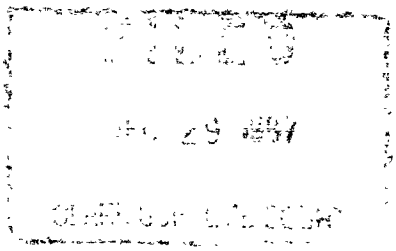
IN THE COURT OF APPEALS OF IOWA

No. 7-671 / 96-2212
Filed December 29, 1997



STATE OF IOWA,
Appellee,

vs.

TOBY LEE SWAIM,
Appellant.

Appeal from the Iowa District Court for Wapello County, E. Richard Meadows, Jr., District Associate Judge.

Defendant appeals from judgment and sentence entered for serious assault causing bodily injury. **AFFIRMED.**

R.E. Breckenridge of Johnson, Hester, Walter, Harrison & Breckenridge, L.L.P., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Victoria Siegel, County Attorney, and Rose Ann Mefford and Kenneth A. Duker, Assistant County Attorneys, for appellee.

Considered by Cady, C.J., and Streit and Vogel, JJ.

STREIT, J.

This is an appeal by a defendant claiming his conviction for assault causing bodily injury should be reversed. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On June 11, 1996, Toby Swaim was charged by trial information with the crime of domestic abuse assault, in violation of Iowa Code sections 708.1 and 708.2A(2)(b). In his written arraignment and plea of not guilty he specifically demanded a speedy trial pursuant to Iowa Rule of Criminal Procedure 27(2)(b).

Swaim had several changes of counsel. On November 3, 1996, he pled guilty to the lesser offense of serious assault causing bodily injury, in violation of sections 708.1 and 708.2. Swaim waived his right to file a motion in arrest of judgment and sentencing proceeded on that same day.

Swaim now appeals his conviction. He claims he received ineffective assistance because his counsel did not file a motion to dismiss on speedy trial grounds. Rule 27(2)(b) provides:

> If a defendant indicted for a public offense has not waived his or her right to a speedy trial he or she must be brought to trial within ninety days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary be shown.

Swaim's guilty plea was entered 154 days after the indictment was entered in this case.

The State asserts Swaim waived his right to object on speedy trial grounds because he pled guilty. Generally, a guilty plea waives all defenses or objections which are not intrinsic to the plea itself, including speedy trial objections. *State v. Morehouse,* 316 N.W.2d 884, 885 (Iowa 1982). In the present case, however, Swaim is claiming that due to the ineffectiveness of his trial counsel, no motion to dismiss on speedy trial grounds was filed and he subsequently pled guilty. We do not believe Swaim's guilty plea waived his right to raise this issue.

If a defendant is not brought to trial within ninety days after indictment, the case must be dismissed unless the defendant has waived the right to a speedy trial, the delay is attributable to the defendant, or good cause exists for the delay. *State v.Orte,* 541 N.W.2d 895, 898 (Iowa App. 1995). Once the ninety-day period has expired, the State has the burden to establish an exception. *State v. Olson,* 528 N.W.2d 651, 653 (Iowa App. 1995).

We are unable to determine from the present record whether one of the exceptions to the ninety-day rule applied in this case. We determine defendant's claims must be preserved for postconviction proceedings. We do not retain jurisdiction of the case.

We affirm Swaim's conviction for assault causing bodily injury. Costs of this appeal are assessed to Swaim.

AFFIRMED.