FILED
MAY 31 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
RONALD L. NESBIT,)
Defendant-Appellant.)

Filed May 31, 1988

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8-02
86-1734

Appeal from the Iowa District Court for Black Hawk County (No. D7X007565), Roger F. Peterson, Dennis D. Damsgaard, and Peter Van Metre, Judges.

Defendant appeals his conviction of delivery of a controlled substance, heroin, in violation of Iowa Code section 204.401(1)(a) and his sentence to a term not to exceed twenty-five years in prison pursuant to Iowa Code sections 204.411(1) and (2). **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, and James F. Whalen, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Jack Burds and Lona Hansen, Assistant Attorneys General; and Jeffrey Goodman, Assistant County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

The defendant appeals his conviction of delivery of a controlled substance in violation of Iowa Code section 204.401(1)(a) and his sentence to a term not to exceed twenty-five years in prison pursuant to Iowa Code sections 204.411(1) and (2). The defendant contends that he was denied his right to a speedy trial and his right to effective assistance of counsel. We affirm.

On May 12, 1986, the defendant, Ronald L. Nesbit, was charged with delivery of a controlled substance. The public defender's office was appointed to represent the defendant. Nesbit was arraigned on May 20, 1986, and elected to stand on his right to a speedy trial. Trial was set for July 15, 1986. On July 11, 1986, the defendant's counsel requested a continuance, which was granted by the trial court. Trial was rescheduled for August 5, 1986. On July 28, 1986, the public defender's office filed a request to withdraw, citing a heavy case load and conflict of interest as reasons. The conflict of interest was due to the public defender's previous representation of the prosecution's main witness. The court granted the public defender's request and appointed a new attorney, Dennis Guernsey, to represent the defendant. On August 1, 1986, Guernsey advised the court that he could not be ready for trial on August 5, 1986, due to his late appointment. Consequently, a trial date was continued until August 26, 1986. On August 20, 1986, the defendant filed a motion to dismiss for violation of his speedy trial rights. This motion was overruled. Trial commenced on August 26, 1986, and a jury returned a verdict of guilty.

I. **Speedy Trial.** Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Iowa Rule of Criminal Procedure 27(2)(b) provides:

> 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.

The trial information charging the defendant was filed on April 21, 1986. Under rule 27(2)(b), Nesbit's speedy trial period ended on August 10, 1986. The defendant contends that the trial court's ruling that the delays in proceeding to trial were attributable to the defendant was erroneous because the continuances were designed to ease the public defender's work load, the public defender should have recognized the conflict of interest at the outset of the case, and the trial court, in appointing new counsel, should have found an attorney who could be ready for trial within the speedy trial period.

If trial is not commenced within the speedy trial period prescribed by rule 27(2)(b), 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. Bond, 340 N.W.2d 276, 279 (Iowa 1983). The burden is on the State to show one of the three exceptions to the speedy trial rule. Id. The Iowa Supreme Court, in State v. LeFlore, 308 N.W.2d 39, 41 (Iowa 1981), stated that "the statutory right to a speedy trial under rule 27(2)(b) is not a personal right that can be waived only by the defendant. Defense counsel acting within the scope of his or her authority may waive this right on the defendant's behalf without the defendant's express consent." Defense counsel may also waive the speedy trial right on the defendant's behalf by a succession of continuance motions. Id.

The delays in proceeding with the defendant's trial were found by the trial court to be attributable to the defendant. We therefore limit our inquiry into whether the trial court abused its discretion in attributing the delays to the defendant. We will not find abuse of discretion where the trial court's ruling was based on one of the three exceptions to the speedy trial rule, and is reasonable under the circumstances. See State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982). Regarding the continuance requested on July 11, 1986, there was no

reason stated for why defense counsel sought it. However, as may be noted from the motion on July 28, 1986, wherein the public defender sought to withdraw from the case, the defendant's attorney was having difficulty finding sufficient time to adequately prepare the case for trial. From this stated reason, it may be reasonably inferred that the motion for continuance on July 11 was requested in order to obtain more time so as to better prepare the defendant's case. Since a continuance which would give the defense attorney more time to prepare the best possible defense is for the defendant's benefit, we find that the trial court did not abuse its discretion in attributing the initial delays to the defendant.

Furthermore, regarding the public defender's July 28 motion to withdraw, wherein one of the reasons given for the request was a conflict of interest, it is reasonable to conclude that such a decision by the public defender was made in the defendant's best interest since difficulties could potentially arise due to the conflict which might harm the defendant's case. Specifically, in the instant case, the defense counsel had previously represented the State's main witness and had obtained information about the witness through confidential communications. This information was of the type which could be used to impeach the witness's testimony. Since this would present a conflict in which resolution might result in defense counsel not being able to thoroughly impeach the witness, it would be in the defendant's best interest to have counsel that could proceed to freely cross-examine the witness and thoroughly impeach him without the problems posed by the conflict of interest. Thus, the trial court did not abuse its discretion in attributing the delay caused by the motion to withdraw to the defendant.

Finally, the delay caused by attorney Guernsey's continuance was also properly attributable to the defendant. Guernsey had just been appointed to defend Nesbit and needed time to become familiar with the case before proceed-

ing to trial. As noted before, it is in the defendant's best interest to have counsel who is thoroughly prepared and able to present the best possible defense. It was therefore not an abuse of discretion for the trial court to attribute this delay to the defendant. We accordingly affirm the trial court's rulings on the speedy trial issue.

II. **Effective Assistance of Counsel.** The defendant makes several allegations contending that he was denied effective assistance of counsel. Generally, we do not review such claims on direct appeal since trial counsel against whom the allegations are made does not have the opportunity to sufficiently explain his or her conduct. See State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). We do not deem this a case where the trial counsel's ineffectiveness is so obvious that it may be determined from the trial record alone. See id. Therefore, we do not address the defendant's contention, but note that the defendant may present his allegations of ineffective assistance of counsel by application for postconviction relief, where a full evidentiary hearing may be had and trial counsel will have the opportunity to address the defendant's charge.

AFFIRMED.