IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

315

STATE OF IOWA,)

Plaintiff-Appellant,) Filed May 26, 1981

vs.)

JOHN N. MILLER,) 1-53
64850

Defendant-Appellee.)

Appeal from Cerro Gordo District Court - B. C. Sullivan, Judge.

Plaintiff appeals from trial court's dismissal of an information against defendant for failure to bring the case to trial within one year of defendant's initial arraignment in accordance with Iowa R. Crim. P. 27(2)(c) asserting that trial court erred in dismissing the charge without allowing the State to show good cause for the delay. AFFIRMED.

Thomas J. Miller, Attorney General of Iowa, and Julie F. Pottorff, Assistant Attorney General, for plaintiff-appellant.

William Pappas and Bary L. Anderson of Mason City, Iowa, for defendant-appellee.

Heard by Donielson, Acting C.J., and Snell, Carter and Johnson, JJ. Considered en banc.

JOHNSON, J.

Plaintiff, State of Iowa, appeals from trial court's dismissal of an information against defendant, John N. Miller, for failure to bring the case to trial within one year of defendant's initial arraignment in accordance with Iowa R. Crim. P. 27(2)(c). The State asserts that trial court erred in dismissing the charge without allowing the State to show good cause for the delay. We affirm.

On November 29, 1978, defendant was charged by information with delivery of a controlled substance, marijuana, for profit in violation of section 204.401, The Code 1977. Defendant was arraigned on January 4, 1979, at which time he pled not guilty and waived his right to a speedy trial. On August 27, 1979, defendant attempted to plead guilty to the lesser offense of accomodation; the county attorney objected and a hearing was set for September 14th to decide the issue. This hearing was never held because the county attorney was absent due to an illness in his family. Defendant filed a motion to dismiss on August 30th alleging unconstitutional delay in the State's filing of the information. Trial was scheduled for September 18th but, because of the pending matters, was not held. On January 16th the court administrator scheduled trial for February 4th. On January 29th defendant filed a second motion to dismiss based on the State's failure to bring the case to trial within one year as required by Iowa R. Crim. P. 27(2)(c). Following a February 1st hearing, trial court sustained the motion on the ground that rule 27(2)(c) requires dismissal where the case has not come to trial within one year, unless an extension has been granted within the one year. Trial court found that since no extension had been granted, dismissal was mandated. This appeal followed.

I. Scope of Review. Because this is an action at law, our review is on assigned error only. Iowa R. App. P. 4.

II. Motion to Dismiss under Rule 27(2)(c). The State argues that rule 27(2)(c) should be construed to allow a showing of good cause and a grant of extension after the one year period lapses, if such showing is made with respect to circumstances existing before the expiration of that period. We disagree.

We begin our analysis with rule 27(2) which states:

> 2. Speedy trial. It is the public policy of the state of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties. Applications for dismissals under this subsection may be made by the prosecuting attorney or the defendant or by the court on its own motion.

> a. When an adult person is arrested for the commission of a public offense . . . and an indictment is not found against him or her 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 or her right thereto.
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> b. 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.
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> c. All criminal cases must be brought to trial within one year after the defendant's initial arraignment unless an extension is granted by the court, upon a showing of good cause.

The State asserts that since subsections (a) and (b) of the rule have been construed to permit a showing of good cause after the expiration of their respective time limitations, subsection (c) should also be so interpreted.

This analysis, however, fails to account for the difference in the language used in subsection (c) and that used in subsections (a) and (b). Focusing on subsection (b), we find it is phrased in the alternative. Trial must commence within 90 days or the court must dismiss. An exception to the dismissal provision is created by the additional phrase, "unless good cause to the contrary is shown."[1] Thus, under subsection (b), it is trial court's obligation to dismiss which is conditional, and that obligation arises after the 90-day period has expired.

Subsection (c), on the other hand, is not phrased in the alternative. The initial statement is an imperative that "all criminal trials must be brought within one year . . .". An exception to this provision is created by the additional phrase "unless an extension is granted by the court, upon a showing of good cause." It is the imperative itself that is conditional in subsection (c), not a provision for the trial court to dismiss as in subsection (b). In fact, subsection (c) contains no provision for the trial court to dismiss at all. It simply provides that, if the limitation period expires without grant of an extension, trial cannot commence. Where a statute reads that a court may "extend" the time granted for doing an act, it is uniformly held that the court order must be made within the statutory time because the word "extension" means prolonged and, of course, a prolongation of time cannot occur after the time originally limited has expired. See Rodda v. Rodda, 202 P.2d 638, 639 (Or. 1949), and cases cited therein. See also Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d 550, 554 (Iowa 1980).

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[1] Webster's Third New International Dictionary, G & C Merriam Co., 1971, defines "unless" as "except on the condition that".

We further believe the State's argument that the congruency among the subsections is established by the post-expiration exceptions of good cause misconstrues the central theme of rule 27(2). The unifying mandate throughout this rule is that the time for commencement of criminal proceedings is limited. These limitations were established in furtherance of the public policy of the State of Iowa, as stated in rule 27, that criminal prosecutions should be concluded at the earliest possible time. The subsections establish cut-off periods for the commencement of criminal proceedings; subsection (c) is the final and most restrictive of the provisions. Acceptance of the State's interpretation would mean that subsection (c) adds nothing to the limitation established under subsection (b). Thus construed, the mandate of subsection (c) would be that, after a year, trial court must dismiss an action not brought to trial, except on a showing of good cause. This, however, has already been provided by subsection (b)'s requirement of dismissal after 90 days if trial is not commenced, except on a showing of good cause. (emphasis added.) We will not attribute such a superfluous meaning to subsection (c).

We therefore hold that rule 27(2)(c) provides that all criminal cases must be brought to trial within one year after the defendant's initial arraignment unless an extension is granted before the expiration of that year.

AFFIRMED.