

continue to prosecute. Further, the case has had no action by the Plaintiff since the filing of the stipulated motion.

Since the Defendant would suffer a demonstrable prejudice or threat of prejudice from the excessive delay in Plaintiff's bringing this case to trial, this prong of the analysis has been met.

IV. CONCLUSION

Taking a look at the Plaintiff's processing of this case prior to the dismissal, the four speedy trial factors, on balance, show that the Defendant has suffered a violation of his right to a speedy trial. The record does not support any legitimate reasons for the delay, and the excessive length of time that has passed coupled with the lack of diligence on the part of the Plaintiff are sufficient to assume prejudice. The record does show that the delays were a direct result of the Plaintiff failing to diligently prosecute the case. Brief periods of inactivity in an otherwise active prosecution are acceptable, however this was not the case in this instance and the Court is unwilling to encourage this behavior by the Plaintiff. The better procedure is for the Plaintiff to insist on its need to have its day in court by filing a motion for reassignment, requesting a status conference, or scheduling of the case prior to a dismissal. Something more than nothing would be a necessary action. Only rarely would a failure to file anything for several years be appropriate.

WHEREFORE, it is hereby ORDERED that this action is DISMISSED without prejudice for lack of prosecution. All scheduled dates in this matter are VACATED, and all pending motions are TERMINATED.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,	)	CSSC CR NO. 068-2008
	)	
Plaintiff,	)	
vs.	)	
	)	
CAR HARUO,	)	
	)	
Defendant.	)	
	)	

ORDER

Camillo Noket  
Chief Justice

Decided: May 17, 2013

APPEARANCE:

For the Plaintiff:	Charleston Bravo Assistant Attorney General Office of the Chuuk Attorney General P.O. Box 1050 Weno, Chuuk FM 96942
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## HEADNOTES

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – Speedy Trial

A four-factor balancing test for determining speedy trial violations: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant, is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Haruo, 19 FSM R. 43, 46 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

Whether there has been a lengthy delay is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. Since a delay of one year is presumptively prejudicial and triggers application of the three remaining factors when the case has been pending since May 19, 2008, the remaining factors are triggered. Chuuk v. Haruo, 19 FSM R. 43, 46 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

A valid reason should serve to justify appropriate delay. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

The Chuuk State Supreme Court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained dormant due to inaction and that meet the standard for dismissal, may be dismissed. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

The state's response is void of any demonstration of good cause as to why it has failed to prosecute the case when, rather than demonstrating a valid reason, it asks the court for permission to set trial; when the state does state that the court is to blame for the delay and that the case has been waiting scheduling and that due to the severity of the crime, it should not be dismissed; and when, assuming that the sole reason for the forty-nine month delay was a result of the crowded courts, such will still go against the government, but less heavily. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

When the record demonstrates that neither the court nor the defendant were the cause for the delay, the state's premise that the case has been waiting scheduling is flawed. If the court were to adopt such an approach, as long as the court schedules trials and other hearings, the state or the court would be free to subsequently delay a trial as long as it wished for any reason, but common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a defendant to trial. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – Speedy Trial

When it can reasonably be inferred from the lack of activity on the record that the state had been deliberately proceeding in dilatory fashion, a dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket." Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – Speedy Trial

When the state offers no reason for its failure to comply with the defendant's constitutional right to a speedy trial; when it was only after the court issued a notice that the state requested leave to begin trial; when the state's failure to make the request on its own, further demonstrates a lack of diligence in prosecuting this case; and when, on three separate occasions, the prosecutor neglected to attend the trials, dismissal without prejudice is a relatively lenient penalty for the state's utter failure to prosecute the case since a dismissal without prejudice does not, in theory, irrevocably deprive the state of its day in court. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor, and a failure to assert the right will make it difficult for him to prove that he was denied it, and while non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

A defendant's failure to object to any delay either on the basis that it was unnecessary or that it violated the defendant's right to a speedy trial, will weigh in the prosecution's favor. Chuuk v. Haruo, 19 FSM R. 43, 47-48 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system, and pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

When the pre-trial release conditions imposed on the defendant restrict his ability to travel outside of Chuuk and when the defendant was also required to submit his passport, this restriction of the defendant's ability to freely move will count as an incarceration of sorts and will weigh in favor of the pretrial incarceration, though much less than actual oppressive incarceration. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

When pretrial anxiety of insurmountable or extraordinary measures has not been demonstrated, it will weigh in the prosecution's favor. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

When the defendant requested discovery on June 23, 2008, and the request was never answered and when forty-nine months elapsed between the filing of the action and the order for dismissal, the case languished in the courts for several years with the inactivity prompting the court to place it on the dismissal list because the appearance docket revealed scant effort by the state's counsel to prosecute this case. Since the primary responsibility for prosecuting a case lies with the state, when a case has not been prosecuted in a diligent manner, prejudice is generally presumed because a case left to languish in the system, with little to no activity will eventually erode the defendant's ability to prepare a defense, particularly if the defendant's request for discovery, which does not require any action by the court, is never answered. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – Speedy Trial

The case will be dismissed without prejudice for lack of prosecution when, taking a look at the state's processing of the case before the dismissal, the four speedy trial factors, on balance, show that the defendant suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because the record does show that the delays were a direct result of the state failing to diligently prosecute the case, and because the excessive length of time that has passed coupled with the absolute lack of diligence on the state's part are sufficient to assume prejudice. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

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COURT'S OPINION

CAMILLO NOKET, Chief Justice:

I. BACKGROUND

A Criminal Information was filed on May 19, 2008, charging Defendant Car Haruo with one (1) count of Murder, one (1) count of Manslaughter, and one (1) count of Aggravated Assault. An Order for Release from Custody was entered on May 19, 2008. On June 23, 2008, Defendant filed a Motion for Discovery and Inspection. Nothing further has been filed on the instant case.

On June 20, 2012, the case came before the court for a Status Conference. At that time, the Court found that there has been unnecessary delay in bringing the Defendant to trial. On June 21, 2012, the Court dismissed the case without prejudice pursuant to Rule 48(b) of the Chuuk State Supreme Court Rules of Criminal Procedure. On July 23, 2012, Plaintiff filed a Motion to Set Aside Order of Dismissal; Reassign the Case and Set a Status Conference. The motion alleges that the discovery process was completed and that the Plaintiff was simply awaiting the reassignment of the case.

II. STANDARD OF REVIEW

A four-factor balancing test for determining speedy trial violations: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right, and (4) prejudice to the defendant is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. FSM v. Wainit, 12 FSM Intrm. 405, 410 (Chk. 2004).

III. LEGAL ANALYSIS

*Length of Delay*

The first factor, whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. A delay of one year is presumptively prejudicial and triggers application of the three remaining factors. Chuuk v. William, 15 FSM Intrm. 381, 386 (Chk. S. Ct. Tr. 2007).

The instant case has been pending since May 19, 2008, therefore the remaining factors are triggered.

*Reason for the Delay*

A valid reason should serve to justify appropriate delay. William, 15 FSM Intrm. at 388. The Court takes this occasion to note that this court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained dormant due to inaction, and meet the standard for dismissal, may be dismissed. The plaintiff now seeks to avoid the unfortunate consequences arguing that dismissal was improper because it was not responsible for the delays and dilatory conduct.

The order dismissing the instant case, allowed for the Plaintiff to show good cause as to why this action should not be dismissed for lack of prosecution. Plaintiff filed a timely response, however, the response is void of any demonstration of good cause as to why the Plaintiff has failed to prosecute this case. Rather than demonstrating a valid reason, Plaintiff asks this Court for permission to set trial. Plaintiff does state that the Court is to blame for the delay, and that the case has been waiting scheduling and that due to the severity of the crime, it should not be dismissed. Assuming that the sole reason for the forty-nine month delay was a result of the crowded courts, such will still go against the government, but less heavily. Further, the record demonstrates that neither the Court nor the Defendant were the cause for the delay. The premise of the Plaintiff's argument—that the case has been waiting scheduling—is flawed. Not only has the Plaintiff provided no supporting evidence for this proposition, if the Court were to adopt such an approach, as long as the court schedules trials and other hearings, a plaintiff and/or court would be free to subsequently delay a trial as long as they wished for any reason. Common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a defendant to trial. Plaintiff's counsel simply failed to prosecute the instant case, and this is not a demonstration of good cause as required by the Chuuk State Court.

This dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket." It can reasonably be inferred from the lack of activity on the record, that Plaintiff had been deliberately proceeding in dilatory fashion.

Plaintiff offers no reason for its failure to comply with the Constitutional mandates of the Defendant's right to a speedy trial. Furthermore, it was only when the Court issued a notice that the Plaintiff requested leave to begin trial. The failure of the Plaintiff to make the request on its own, further demonstrates a lack of diligence in prosecuting this case. Additionally, on three separate occasions, Plaintiff's counsel neglected to attend the trials. Dismissal without prejudice is a relatively lenient penalty for Plaintiff's utter failure to prosecute this action, for the dismissal without prejudice does not, in theory, irrevocably deprive Plaintiff of its day in court.

The reasoning for the delay will be weigh against the Plaintiff therefore, this prong has been met.

*Defendant's Assertion of His Right*

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor, while a failure to assert the right will make it difficult for him to prove that he was denied it. See Pohnpei v. Weilbacher, 5 FSM Intrm. 431, 443 (Pon. S. Ct. Tr. 1992) (following Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)). Although non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. FSM v. Kansou, 15 FSM Intrm. 180, 185 (Chk. 2007).

In the instant case, the Defendant failed to object to any delay either on the basis that they were

unnecessary or that they violated the Defendant's right to a speedy trial.

Due to Defendant's failure to demand a speedy trial, this factor will weigh in favor of the Plaintiff.

*Prejudice to the Defendant*

Prejudice to an accused may consist of: (1) oppressive pretrial incarceration; (2) the accused's pretrial anxiety; and (3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. William, 15 FSM Intrm. at 389.

- (1) The record demonstrates that the Defendant is not currently incarcerated, however, the pre-trial release conditions imposed on the Defendant restrict his ability to travel outside of the State of Chuuk. Defendant was also required to submit his passport. This restriction of Defendant's ability to freely move will count as an incarceration of sorts and will weigh in favor of the pretrial incarceration, though much less than actual oppressive incarceration.
- (2) Pretrial anxiety of insurmountable/extraordinary measures has not been demonstrated in this case, therefore this prong weighs in favor of the Plaintiff.
- (3) Plaintiff contends that a dismissal was not appropriate because no prejudice had been demonstrated, however, Defendant requested discovery on June 23, 2008, and the request was never answered. Additionally, forty-nine months elapsed between the filing of the action and the order for dismissal. The case languished in the courts for several years with the inactivity prompting the court to place it on the dismissal list. Simply put, the appearance docket reveals scant effort by Plaintiff's Counsel to prosecute this case. The primary responsibility for prosecuting a case lies with the plaintiff. When a case has not been prosecuted in a diligent manner, prejudice is generally presumed. Even though the Defendant did not claim any prejudice, the Court identifies that the record supports a claim of prejudice and further, A case left to languish in the system, with little to no activity will eventually erode the ability of the Defendant to prepare a defense, particularly if Defendant's request for discovery, which does not require any action by the court, is never answered.

Since the Defendant would suffer a demonstrable prejudice or threat of prejudice from the excessive delay in Plaintiff's bringing this case to trial, this prong of the analysis has been met.

IV. CONCLUSION

Taking a look at the Plaintiff's processing of this case prior to the dismissal, the four speedy trial factors, on balance, show that the Defendant has suffered a violation of his right to a speedy trial. The record does not support any legitimate reasons for the delay, and the excessive length of time that has passed coupled with the absolute lack of diligence on the part of the Plaintiff are sufficient to assume prejudice. The record does show that the delays were a direct result of the Plaintiff failing to diligently prosecute the case.

WHEREFORE, it is hereby ORDERED that this action is DISMISSED without prejudice for lack of prosecution. All scheduled dates in this matter are VACATED, and all pending motions are TERMINATED.

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