

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

Court of Appeals of New Mexico

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2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellant,



Ramon J. Maestas
Chief Clerk

4 v.

No. A-1-CA-41567

5 **EZRA H. DUNCAN a/k/a**

6 **EZRA DUNCAN,**

7 Defendant-Appellee.

8 **APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY**

9 **Douglas W. Decker, District Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 Michael J. Thomas, Assistant Solicitor General

13 Albuquerque, NM

14 for Appellant

15 Bennett J. Baur, Chief Public Defender

16 Santa Fe, NM

17 Steven J. Forsberg, Assistant Appellate Defender

18 Albuquerque, NM

19 for Appellee

20 **MEMORANDUM OPINION**

21 **IVES, Judge.**

22 {1} The State appeals the district court's order granting Defendant Ezra H.

23 Duncan's motion to dismiss for violating his right to a speedy trial. We reverse.

1 **DISCUSSION**

2 {2} To determine whether a speedy trial violation has occurred, we consider the
3 four factors set forth in *Barker v. Wingo*, 407 U.S. 514 (1972): “(1) the length of
4 delay in bringing the case to trial, (2) the reasons for the delay, (3) the defendant’s
5 assertion of the right to a speedy trial, and (4) the prejudice to the defendant caused
6 by the delay.” *State v. Radler*, 2019-NMCA-052, ¶ 7, 448 P.3d 613 (text only)
7 (citation omitted). “We weigh these factors according to the unique circumstances
8 of each case in light of the [s]tate and the defendant’s conduct and the harm to the
9 defendant from the delay.” *State v. Serros*, 2016-NMSC-008, ¶ 5, 366 P.3d 1121
10 (internal quotation marks and citation omitted). We defer to the district court’s
11 findings, but we review de novo how the district court weighed and balanced the
12 *Barker* factors. *See State v. Collier*, 2013-NMSC-015, ¶ 39, 301 P.3d 370.

13 {3} In this case, we need not review all of the factors because two of them are
14 dispositive: the length of delay and actual prejudice. Our Supreme Court recently
15 reiterated that “[t]o find a speedy trial violation without a showing of actual
16 prejudice, the [appellate c]ourt must find that the three other *Barker* factors weigh
17 heavily against the state.” *State v. Gurule*, ___-NMSC-___, ¶ 55, ___P.3d___ (S-1-
18 SC-37879, Dec. 7, 2023) (alteration, internal quotation marks, and citation omitted).
19 Here, the district court weighed the first factor slightly for Defendant; it gave
20 “heavier weight” to Defendant for the second factor; it did not assign a weight for

1 the third factor; and, as to the fourth factor, it found that Defendant failed to make a
2 particularized showing of prejudice. Because we see no error in the weight that the
3 district court assigned to the length of delay or in the district court’s finding that
4 Defendant did not show particularized prejudice, we reverse. *See id.* We discuss the
5 length of delay and prejudice in turn.

6 {4} The length of delay presents a threshold question and, if that threshold is
7 crossed, the delay becomes a factor that must be weighed along with the others. *State*
8 *v. Ochoa*, 2017-NMSC-031, ¶ 12, 406 P.3d 505. The length of delay that triggers a
9 speedy trial inquiry depends on the case’s complexity: twelve months for a simple
10 case, fifteen months for an intermediate case, and eighteen months for a complex
11 case. *State v. Garza*, 2009-NMSC-038, ¶ 2, 146 N.M. 499, 212 P.3d 387. When
12 weighing delay as a factor, “[a]s the delay lengthens, it weighs increasingly in favor
13 of the accused.” *Ochoa*, 2017-NMSC-031, ¶ 14.

14 {5} Here, the delay triggers a speedy trial analysis, but we agree with the district
15 court that the delay weighs only slightly for Defendant. Because neither party
16 challenges the district court’s determination that the case was simple, a delay of
17 twelve months triggers the speedy trial analysis. *Garza*, 2009-NMSC-038, ¶ 2. The
18 delay here was about thirteen-and-a-half months: beginning when the State filed a
19 criminal complaint against Defendant in magistrate court on July 21, 2022, and
20 ending when the district court dismissed the case on September 7, 2023. We reject

1 the State’s argument that the period of delay ended on July 10, 2023, when the court
2 heard and orally granted Defendant’s motion to dismiss. The period of delay does
3 not end until “the date that the charges were dismissed or the date the trial was
4 scheduled to begin.” *State v. Lujan*, 2015-NMCA-032, ¶ 13, 345 P.3d 1103. In the
5 present case, the district court had yet to schedule a trial, and the case was not
6 dismissed at the motion hearing on July 10, 2023, because “an oral ruling by the trial
7 court is not a final judgment, and . . . the [district] court can change such ruling at
8 any time before the entry of written judgment.” *State v. Diaz*, 1983-NMSC-090, ¶ 4,
9 100 N.M. 524, 673 P.2d 501. As such, we conclude the case was dismissed when
10 the court’s written order was filed on September 7, 2023, and that the period of delay
11 ended on that date. *See Lujan*, 2015-NMCA-032, ¶ 13. However, the delay weighs
12 slightly in favor of Defendant because it exceeded the threshold period for a simple
13 case by a mere month and a half. *See, e.g., State v. Prieto-Lozoya*, 2021-NMCA-
14 019, ¶ 41, 488 P.3d 715 (weighing a delay of six months over the threshold period
15 for a simple case slightly for the defendant); *State v. Wilson*, 2010-NMCA-018, ¶ 29,
16 147 N.M. 706, 228 P.3d 490 (weighing a delay of five months over the threshold
17 period for a simple case slightly for the defendant).

18 {6} Moving to the fourth factor, the district court considers the prejudice to the
19 defendant caused by the delay, weighing the three interests that the speedy trial right
20 was designed to protect: “preventing oppressive pretrial incarceration, minimizing

1 anxiety and concern of the accused, and limiting the possibility that the defense will
2 be impaired.” *Ochoa*, 2017-NMSC-031, ¶ 48. Defendant therefore “must make a
3 particularized showing of prejudice to demonstrate a violation of any of the three
4 interests.” *State v. Samora*, 2016-NMSC-031, ¶ 21, 387 P.3d 230.

5 {7} Defense counsel argued to the district court that Defendant was prejudiced
6 because he had to take off work without pay to attend the trial before the magistrate
7 court, and Defendant supported this argument with his testimony. The district court
8 determined that Defendant did not make “a particularized showing of prejudice.” On
9 appeal, the State agrees with the district court because the prejudice Defendant
10 experienced was not caused by the delay, but rather “because he had been charged
11 with a crime and his case was set for trial.” Defendant counters that the district court
12 “would have been justified in” finding particularized prejudice “had [it] so chosen.”
13 This is an unavailing attack on the district court’s finding. *See State v. Ernesto M.,*
14 *Jr.*, 1996-NMCA-039, ¶ 15, 121 N.M. 562, 915 P.2d 318 (recognizing that, under
15 substantial evidence review, we do not ask “whether the court could have reached a
16 different conclusion”); *see also Gurule*, ___-NMSC-___, ¶ 42 (requiring “deference
17 to the [district] court’s discretion in finding that [the d]efendant showed no
18 particularized prejudice”).

19 {8} In conclusion, because at least one *Barker* factor, the length of delay, does not
20 weigh heavily for Defendant and because he did not make a particularized showing

1 of prejudice, the district court erred in concluding that his right to a speedy trial was
2 violated. *See Gurule*, ___-NMSC-___, ¶ 55.

3 **CONCLUSION**

4 {9} We reverse the order of dismissal and remand for further proceedings.

5 {10} **IT IS SO ORDERED.**

6
7 
ZACHARY A. IVES, Judge

8 **WE CONCUR:**

9 
10 **JENNIFER L. ATTREP, Chief Judge**

11 
12 **KRISTINA BOGARDUS, Judge**