

ALBUQUERQUE CRIMINAL LAWYER BLOG

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10th Circuit Places Burden on State to Justify Trial Delays

The 10th Circuit Court Appeals addressed the 6th Amendment Right to a speedy trial in *U.S. v. Seltzer*. Though the constitutional protections under New Mexico law are typically more expansive than federal law, the 10th Circuit in the *Seltzer* case appears more respectful of the 6th Amendment than the recent New Mexico Supreme Court decision of *State v. Garza*.

In *State v. Garza*, the court set forth a sliding scale related to a criminal defendant's right to a speedy trial in New Mexico. The court suggested speedy trial parameters as follows: 1) 12 months for simple cases, 2) 15 months for cases with intermediate complexity, and 2) 18 months for complex cases. The New Mexico Supreme Court even allowed for some leeway in these standards by stating that these time limits were mere thresholds for further inquiry.

The 10th Circuit in *U.S. v. Seltzer* set forth a number of considerations in the determination of whether or not a defendant's right to a speedy trial have been violated. The Court stated that a delay of more than one year from the date of arrest or indictment, whichever is earlier, was "presumptively prejudicial" to the defense. The court noted that in particularly complex cases, longer delays, even a two year delay might not be unreasonable. The court noted further that in straightforward cases, even a minor delay might be considered prejudicial and unreasonable.

The Court found that the charges against the defendant *Seltzer* related to counterfeiting, drug possession, and firearm possession by a felon were not complex and a delay of more than one year was presumptively unreasonable. The Court stated that even lesser delays might prove prejudicial in cases involving eyewitness testimony.

Once the presumption of prejudice has been found, it is up to the State to "provide an inculpable explanation for delays in speedy trial claims." The Court cited the 1972 United States Supreme Court case of *Barker v. Wingo* as follows: "A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay." Thus the burden quickly shifts to the State to show a legitimate reason for any delay impacting the defendant's speedy trial rights. This burden becomes harder to meet in cases involving simple charges.

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Unlike the New Mexico Court in *State v. Garza*, there is a heavy burden on the State to justify any delay impacting the defendant's 6th Amendment right to a speedy trial. New Mexico typically zealously protects the constitutional rights of its citizens. The protections under New Mexico's Constitution are generally much broader than under federal law. In *State v. Garza*, the burden appears to be on the defendant to prove prejudice, rather than on the State where the burden belongs. Hopefully, the New Mexico Supreme Court will take the lead of the 10th and revisit the 6th Amendment rights that are so important to due process and a fair trial.

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