FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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| **STATE OF IOWA,** | ) | |
| Plaintiff-Appellee, | ) | Filed September 27, 1983 |
| vs. | ) | |
| **THOMAS WADE WORTHINGTON,** | ) | 3-251 / 69563 |
| Defendant-Appellant. | ) | |

Appeal from Jasper District Court - Thomas W. Mott, Judicial Magistrate.

Defendant appeals from his conviction of OMVUI in violation of Iowa Code § 321.281. AFFIRMED.

Thomas Reilly of Thomas J. Reilly Law Firm, P.C., Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General, and Mary Jane Blink, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ. Sackett, J., takes no part.

**DONIELSON, J.**

Defendant appeals from his conviction of OMVUI in violation of Iowa Code § 321.281. He asserts the court erred in overruling his motion to dismiss for failure to comply with the speedy indictment rule of Iowa R. Crim. P. 27(2)(a). We affirm.

Iowa R. Crim. P. 27(2)(a) provides in relevant part:

> [W]hen an adult is arrested for the commission of a public offense, . . . , and an indictment is not found against him within forty-five days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives his right thereto.

Defendant was arrested on July 29, 1981, for operating a motor vehicle while under the influence of alcohol. A trial information was filed on September 28, 1981, seventeen days after the expiration of the forty-five day time period from the date of arrest. Defense counsel entered a written appearance as well as a plea of not guilty on defendant's behalf on October 19, 1981. On September 27, 1982, defendant moved to dismiss on speedy indictment grounds. The State "acquiesced" in the motion, but the trial court declined to dismiss the case on grounds defendant's waiver of speedy trial and his failure to appear at the proper time for arraignment constituted a waiver of speedy indictment. In fact, the trial court found that defendant failed to appear in court as promised for his initial appearance and failed to appear at any of the four times scheduled for arraignment or trial in October, November, and December of 1981.

The motion to dismiss on speedy indictment grounds was renewed prior to trial and again overruled on similar grounds. Defendant was found guilty and was sentenced to two days in the county jail and was ordered to pay a $350 fine. He then brought this appeal.

Although Rule 27(2)(a) speaks of indictments, the time limitations in that rule apply to cases tried by information as well. State v. Hunziker, 311 N.W.2d

692, 693 (Iowa Ct. App. 1981). It is clear that a defendant may waive his right to speedy trial either expressly or impliedly; see State v. Paulsen, 265 N.W.2d 581, 585 (Iowa 1978). There is no reason to think that a defendant's right to speedy indictment may not likewise be waived.

We conclude, as did the trial court, that defendant in this case waived his right to speedy indictment. According to Iowa R. Crim. P. 10(2)(b), a motion to dismiss for failure to comply with the speedy indictment rule is a motion which must be raised before trial. Such a motion must be filed no later than forty days after arraignment. Iowa R. Crim. P. 10(4). Rule 10(3) states as follows:

> Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial under this rule shall constitute waiver thereof, but the court for cause shown, may grant relief from such waiver.

Here, defendant entered his not guilty plea for arraignment purposes on October 19, 1981. See Iowa R. Crim. P. 8. He did not file his motion to dismiss under Rule 27(2)(a) until September 27, 1982—over eleven months later. The record contains no showing of good cause for such a long delay. Because of his failure to timely file his motion to dismiss, defendant has waived any objection based on the State's failure to comply with the speedy indictment rule.

The trial court did not err in overruling defendant's motion to dismiss. Defendant's conviction and sentence are affirmed.

AFFIRMED.