IN THE COURT OF APPEALS OF IOWA

No. 0-452 / 98-1674
Filed November 8, 2000

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DONALD OLSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Donald Olson appeals following the court's judgment and sentence on the charges of control of a firearm by a felon, in violation of Iowa Code section 724.26 (1997), and assault with a dangerous weapon, in violation of section 708.2(3). Olson contends that the court erred in denying his motion to dismiss for a speedy trial violation. **AFFIRMED.**

Kenneth J. Weiland, Jr. of Weiland Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, John P. Sarcone, County Attorney, and Jim Ward, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

PER CURIUM

Defendant-appellant, Donald Lee Olson, appeals his conviction and sentence for control of a firearm by a felon, in violation of Iowa Code section 724.26, and assault with a dangerous weapon, in violation of Iowa Code section 708.2(3) (1997). Defendant contends the district court erred in denying his motion to dismiss contending he was not arraigned as soon as practical. We affirm.

Defendant was arrested on April 21, 1998. He appeared and was scheduled for arraignment on June 2, 1998, in Room 204 of the Polk County Courthouse. Trial information was filed on May 4, 1998. Defendant did not appear for arraignment on June 2. He claimed he had car trouble and was told by a person in the clerk's office to come the next day. He said he came to the courthouse on June 3 and 4 but was not arraigned. He was arrested in the courthouse on June 5 for failing to appear on June 2. Defendant finally was arraigned on June 23, 1998, at which time his trial was set for August 3, 1998, ninety-one days after the trial information was filed.

Defendant filed a motion to dismiss contending (1) he had not been arraigned "as soon as practicable" as required by Iowa R. Cr. P. 8(1) and (2) the August 3 trial date was beyond the ninety-day speedy trial time limit established in Iowa R. Cr. P. 27(2)(b). The district court denied defendant's motion to dismiss.

The sole issue raised by defendant on appeal is that the district court committed error in overruling his motion to dismiss for failure to be arraigned a soon as practical.

Iowa Rule of Criminal Procedure 8(1) in applicable part provides, "Arraignment shall be conducted as soon as practicable." Arraignment was scheduled within a reasonable time following defendant's arrest. Defendant knew of the arraignment date. The district court found he did not appear in Room 204 according to the court order.

Defendant contends without citing authority the issue he raises is a constitutional issue and our review is de novo. The State contends we review for correction of errors at law citing *State v. Olson*, 528 N.W.2d 651, 653 (Iowa App. 1995). We review speedy trial issues for correction of errors at law. *State v. Smith*, 573 N.W.2d 14, 17 (Iowa 1997). We are bound by the district court's findings of fact if supported by substantial evidence. *Id.* "Delay attributable to defendant may constitute statutory good cause preventing the State from carrying out its obligation to bring him to trial." *State v. Keys*, 535 N.W.2d 783, 787 (Iowa App. 1995) (quoting *State v. Donnell*, 239 N.W.2d 575, 579 (Iowa 1976)). Furthermore, a defendant may not actively or passively participate in the events that delay his or her trial and then later take advantage of that delay to terminate the prosecution. *State v. Ruiz*, 496 N.W.2d 789, 792 (Iowa App.1992); *Finn*, 469 N.W.2d at 694.

Defendant was not promptly tried because he failed to appear for arraignment. In *State v. Lyles*, 225 N.W.2d 124, 126 (Iowa 1975) the defendant was notified to appear for arraignment. He came to court as ordered but failed to tell the court or the county attorney he was present or to advise necessary parties of his address. *Id.* The court finding delays attributable to defendant said:

> Although the State, not the defendant, has the obligation to bring a defendant to trial, delay attributable to the defendant may constitute good cause preventing the State from carrying out its obligation. The State's duty to provide a defendant a speedy trial does not require that it play a game of hide-and-go-seek with him.

Id. (citations omitted).

Defendant was on notice he was to appear for arraignment on June 2, 1998. He failed to appear. Defendant did not present any evidence to substantiate the alleged conversations he had and instructions he received from the Clerk's office regarding when he could be arraigned.

The delay in this case is attributable to defendant's failure to appear for his scheduled arraignment. Defendant would have been arraigned had he appeared for arraignment as scheduled and his trial date would have been scheduled with the ninety-day requirement of Iowa Rule of Criminal Procedure 27(2)(b). The district court did not error in overruling defendant's motion to dismiss for failure to be arraigned as soon as practical.

AFFIRMED.