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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellant,) Filed November 20, 1984 283

vs.)

TIMOTHY DALE MEYER,) 4-380
84-270

Defendant-Appellee.)

Appeal from the Iowa District Court for Washington County - James P. Rielly, Judge.

The State appeals from an order dismissing the drug trafficking charges against defendant on the ground that the defendant's statutory right to a speedy trial was violated. AFFIRMED.

Gerald N. Partridge, Washington County Attorney, for plaintiff-appellant.

Davis L. Foster of Barker, Cruise & Kennedy, Iowa City, for defendant-appellee.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

SNELL, J.

On July 20, 1983, the defendant, Timothy Meyer, and two other individuals were arrested on charges of delivery of cocaine and conspiracy to deliver cocaine. A trial information was filed on July 29, 1983, charging defendant and the two other men with both offenses. Defendant, who was released on bond, filed a written arraignment and demanded a speedy trial. Both codefendants waived their right to speedy trial. The trial of all three men was joined pursuant to Iowa Code section 204.408 (1983). The trial date was set for November 15, 1983, by a trial assignment issued by the court administrator on October 17, 1983. Defendant did not object to the trial date despite the fact that it was set for nineteen days beyond the ninety-day period guaranteed in Iowa Rule of Criminal Procedure 27(2)(b). On October 28, 1983, defendant moved to dismiss the charges on the ground that his statutory right to a speedy trial had been violated. Defendant's motion was sustained by the district court and the State's subsequent motion to reconsider was overruled. The State has appealed.

Iowa Rule of Criminal Procedure 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.

Iowa R. Crim. P. 27(2)(b).

The State bears the burden of bringing the defendant to trial in a timely fashion. State v. Ege, 274 N.W.2d 350, 354 (Iowa 1979). If the trial is not commenced within the 90-day period, the case must be dismissed unless: (1) the defendant waived his right to speedy trial; (2) the delay is attributable to the defendant; or (3) there is good cause for the delay. See, State v. Bond, 340 N.W.2d 276, 279 (Iowa 1983) (citing State v. Hamilton, 309 N.W.2d 471, 475 (Iowa 1981) (waiver of delay); State v. Petersen, 288 N.W.2d 332, 335 (Iowa 1980) (State

established good cause for delay); State v. Ege, 274 N.W.2d 350, 354-55 (Iowa 1979) (delay attributable to defendant)).

The State claims that the court abused its discretion by finding no good cause for the trial to take place beyond the 90 days or, in the alternative, that the court erred in not finding that the defendant acquiesced in the delay.

Our review of the trial court's determination is not de novo and its findings of fact are binding on us if supported by substantial evidence. State v. LaPlant, 244 N.W.2d 240, 242 (Iowa 1976). To obtain a reversal, the defendant must establish that the trial court abused its limited discretion. Id.

In Bond, the supreme court described the good cause determination to be made under rule 27(2)(b):

> The good cause exception to trial within ninety days under Rule 27(2)(b) focuses on only one factor: the reason for the delay. Surrounding circumstances bear on the focal point of the inquiry but only to the extent that they relate directly to the sufficiency of the reason itself. Such circumstances as a relatively short period of delay, failure of the defendant to demand a speedy trial, and the absence of prejudice may allow a weaker reason to constitute good cause; a stronger reason may be necessary in the absence of such factors. State v. Moritz, 293 N.W.2d 235, 251 (Iowa 1980); State v. Petersen, 288 N.W.2d at 335.

Bond at 279.

Applying this analysis to the facts of this case, we find that the trial court did not abuse its discretion in dismissing the case. While the length of the delay was only 19 days and the defendant, who was free on bail, was not overly prejudiced, the defendant did assert his right to a speedy trial. In light of these facts, we look to the strength of the reason offered by the State to show good cause.

The State first argues that the defendant caused the delay by filing various motions. However, the State fails to establish how any of these motions caused the case to be delayed. The motions were made for discovery purposes. None of

the motions was for a continuance and there is no showing that the setting of the trial date was in any way related to, let alone delayed by, these motions.

It appears that the primary reason this case was not tried within 90 days is that the clerk of court and the county attorney failed to follow the procedures mandated in the Iowa Rules of Criminal Procedure.

The assignment of the case for trial was not made until October 17, 1983, 48 days from the deadline. See Iowa R. Crim. P. 8.1(1) (date and time for trial shall be set within seven days after entry of a written plea of not guilty). There was no explanation offered as to why the trial date was not within the 90 days. Although the codefendants had waived their right to speedy trial, the court and the county attorney were aware that defendant Meyers had not. The State argues that the request by the attorney for one of the codefendants to have the trial set for mid-November should be imputed to defendant Meyers. He cites no support for the argument excepting administrative efficiency and we find no merit in that argument.

Administrative mistakes or problems do not establish good cause. See State v. Hunziker, 311 N.W.2d 692, 694 (Iowa Ct. App. 1981) (county attorney's miscalculation of dates is not good cause); State v. Sassman, 226 N.W.2d 808, 809 (Iowa 1975) (shortage of clerical or secretarial help is not good cause).

> The fact that the delay was short, that the defendant was not prejudiced, and that the defendant did not demand speedy indictment will not turn an insufficient reason for delay into a sufficient one.

Hunziker at 694.

The record indicates that the reason Meyers was not tried within the 90-day period was because of administrative negligence. The State has failed to establish sufficient reason to show good cause.

We also reject the State's claim that because the defendant acquiesced in the delay, the granting of the motion to dismiss is in error. The State's reliance

on State v. Zaehringer, 360 N.W.2d 792 (Iowa 1981), is misplaced. The claim in Zaehringer was based on a violation of the defendant's constitutional right to a speedy trial which is less specific and less stringent than his right under Iowa R. Crim. P. 27(2)(b). State v. Petersen, 288 N.W.2d 332, 335 (Iowa 1980). Additionally, the court in Zaehringer found no denial of a right to a speedy trial based on the length of delay, the reason for the delay, the defendant's failure to assert his speedy trial right, and lack of prejudice. Further, the Zaehringer court found that defendant's motions showed that he did not want to go to trial within the 90-day period and was not prepared to do so. Zaehringer, 360 N.W.2d at 794-96. Such is not the case here.

The findings of the trial court are affirmed.

AFFIRMED.