IN THE COURT OF APPEALS OF IOWA

FILED
JAN 27 1988
CLERK SUPREME COURT

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	Filed January 27, 1988
WARREN LARUE WILLIAMS,	)	7-501 87-237
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Black Hawk County (No. DF-X008279) - Robert E. Mahan, Judge.

Defendant appeals from trial court's order overruling his motion to dismiss for lack of a speedy trial. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Ann L. Beneke and Christie Scase, Assistant Attorneys General; James M. Metcalf, County Attorney; and Michael W. Buckner, Assistant County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, and Sackett, JJ. Schlegel, J., takes no part.

PER CURIAM 268

Defendant contends the trial court erred in overruling his motion to dismiss based on his claimed right to a speedy trial under Iowa Rule of Criminal Procedure 27(2)(b) and article I, section 10 of the Iowa Constitution. We disagree and affirm the trial court.

Rule 27(2)(b) requires a defendant be brought to trial within ninety days of indictment. When a trial is not commenced within the prescribed period, dismissal is mandated unless (1) the defendant has waived his right to speedy trial, (2) the delay is attributable to the defendant, or (3) "good cause" exists for the delay. State v. Longstreet, 407 N.W.2d 591, 593 (Iowa 1987). We reverse only for an abuse of discretion. See State v. Mary, 401 N.W.2d 239, 242 (Iowa App. 1986).

Defendant filed a notice of his intent to raise the defense of diminished responsibility based on "post-traumatic stress disorder" arising from defendant's combat service in Viet Nam. At the State's request, the trial court ordered defendant to submit to an examination by the State's physician.

The trial court concluded the subsequent trial delay was attributable to defendant because he had not cooperated in providing the information necessary for the State to obtain a release of defendant's military records from the federal government. The trial court found the records were needed before the State's expert could perform a medical examination and evaluation. These findings of fact are binding on appeal if supported by substantial evidence. State v. Bond, 340 N.W.2d 276, 279 (Iowa 1983).

Defendant contends the trial court abused its discretion in overruling his motion to dismiss because there was not substantial evidence in the form of letters or phone records to support a finding (1) the State was attempting

to obtain defendant's military records from the federal government, (2) the State was attempting to obtain any necessary information from defendant, or (3) the State's expert needed the records before he could conduct his examination and evaluation of defendant.

At the hearing on the motion to dismiss, the prosecutor stated,

> . . . after Judge Van Metre ordered that the State could have this examination conducted, I immediately took steps to attempt to secure the defendant's military records for purposes of examination by the State's expert. I ran into several road blocks in attempting to secure those medical records, and after ascertaining exactly what needed to be done in order to get those military records, I contacted [defense counsel] and asked him if he would — if his client would voluntarily supply me with the necessary information so that I could get those military records. I received no reply from [defense counsel]. . . .

We hold the trial court did not abuse its discretion in accepting the prosecutor's uncontroverted statement as being true. See, e.g., State v. Williams, 315 N.W.2d 45, 52-53 (Iowa 1982); State v. Brewer, 247 N.W.2d 205, 212 (Iowa 1976). The trial court could conclude from this evidence the delay was attributable to defendant. We also hold the trial court was within its discretion in determining defendant's military records were prerequisite to an adequate examination and an informed evaluation of defendant by the State's expert.

We affirm the trial court's order.

AFFIRMED.