IN THE COURT OF APPEALS OF IOWA

No. 0-245 / 99-960
Filed June 14, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TONY AUGUSTUS MALLETT,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Jeffrey L. Harris (trial) and Joseph Moothart (speedy trial ruling), District Associate Judges.

Defendant appeals from the judgment and sentence entered upon a jury verdict finding him guilty of assault on a police officer. **REVERSED AND REMANDED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney General, Thomas Ferguson, County Attorney, and Danielle Davis, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

STREIT, P.J.

Tony Mallett appeals his conviction for assault on a police officer, claiming his trial was not commenced within ninety days as prescribed by statute and there was no good cause for the delay. We concur and reverse his conviction.

I. Background Fact & Proceedings.

On January 27, 1999, the State charged Tony Mallett with assaulting a police officer while he was in the Black Hawk County Jail awaiting sentencing on other charges. Arraignment was set for February 16, but Mallett did not appear because he was transported to the Oakdale Medical and Classification Center to begin serving his sentence on the other charges and had not received notice of the arraignment. The court, apparently unaware of Mallett's whereabouts, reset the arraignment for February 23. On February 24 the court issued a warrant for Mallett's arrest based on his failure to appear.

The next day the court received a letter from Mallett stating he had not received notice of his arraignment date, was presently incarcerated in Oakdale, was in need of an attorney, wished to be arraigned in open court, and asserted his right to speedy trial. On March 5 the court appointed the public defender's office to represent Mallett and reset arraignment for March 24. A week later the court received an additional letter from Mallett which was coined "written arraignment and plea of not guilty" and informed the court he had received a copy of the trial information, wanted to waive his presence at arraignment, wished to plead not guilty, and again asserted his right to speedy trial. On March 24 the court noted Mallett's consent to written arraignment, scheduled a

pretrial conference for April 28, and set trial for May 4. At the pretrial conference the court, without explanation, set the case for sentencing on August 9.

On May 5 Mallett filed a pro se motion to dismiss for lack of speedy trial, and the court received an accompanying letter from Mallett stating he had not had any contact with his attorney, had not waived speedy trial, and had no intention of pleading guilty. The court overruled the motion because it was filed by Mallett and not his attorney and asked to be immediately notified if Mallett was seeking a trial rather than a sentencing hearing. The court interpreted Mallett's letter as a request for trial and, since the original May 4 trial date had passed, continued the matter until May 11. The day before trial the court heard Mallett's motion to dismiss for lack of speedy trial. The next day the court overruled Mallett's motion, finding although ninety days had expired there was good cause for the delay. A jury found Mallett guilty, and he was sentenced accordingly.

Mallett appeals, claiming the court erred in overruling his motion to dismiss for lack of speedy trial and his attorney was ineffective for a multitude of reasons. However, as our ruling on the motion to dismiss will render his remaining claims moot, we only address his claim of speedy trial.

II. Standard of Review.

We review a district court's ruling on a motion to dismiss under Iowa Rule of Criminal Procedure 27(2)(b) for an abuse of discretion. *State v. Nelson*, 600 N.W.2d 598, 601 (Iowa 1999).

III. The Merits.

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.

As it is the State's duty to effectuate the ninety-day speedy trial rule, we operate from the presupposition that a defendant has no duty to bring himself to trial. *State v. Hines*, 225 N.W.2d 156, 158 (Iowa 1975). Thus, if trial does not begin within ninety days of the filing of an indictment or trial information, immediate dismissal is warranted—unless the State proves defendant waived speedy trial, or there was "good cause" for the delay. *State v. Nelson*, 600 N.W.2d at 600. Under the rubric of "good cause" for delay is the situation where the defendant actively or passively participates in the events that cause the delay of his or her trial. *State v. Ruiz*, 496 N.W.2d 789, 792 (Iowa App. 1992). In such a situation, a defendant will not be permitted to take advantage of that delay to terminate the prosecution. *Id.* With regard to the general notion of good cause, our sole focus is on the reason for the delay. *State v. Peterson*, 288 N.W.2d 332, 335 (Iowa 1980). "Thus a short period of delay or the absence of prejudice may be legitimate considerations but 'only insofar as they affect the strength of the reason for delay.'" *State v. Nelson*, 600 N.W.2d at 601 (quoting *State v. Peterson*, 288 N.W.2d at 335). In other words, if the underlying reason is purely insufficient, the other factors, no matter their strength, cannot save the charge from dismissal. *Id.*

It is undisputed Mallett's trial commenced thirteen days after the speedy trial deadline expired and at no point in time did he waive his right to speedy trial.

Therefore, the sole question posited before us is if good cause existed for the delay.

First, nothing about Mallett's actions or inactions caused the delay. Mallett did not file a bevy of motions on the eve of trial, did not string along the plea negotiations and then summarily back out, nor did he fire his attorney for some frivolous reason. The State alleges the delay should be attributable to Mallett because his voluntary actions led to his incarceration at Oakdale. We could envision a situation where a defendant could be attributed delay where his actions, unbeknownst to prosecuting authorities, led to his incarceration in another county or state. In the case at hand, however, the prosecution knew the alleged offense occurred in the Black Hawk County Jail while Mallett was awaiting transfer to the department of corrections. This is not a case where Mallett was lost somewhere in the criminal justice system. The State knew his location at all times. Also, these events all occurred in the context of the defendant demanding a speedy trial in written communications with the court. Our system should have accommodated this request. Thus, we cannot find Mallett attributable for the delay caused by his incarceration and subsequent failures to appear.

Furthermore, neither the State nor the court offered any "good cause" for the delay. Both the State and the court made the misstep of turning immediately to the surrounding circumstances of the delay without offering an underlying cause for the delay. The court in denying Mallett's motion to dismiss found the delay did not prejudice Mallett. The State argues Mallett suffered no prejudice

and the delay in commencing trial was relatively brief. There has been no rationale proffered for originally setting the trial date outside the mandatory ninety days. These surrounding circumstances therefore have no bearing on the analysis. *See State v. Nelson*, 600 N.W.2d at 602. The record is simply devoid of any articulated "good cause" for the delay in commencing Mallett's repeated requests for a trial. As such, the charge against Mallett must be dismissed under Iowa Rule of Criminal Procedure 27(2)(b). The conviction is reversed and the matter remanded for dismissal of the trial information.

REVERSED AND REMANDED.