

THE ARKANSAS SUPREME COURT HOLDS THAT THE ISSUANCE OF A WARRANT FOR FAILURE TO APPEAR AT A TRIAL THAT WAS SET TO OCCUR WITHIN THE SPEEDY-TRIAL TIME HAS NO EFFECT ON THE CALCULATION OF THE TIME IN WHICH THE STATE IS REQUIRED TO BRING THE DEFENDANT TO TRIAL.

In *Sullivan v. State*,<sup>1</sup> Cameka Sullivan was convicted of permitting her boyfriend, Victor Lyons, to abuse L.B., Sullivan's twenty-three-month-old daughter.<sup>2</sup> Testimony at trial revealed that the abuse had been ongoing, and L.B. was taken to the hospital when she sustained a life-threatening brain injury caused by Lyons.<sup>3</sup> At the hospital, Sullivan informed medical personnel that the brain injury was due to L.B. falling from a bunk bed.<sup>4</sup> The State's expert on child abuse testified that she did not believe this story explained L.B.'s injuries, which she testified were likely caused by an adult slinging L.B.'s head against a wall or violently shaking her.<sup>5</sup> L.B. had other injuries, which tended to show a history of abuse, including blunt trauma to her abdomen, multiple bruises and scars all over her body, injury to her liver, lesions and scabs, and significant injury to her left hand.<sup>6</sup> The jury determined the evidence was sufficient to convict Sullivan of permitting the abuse of L.B. and of hindering the apprehension and prosecution of Lyons.<sup>7</sup>

The Saline County Circuit Court sentenced Sullivan to 216 months' incarceration, and the Arkansas Court of Appeals confirmed the convictions.<sup>8</sup> Sullivan petitioned the Supreme Court for review, claiming, among other things, that the trial court erred by denying her right to a speedy trial.<sup>9</sup>

Rule 28.1 of the Arkansas Rules of Criminal Procedure<sup>10</sup> requires the State to try defendants within one year unless there are delays due to the defendant's own conduct or other time periods that are excludable under Rule 28.3.<sup>11</sup> If a defendant is not brought to trial within the required amount of time, the charges will be dismissed with an absolute bar to prosecution.<sup>12</sup>

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1. 2012 Ark. 74, at 1, 386 S.W.3d 507.

2. *Id.*, 386 S.W.3d at 507.

3. *Id.* at 14, 386 S.W.3d at 517.

4. *Id.*

5. *Id.* at 14–15, 386 S.W.3d at 517.

6. *Id.* at 15, 386 S.W.3d at 518.

7. *Sullivan*, 2012 Ark. 74, at 20–21, 386 S.W.3d at 520.

8. *Id.*, at 1, 386 S.W.3d at 511.

9. *Id.*

10. ARK. R. CIV. P. 28.1.

11. *Sullivan*, 2012 Ark. 74, at 2–3, 386 S.W.3d at 511.

12. *Id.* at 3, 386 S.W.3d at 511.

Appellate courts review the lower court’s finding de novo to determine whether time periods are excludable under the speedy-trial rules.<sup>13</sup>

Sullivan was arrested on July 10, 2005, and was charged the next day.<sup>14</sup> She was tried and convicted of both charges on June 22, 2010, which establishes a prima facie case that the trial occurred outside of the requisite one-year period.<sup>15</sup> Thus, the burden shifted to the State to show that the delay was justified or that the additional time was excludable.<sup>16</sup>

Sullivan’s trial was originally set for April 6, 2006, and the period of nearly nine months prior to that was charged against the State in calculating the one-year period.<sup>17</sup> The State had ninety days after that to bring Sullivan to trial.<sup>18</sup> Due to continuances, the trial was postponed and eventually set for December 11, 2007.<sup>19</sup> On that date, Sullivan failed to appear for her trial, and two days later a bench warrant was authorized and issued for her failure to appear.<sup>20</sup>

In April 2008, Sullivan was stopped for a traffic violation and subsequently arrested on an outstanding warrant from Texas. Two days after the arrest, Sullivan was extradited to Texas.<sup>21</sup> On May 21, 2008, the Saline County Sheriff’s Department informed Texas authorities of the warrant for Sullivan’s failure to appear and placed a “hold” on her, requiring her to be extradited back to Arkansas after completing her Texas sentence.<sup>22</sup> Sullivan asserted that the State had the burden of demonstrating it made an attempt to serve the warrant on her without unnecessary delay after the warrant was issued on December 13, 2007.<sup>23</sup> Sullivan contended that the Supreme Court’s previous holding in *Duncan v. Wright*<sup>24</sup> required that the period from December 13, 2007, until May 20, 2008, be included in the one-year period in which the State was required to try her.<sup>25</sup> This contention by Sullivan was the Court’s primary reason for granting review in this case.<sup>26</sup>

In *Duncan*, an arrest warrant was issued for the initial criminal charge of writing hot checks.<sup>27</sup> The issue in that case was whether a delay of two

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13. *Id.*

14. *Id.*, 386 S.W.3d at 512.

15. *Id.*

16. *Id.*, 386 S.W.3d at 511.

17. *Sullivan*, 2012 Ark. 74, at 3, 386 S.W.3d at 512.

18. *Id.*

19. *Id.* at 4, 386 S.W.3d at 512.

20. *Id.* at 6, 386 S.W.3d at 513.

21. *Id.*

22. *Id.*

23. *Sullivan*, 2012 Ark. 74, at 7, 386 S.W.3d at 513.

24. 318 Ark. 153, 883 S.W.2d 834 (1994).

25. *Sullivan*, 2012 Ark. 74, at 7, 386 S.W.3d at 513.

26. *Id.*

27. *Id.*, 386 S.W.3d at 514.

years between the date the information was filed and the date he was arrested was excludable from the speedy trial time.<sup>28</sup> Additionally, in *Duncan*, the State failed to show it had made any attempt to serve the warrant on the defendant.<sup>29</sup>

Conversely, in the instant case, the delay was not between the date of information and the date the arrest warrant was issued.<sup>30</sup> Instead, the delay at issue was the period from the date the warrant was issued and the date Sullivan received notice of the warrant.<sup>31</sup> Furthermore, the Court distinguished the two cases, explaining that “*Duncan* did not involve an arrest warrant for failure to appear at a criminal trial, as does the present case.”<sup>32</sup> The Court thus stated that *Duncan* was “not even applicable to, much less controlling of, the present case” and the issuance of a warrant for failure to appear in a given case has no effect on the calculation of the one year in which the State must try that the defendant in that same case.<sup>33</sup>

It is worth noting that Sullivan’s last point on appeal was that the trial court erred by amending the judgment to require her to register as a sex offender, which she claimed was an illegal sentence.<sup>34</sup> Arkansas law requires registration as a sex offender when a person is found guilty of permitting the abuse of a minor when the abuse is sexual or when it causes physical injury or serious physical injury.<sup>35</sup> The relevant statute does not distinguish between sexual and non-sexual crimes for purposes of registration.<sup>36</sup> The Court rejected Sullivan’s argument that the registration requirement is an illegal sentence.<sup>37</sup> The Court explained that, while illegal sentences may be addressed for the first time on appeal, the registration requirement is not an illegal sentence.<sup>38</sup> The Court has previously held that the requirement to register as a sex offender is “essentially regulatory and . . . non-punitive”<sup>39</sup> and is therefore “not a form of punishment.”<sup>40</sup> Hence, the Court held that the requirement is not a criminal sentence, illegal or otherwise.<sup>41</sup>

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28. *Id.*

29. *Id.* at 8, 386 S.W.3d at 514.

30. *Id.*

31. *Sullivan*, 2012 Ark. 74, at 8, 386 S.W.3d at 514.

32. *Id.*

33. *Id.*

34. *Id.* at 28–29, 386 S.W.3d at 525.

35. *Id.* at 29, 386 S.W.3d at 525. See ARK. CODE ANN. § 12-12-903(12)(A)(i)(s) (Repl. 2009); see also ARK. CODE ANN. § 5-27-221(b)(1) (Supp. 2005).

36. *Id.* at 29, 386 S.W.3d at 525.

37. *Sullivan*, 2012 Ark. 74, at 30, 386 S.W.3d at 525.

38. *Id.*

39. *Id.*

40. *Id.* at 31, 386 S.W.3d at 525.

41. *Id.*

Justice Robert Brown voiced concerns in his concurrence that the registration requirement was not the true intent of the General Assembly.<sup>42</sup> He stated in his concurring opinion, “it concerns me that a person who has been convicted of permitting the physical abuse, not sexual abuse, under that statute, is required to register as a sex offender.”<sup>43</sup> He called for the General Assembly to examine the Act and determine whether this result is the legislature’s true intention.<sup>44</sup>

*Sullivan v. State* does nothing to change Arkansas rules regarding speedy-trial rights or calculations of excludable periods therein. Instead, this case distinguishes between delays related to the issuance of warrants for the initial arrest for criminal charges and warrants issued for a defendant’s failure to appear at a trial set within speedy-trial time limits. Where delays are due to the defendant’s own failure to appear, those delays will be excluded from the requisite one-year period for purposes of speedy-trial calculations.

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42. *Id.* at 32, 386 S.W.3d at 525–26.

43. *Sullivan*, 2012 Ark. 74 at 32, 386 S.W.3d at 526.

44. *Id.*