IN THE COURT OF APPEALS OF IOWA

No. 3-268 / 92-1475

FILED
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CLERK SUPREME COURT

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STATE OF IOWA,

Appellee,

vs.

TERRY RODRIGUEZ,

Appellant.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Terry Rodriguez appeals his conviction, following a bench trial, of delivery of cocaine and possession of cocaine with the intent to deliver. **REVERSED AND REMANDED.**

Randy J. Hohenadel, Davenport, for appellant.

Bonnie J. Campbell, Attorney General, Chris Odell, Assistant Attorney General, William E. Davis, County Attorney, and Realff Ottesen, Assistant County Attorney, for appellee.

Heard by Schlegel, P.J., Hayden, J., and McCartney, S.J.*

*Senior judge from the 2nd judicial district serving on this court by order of the Iowa Supreme Court.

SCHLEGEL, P.J. 000894

The defendant, Terry Rodriguez, appeals his conviction, following a bench trial, of delivery of cocaine and possession of cocaine with the intent to deliver in violation of Iowa Code section 204.401(1)(c). He contends the district court erred in overruling his motion to dismiss based upon the denial of his right to a speedy trial. This appeal involves the question of whether Rodriguez was denied his right to speedy trial and whether his conviction can be allowed to stand by reason of that denial.

On or about October 1, 1990, the defendant was charged, together with three other parties, with delivery of a controlled substance; possession with intent to deliver a controlled substance; and possession of a controlled substance. He was arraigned on October 8, 1990. At arraignment, he waived his right to trial within ninety days in writing. On November 18, 1990, defendant moved to sever his trial from the trials of his codefendants, arguing the record indicated his codefendants would introduce testimony of statements allegedly made by the defendant which would tend to incriminate him. The motion was denied by order dated December 11, 1990.

Trial, which had initially been set for December 26, 1990, was reset for January 28, 1991. Subsequently, on the State's motion, the trial date was continued from January 28 to February 20, 1991. In the interim, codefendant, Anthony Jamison, filed an interlocutory appeal

000895

to the supreme court after the trial court's denial of a suppression motion. As a result of that appeal, the prosecution of this case was stayed.

Following the completion of the appeal by Jamison, the case was set for pretrial conference on May 8, 1992. On May 13, 1992, Rodriguez filed a motion to dismiss on the ground that trial had not been brought within one year of initial arraignment. The State resisted, and the court overruled the motion. Rodriguez appeals that ruling. The trial court entered a judgment of guilty and sentenced the defendant to a period not to exceed ten years.

Rodriguez claims that his right to a speedy trial under the provisions of Iowa Rule of Criminal Procedure 27(2)(c) has been violated. He argues he is entitled to a dismissal of this charge since he was not afforded a trial on the charges within one year after his initial arraignment.

Rule 27(2)(c) provides:

> c. All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to R.Cr.P.8 unless an extension is granted by the court, upon a showing of good cause.

In State v. Mary, 401 N.W.2d 239, 241 (Iowa App. 1986), we stated:

> Rule 27(2)(c) establishes an "outer limit" for trial, like a statute of limitation. State v. Hempton, 310 N.W.2d 206, 208 (Iowa 1981). Once the one-year period has expired the State must show either a waiver on the part of the defendant or good cause for the delay. See State v. Miller, 311 N.W.2d 81, 83-84 (Iowa 1981).

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000896

> In considering whether good cause exists, we consider only one factor: the reason for the delay. State v. Petersen, 288 N.W.2d 332, 335 (Iowa 1980). The "reason for the delay" cannot be considered entirely in a vacuum. Rather surrounding circumstances--such as length of delay, whether the defendant asserted his right to speedy trial, and whether defendant was prejudiced by the delay--may be considered only as they weigh on the sufficiency of the reason itself. Id.

Even though Rodriguez waived his ninety-day right to speedy trial, the record does not show that he waived his right to trial within one year from initial arraignment. The only delay which could be reasonably ascribed to the defendant was his motion to sever his trial from the trial of his codefendants. That motion was overruled, and he proceeded to prepare for trial, so far as the record shows, which was to be held on December 26, 1990. The record does not show that he caused any delay in the scheduled trial date. The issue presented in the interlocutory appeal by Jamison had no connection with Rodriguez's trial.

The State had the ability to try Rodriguez separately. Instead, nothing was done to bring him to trial from the last trial date set by the court to the time of the bench trial, on July 17, 1992. The filing of the interlocutory appeal by Jamison did not interfere with the State's ability to proceed with the trial of this defendant. The State argues the defendant did nothing during this time to insist upon a speedy trial.

> The State, not the defendant, must see that prosecution is timely and that a trial is afforded within the allowable period. State v. Lybarger, 263 N.W.2d 545, 546 (Iowa 1978). The speedy trial guarantee is designed, among other things, "to shorten the disruption of life caused by arrest

000897

> and the presence of unresolved criminal charges." United States v. MacDonald, 456 U.S. 1, 8, 102 S. Ct. 1497, 1502, 71 L. Ed. 2d 696, 704 (1982).

State v. Mary, 401 N.W.2d at 242.

In this case, initial arraignment occurred on October 8, 1990. The case finally came to trial on July 17, 1992, a period of one year and nine months, plus a few days. The time totaled 640 days. Since nothing about Jamison's appeal necessarily caused a delay in the prosecution of Rodriguez, the State has not shown good cause for the delay. Accordingly, the trial court should have dismissed the charges against the defendant.

We reverse defendant's conviction and remand this case to the trial court for entry of an order dismissing this prosecution.

REVERSED AND REMANDED.