IN THE COURT OF APPEALS OF IOWA

No. 7-628 / 97-0218

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STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOHN ARTHUR DERRETT,

Defendant-Appellant.

FILED
DEC 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, William E. Adams and L. M. Goldblatt, Judges.

Defendant appeals from his conviction, following a jury trial, for possession of a controlled substance in violation of Iowa Code section 124.401(3) (1995). **REVERSED AND REMANDED.**

Linda Del Gallo, State Appellate Defender, and Tricia A. Johnston, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Rhonda J. Ganzel, Assistant County Attorney, for appellee.

Decided en banc.

PER CURIAM.

Defendant-appellant John Arthur Derrett appeals from his conviction, following a jury trial, for possession of a controlled substance, arguing the district court abused its discretion in denying his motion to dismiss based on failure to prosecute within one year. We reverse and remand on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Defendant was charged by trial information on November 16, 1994, with possession of a controlled substance. He was arraigned on November 23, 1994. On December 5, 1996, defendant filed a motion to dismiss advancing the State had failed to bring him to trial within one year after his arraignment pursuant to Iowa Rule of Criminal Procedure 27(2)(c).

The district court denied the motion to dismiss, finding good cause existed for the delay. The court found, following defendant's arraignment, he was arrested on other charges, including felonies, and defense counsel agreed to all continuances through December 21, 1995. As a result of the felonies with which defendant was charged in the interim, he was sent to prison for concurrent sentences of five and ten years. The district court further found settlement offers by the State went on until at least October 1996.

Defendant contends, among other things, none of the delay can be attributable to his actions. He claims the State's arguments there were busy court schedules and the standard procedure is to handle felony cases before misdemeanors should not be

considered because of the long delay in this case. Defendant further asserts the State made no attempt to bring this case to trial after the felony cases were resolved.

Iowa Rule of Criminal Procedure 27(2) sets the time requirements for a speedy trial. Paragraph (c) requires a trial within one year after arraignment "unless an extension is granted by the court, upon a showing of good cause." Under this rule, good cause focuses only on the reason for the delay, but surrounding circumstances such as the length of the delay, whether the defendant demanded a speedy trial, and the absence of prejudice may bear on the sufficiency of the reason for the delay. *State v. Petersen*, 288 N.W.2d 332, 334-35 (Iowa 1980).

Negotiations between the prosecution, defense counsel, and defendant toward obtaining a guilty plea may constitute good cause for delaying a trial, particularly when, as here, negotiations include several charges. *State v. LaMar*, 224 N.W.2d 252, 254 (Iowa 1974) (citing *People v. Mack*, 17 Ill.App.3d 352, 307 N.E.2d 646 (1974) and *State ex rel. Gutierrez v. Baker*, 276 So.2d 470 (Fla. 1973)).

A defendant may not actively, or passively, participate in the events which delay his trial and then later take advantage of that delay to terminate the prosecution. *State v. Finn*, 469 N.W.2d 692, 694 (Iowa 1991). These rules were not intended to provide a defendant with a weapon to trap state officials and terminate prosecutions. *Id.* A determination there is good cause for delay lies within the discretion of the district court. *See LaMar*, 224 N.W.2d at 254. An abuse of discretion will be found if the defendant shows the trial court's discretion was "exercised on grounds or for

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reasons clearly untenable or to an extent clearly unreasonable." *State v. Neary*, 470 N.W.2d 27, 29 (Iowa 1991).

Defendant agreed to the continuances which exceeded one year from his arraignment. However, he did not agree to numerous additional continuances during the next eleven months before his trial. It was not Derrett's burden to demand a speedy trial. Although several charges were pending against Derrett, the State has the duty to bring the cases to trial in a timely manner. The district court abused its discretion in not dismissing the misdemeanor charge against Derrett for failure to have a speedy trial. Consequently, we reverse the trial court's decision and remand this case for dismissal.

REVERSED AND REMANDED.