FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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LARRY LEROY BAKER,

Plaintiff,

vs.

CARROLL E. ENGELKES, as Judge of the District Court of Iowa in and for Black Hawk County, and DENNIS D. DAMSGAARD, as Judge of the District Court of Iowa in and for Black Hawk County,

Defendants.

Filed November 24, 1981

1-313
2-66195

Certiorari to Black Hawk District Court, Carroll E. Engelkes and Dennis D. Damsgaard, Judges.

Plaintiff petitions by writ of certiorari for review of the trial court's refusal to dismiss the second information and the trial court's earlier ruling that the dismissal of the first information was without prejudice to reprosecution. WRIT OF CERTIORARI SUSTAINED WITH DIRECTIONS TO DISMISS THE SECOND INFORMATION.

Stanford J. Patterson of Patterson Law Firm, Waterloo, for plaintiff.

Thomas J. Miller, Attorney General, and Shirley Ann Steffe, Assistant Attorney General, for defendants.

Heard by Oxberger, C.J., and Donielson, Carter, Snell, and Johnson, JJ.

PER CURIAM

Plaintiff petitions by writ of certiorari for review of the trial court's refusal to dismiss the second information and the trial court's earlier ruling that the dismissal of the first information was without prejudice to reprosecution. Writ of certiorari is sustained with directions to dismiss the second information.

On July 1, 1980, Larry L. Baker was charged with possession of a controlled substance with intent to deliver in violation of Section 204.401(1)(a), The Code 1979. Various motions were subsequently filed by both sides, including a joint motion for continuance, a suppression motion by defendant, and a motion by the State to continue the case to the latest possible date consistent with Baker's speedy trial rights so that the State could perform further chemical analysis of the substance removed from Baker's home. As a result of these motions, trial was scheduled for Tuesday, September 30, 1980, which was the ninety-first day after the filing of the information on July 1, 1980. A pretrial conference was held September 29, 1980, and the prosecutor indicated the State would move for a dismissal because its laboratory tests had failed to show that the substance seized from Baker's home was a controlled substance. Three days after the ninety-day period for a speedy trial had elapsed, the State moved to dismiss under Iowa R. Crim. P. 27 because its tests had failed to show the substance seized from Baker was heroin. In response to the State's motion, on October 2, 1980, Judge Elwood ordered a dismissal of the case without prejudice.

Defendant Baker filed a partial resistance to Judge Elwood's order and asked for a dismissal with prejudice because the time limit of Iowa R. Crim. P. 27 had not been met. Judge Keefe reviewed the file and dismissed the charge with prejudice on October 29, 1980.

The State then filed a motion to reinstate the prosecution because its laboratory tests had detected a controlled substance in the material seized from the defendant's home. On December 23, 1980, Judge Engelkes entered an order granting the State's motion. He noted that the dismissal of October 2, 1980, by Judge Elwood was done pursuant to Iowa R. Crim. P. 27, which provides in part that dismissal is not a bar to another prosecution for a felony charge. In reliance on that rule, Judge Engelkes held that Judge Keefe had been mistaken in his October 29 order and set it aside.

The State then filed a new information charging defendant Baker with the same offense. Baker moved to dismiss the new information on the theory that he had been entitled to, but had been denied, a trial on the offense within ninety days of the first

information, i.e., within ninety days of July 1, 1980.

On January 19, 1981, Judge Damsgaard overruled Baker's motion to dismiss, so Baker petitioned the Iowa Supreme Court for a writ of certiorari to challenge both the December 23, 1980, order of Judge Engelkes, and the January 19, 1981, ruling of Judge Damsgaard refusing to dismiss the second information.

In this appeal we must determine whether Judge Damsgaard was required to dismiss the second trial information because defendant Baker was denied his right to a speedy trial and whether Judge Engelkes had the jurisdiction to reconsider the dismissal with prejudice ruling of Judge Keefe.

I. If trial is not begun within the statutory ninety-day period, the case must be dismissed unless one of three things has occurred: (1) the defendant has waived his right to a speedy trial, (2) the delay is attributable to the defendant, or (3) there is good cause for the delay. State v. Petersen, 288 N.W.2d 332, 335 (Iowa 1980).

Defendant argues that he was not tried within ninety days of the first information, he did not waive his right to a speedy trial, he did not cause the delay, and the State failed to argue good cause for the delay, so the statutory requirements were not met and Judge Damsgaard was therefore required to dismiss the second trial information. We agree and do so because the strict requirements set out in Iowa R. Crim. P. 29(2)(b) were not met and the State failed to carry the burden to show good cause why it was excused from the ninety-day speedy trial requirement.

The State argues that it is not required to show good cause when the dismissal was granted under Rule 27(1), which provides, in the interest of justice, for a dismissal which is not a bar to reprosecution for the same offense if the offense is a felony. We should read Rule 27, subsections one and two, in conjunction with each other. Just because a crime is a felony, the State is not exempt from the statutory speedy trial requirement. Thus, we hold that since the speedy trial requirement was not fulfilled, Judge Damsgaard is required to dismiss the second trial information.

II. In addition, we should look at the effect of the dismissal of Baker's case with prejudice by Judge Keefe. When a case is dismissed with prejudice, the consequences that flow from the dismissal are equal to that of trial and acquittal. A dismissal with prejudice will foreclose the filing of a second indictment on the same charge. White v. United States, 377 F.2d 948, 949 (D.C. Cir. 1967). In other words, a dismissal with prejudice is a final order and is binding on the district court.

Despite the number of judges who ruled on this matter, it was the same court. Cowman v. LaVine, 234 N.W.2d 114, 124 (Iowa 1975). A court may correct its own rulings before final judgment. Id. After final judgment, however, only an appellate court may entertain a reconsideration of the matter.

Thus, Judge Keefe could reconsider Judge Elwood's ruling because his ruling was not a final judgment. Judge Engelkes, however, did not have jurisdiction to reconsider and change Judge Keefe's dismissal with prejudice. Judge Keefe's order was final and, as such, was removed from the district court's jurisdiction.

WRIT OF CERTIORARI SUSTAINED, WITH DIRECTIONS TO DISMISS SECOND TRIAL INFORMATION.