

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

VERMONT *v.* BRILLON

## CERTIORARI TO THE SUPREME COURT OF VERMONT

No. 08–88. Argued January 13, 2009—Decided March 9, 2009

In July 2001, respondent Brillon was arrested on felony domestic assault and habitual offender charges. Nearly three years later, in June 2004, he was tried by jury, found guilty as charged, and sentenced to 12 to 20 years in prison. During the time between his arrest and his trial, at least six different attorneys were appointed to represent him. Brillon “fired” his first attorney, who served from July 2001 to February 2002. His third lawyer, who served from March 2002 until June 2002, was allowed to withdraw when he reported that Brillon had threatened his life. His fourth lawyer served from June 2002 until November 2002, when the trial court released him from the case. His fifth lawyer, assigned two months later, withdrew in April 2003. Four months thereafter, his sixth lawyer was assigned, and she took the case to trial in June 2004.

The trial court denied Brillon’s motion to dismiss for want of a speedy trial. The Vermont Supreme Court, however, reversed, holding that Brillon’s conviction must be vacated, and the charges against him dismissed, because the State did not accord him the speedy trial required by the Sixth Amendment. Citing the balancing test this Court stated in *Barker v. Wingo*, 407 U. S. 514, the Vermont Supreme Court concluded that all four factors described in *Barker*— “[l]ength of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant,” *id.*, at 530—weighed against the State. Weighing heavily in Brillon’s favor, the Vermont court said, the three-year delay in bringing him to trial was “extreme.” In assessing the reasons for that delay, the court separately considered the period of each counsel’s representation. It acknowledged that the first year, when Brillon was represented by his first and third lawyers, should not count against the State. But the court counted much of the remaining two years against the State. Delays

## Syllabus

in that period, the court determined, were caused, for the most part, by the failure or unwillingness of several of the assigned counsel, over an inordinate period of time, to move the case forward. As for the third and fourth *Barker v. Wingo* factors, the court found that Brillon repeatedly and adamantly demanded a trial and that his lengthy pretrial incarceration was prejudicial.

*Held:* The Vermont Supreme Court erred in ranking assigned counsel essentially as state actors in the criminal justice system. Assigned counsel, just as retained counsel, act on behalf of their clients, and delays sought by counsel are ordinarily attributable to the defendants they represent. Pp. 6–11.

(a) Primarily at issue here is the reason for the delay in Brillon’s trial. In applying *Barker*, the Court has asked “whether the government or the criminal defendant is more to blame for th[e] delay.” *Doggett v. United States*, 505 U. S. 647, 651. Delay “to hamper the defense” weighs heavily against the prosecution, *Barker*, 407 U. S., at 531, while delay caused by the defense weighs against the defendant, *id.*, at 529. Because “the attorney is the [defendant’s] agent when acting, or failing to act, in furtherance of the litigation,” delay caused by the defendant’s counsel is charged against the defendant. *Coleman v. Thompson*, 501 U. S. 722, 753. The same principle applies whether counsel is privately retained or publicly assigned, for “[o]nce a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” *Polk County v. Dodson*, 454 U. S. 312, 318. Unlike a prosecutor or the court, assigned counsel ordinarily is not considered a state actor. Pp. 6–8.

(b) Although the balance arrived at in close cases ordinarily would not prompt this Court’s review, the Vermont Supreme Court made a fundamental error in its application of *Barker* that calls for this Court’s correction. The court erred in attributing to the State delays caused by the failure of several assigned counsel to move Brillon’s case forward and in failing adequately to take into account the role of Brillon’s disruptive behavior in the overall balance. Pp. 8–11.

(1) An assigned counsel’s failure to move the case forward does not warrant attribution of delay to the State. Most of the delay the Vermont court attributed to the State must therefore be attributed to Brillon as delays caused by his counsel, each of whom requested time extensions. Their inability or unwillingness to move the case forward may not be attributed to the State simply because they are assigned counsel. A contrary conclusion could encourage appointed counsel to delay proceedings by seeking unreasonable continuances, hoping thereby to obtain a dismissal of the indictment on speedy-trial

## Syllabus

grounds. Trial courts might well respond by viewing continuance requests made by appointed counsel with skepticism, concerned that even an apparently genuine need for more time is in reality a delay tactic. Yet the same considerations would not attend a privately retained counsel's requests for time extensions. There is no justification for treating defendants' speedy-trial claims differently based on whether their counsel is privately retained or publicly assigned. Pp. 9–10.

(2) The Vermont Supreme Court further erred by treating the period of each counsel's representation discretely. The court failed appropriately to take into account Brillon's role during the first year of delay. Brillon sought to dismiss his first attorney on the eve of trial. His strident, aggressive behavior with regard to his third attorney further impeded prompt trial and likely made it more difficult for the Defender General's office to find replacement counsel. Absent Brillon's efforts to force the withdrawal of his first and third attorneys, no speedy-trial issue would have arisen. Pp. 10–11.

(c) The general rule attributing to the defendant delay caused by assigned counsel is not absolute. Delay resulting from a systemic breakdown in the public defender system could be charged to the State. Cf. *Polk County*, 454 U. S., at 324–325. But the Vermont Supreme Court made no determination, and nothing in the record suggests, that institutional problems caused any part of the delay in Brillon's case. P. 11.

955 A. 2d 1108, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, SOUTER, THOMAS, and ALITO, JJ., joined. BREYER, J., filed a dissenting opinion, in which STEVENS, J., joined.