

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**ROGER PATTERSON**

**APPELLANT**

**VS.**

**NO. 2010-KA-1353-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE ISSUE**

- I. PATTERSON IS PROCEDURALLY BARRED FROM CLAIMING THAT HIS CONSTITUTIONAL AND STATUTORY RIGHTS TO A SPEEDY TRIAL WERE VIOLATED, WHERE HE FAILED TO RAISE THE ISSUE IN THE TRIAL COURT.

**STATEMENT OF FACTS**

A Calhoun County Circuit Court found Roger Patterson guilty of sale of cocaine. C.P. 97.  
Patterson was sentenced to twenty years with eight suspended and twelve to serve. T. 98.

**SUMMARY OF ARGUMENT**

Patterson is procedurally barred from claiming for the first time on appeal that his right to a speedy trial was violated. As the issue was never presented to the trial court, the record contains no findings of fact pertaining to this issue. Plain error review is not possible on the record before the Court.

## ARGUMENT

### I. **PATTERSON IS PROCEDURALLY BARRED FROM CLAIMING THAT HIS CONSTITUTIONAL AND STATUTORY RIGHTS TO A SPEEDY TRIAL WERE VIOLATED, WHERE HE FAILED TO RAISE THE ISSUE IN THE TRIAL COURT.**

Patterson failed to file a speedy trial motion or even raise the issue in a motion for new trial. Accordingly, the trial court was not given the opportunity to make any findings of fact pertaining to the issue. Patterson correctly notes that raising a speedy trial claim for the first time on appeal amounts to a procedural bar, and that the claim can only be reviewed under the plain error doctrine. *Dora v. State*, 986 So.2d 917, 924-926 (¶15-23) (Miss. 2008). This Court has even found that where a defendant files a motion for speedy trial but fails to obtain a ruling on the motion, the claim is barred from appellate review. *Muise v. State*, 997 So.2d 248, 252 (Miss. Ct. App. 2008).

The only relevant information contained in the record pertaining to a claim that the appellant's speedy trial rights were violated is that Patterson's trial commenced approximately 813 days from his arrest and 788 days from the date of his waiver of arraignment. C.P. 7-9, T. 6. We do not know the reasons for delay, and Patterson fails to even articulate prejudice due to the delay. Accordingly, a meaningful analysis is simply not possible on this record. As such, plain error simply cannot exist.

Even though Patterson's claims are clearly barred, the State will attempt a brief *Barker v. Wingo* analysis based on the scant record. The State must admit that the length of delay is presumptively prejudicial. *Brunson v. State*, 944 So.2d 922, 926 (¶12) (Miss. Ct. App. 2006). The record provides no clue as to the reason for the delay. Because delays in bringing a matter to trial can work to the defendant's advantage, it is just as likely as not that the reasons for delay are attributable to Patterson. In any event, this factor must be counted as neutral based on the record before the court. It is undisputed that Patterson never asserted his right to a speedy trial. Finally,

## CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Patterson's conviction and sentence.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Robert William Elliott  
Circuit Court Judge  
105 E. Spring St.  
Ripley, MS 38663

Honorable Ben Creekmore  
District Attorney  
1301 Monroe Avenue  
Oxford, MS 38655

W. Daniel Hinchcliff, Esquire  
Office of Indigent Appeals  
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This the 15th day of February, 2011.

  
\_\_\_\_\_  
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