

Circuit Court for Wicomico County
Case No. 22-K-2016-000178

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1975

September Term, 2016

J.R. WATSON, JR.

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 11, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

J.R. Watson, Jr., appellant, was convicted of second-degree sexual offense, third-degree sexual offense, and two counts of causing abuse to a child following a jury trial in the Circuit Court for Wicomico County. The abuse occurred between 1974 and 1977; however, the victim did not report it to the police until December 2015. Watson was indicted in March 2016. On appeal, Watson claims that the trial court erred in denying his motion to dismiss the indictment because, he claims, the forty-two year pre-indictment delay violated his due process rights. For the reasons that follow, we affirm.

As an initial matter, we note that “the primary protection against the presumption of prejudice that may arise from extended pre-indictment delay [is] the applicable statute of limitations.” *See Clark v. State*, 364 Md. 611, 626 (2001). And there is no statute of limitations on the offenses for which Watson was charged. Nevertheless, a defendant is entitled to dismissal on the grounds that a pre-indictment delay violated due process if he or she can establish (1) actual prejudice and (2) that the delay was purposefully made by the State to gain a tactical advantage. *Id.* at 645.

But even assuming that Watson was prejudiced by the pre-indictment delay, it is clear that the delay in this case resulted from the victim not having reported the abuse to any Maryland law enforcement agency until 2015. Appellant acknowledges that the delay was attributable to the victim but contends that her failure to alert the police should be imputed to the State. However, this argument ignores the fact that due process under the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights is a limitation on state action. *See Woods v. State*, 196 Md. App. 146, 154 (2010) (noting that for “constitutional law to apply in a state criminal trial, there must first and foremost be ‘state

action’’). “Private action, good or bad, reasonable or unreasonable, simply does not qualify[.]” *Id.* In the instant case, neither the police nor the prosecutor had a duty to act on a complaint that had not been presented. Consequently, Watson failed to demonstrate that the pre-indictment delay was the result of state action and, therefore, the trial court did not err in denying his motion to dismiss.

**JUDGMENT OF THE CIRCUIT
COURT FOR WICOMICO COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**