
4 six months of the delay and much of the remaining delay was administrative in  
5 nature leads us to conclude that the reasons for the delay serve to temper the  
6 prejudice caused by the length of the delay, *see Garza*, 2009-NMSC-038, ¶ 25, and  
7 the assertion of the right factor weighs only slightly in Defendant’s favor. We thus  
8 conclude that Defendant’s right to a speedy trial was not violated.

9 **CONCLUSION**


10 {10} For the foregoing reasons, we affirm.

11 {11} **IT IS SO ORDERED.**

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MEGAN P. DUFFY, Judge

14 **WE CONCUR:**

15   
16 \_\_\_\_\_  
JENNIFER L. ATTREP, Chief Judge

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18 \_\_\_\_\_  
J. MILES HANISEE, Judge