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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed May 30, 1980
vs.)
RUSSELL JOSEPH SQUIRES,) 0-85
Defendant-Appellant.) 63351

Appeal from Wapello District Court - James D. Jenkins, Judge.

Defendant appeals his conviction of burglary in the second degree, a violation of section 713.3, supplement to the Code 1977. Affirmed.

J. Terrence Denefe of Kiple & Kiple, Ottumwa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, John P. Messina, Assistant Attorney General, and Thomas F. Kintigh, Wapello County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant, Russell Joseph Squires, appeals his conviction of burglary in the second degree, a violation of section 713.3, supplement to the Code 1977. For reversal, defendant contends trial court erred in denying his application to permit the late filing of a notice of an insanity or diminished responsibility defense. We affirm the trial court.

Our review is limited to correction of errors at law. Iowa R. App. P. 4.

I.

On July 13, 1978, defendant was charged by information with burglary in the second degree, in connection with a break-in at an appliance store on the night of July 2, 1978. After trial on January 16, 1979, the jury returned a verdict of guilty as charged. Trial court sentenced defendant on January 30, 1979, to a prison term not to exceed ten years.

On January 15, 1979, one day before the scheduled start of trial, defendant filed an application to permit late filing of a notice of an insanity or diminished responsibility defense, stating defendant had just recently informed counsel he suffers from epilepsy. A hearing was held on the application later that same day. At that hearing, defendant testified he is a psychomotor epileptic and suffers occasional seizures. Defendant said he had two minor seizures in 1978, one while working at a gas station and one while in the county jail; during a seizure his mind goes blank and he has no recollection of events during the seizure. Defendant further testified he had not previously told his attorney about his epilepsy because he thought he was going to be turned over to Illinois authorities and would not be tried on the Iowa charge. Trial court overruled the application stating defendant had failed to show good cause pursuant to Iowa R. Crim. P. 10(4) to excuse his failure to file within the prescribed filing time period. Trial court further stated as an apparent rationale of its decision that defendant had failed to show his purported epileptic condition had in any way lessened his ability to distinguish right from wrong or compelled him to commit criminal acts.

II.

Defendant contends trial court erred in refusing to allow late filing of the notice of an insanity or diminished responsibility defense or grant additional time to allow

defendant to prepare this issue for trial. Defendant acknowledges the filing of his application was untimely, but asserts he established good cause why a late filing or additional defense preparation time should have been allowed. In support of his assertion, defendant advances two arguments: one technical, the other substantive.

First, defendant notes trial court apparently applied Iowa R. Crim. P. 10(4)[1], rather than Iowa R. Crim. P. 10(10)(b)(1) on which he had based his application.[2] Defendant argues Iowa R. Crim. P. 10(4) could be interpreted "to require that the period to file appropriate notice can be extended beyond 30 days only if the application to extend the period is filed within the 30-day period." If this is a correct interpretation, defendant argues, the rule should not govern because it would conflict with Iowa R. Crim. P. 10(10)(b)(1), which allows for late filing, and the trial court erred in applying Iowa R. Crim. P. 10(4).

We are unpersuaded by defendant's reasoning. Iowa R. Crim. P. 10(10)(b)(1) clearly states notice of a defense of insanity or diminished responsibility shall be filed "within the time provided for the filing of pretrial motions," id., which is governed by Iowa R. Crim. P. 10(4). The two subparagraphs both allow extension of the filing period on a showing of good cause. Iowa R. Crim. P. 10(10)(b)(1) further provides the court may "grant additional time to the parties to prepare for trial or make such other order as may be appropriate." Id. We fail to discern the interpretation defendant places on Iowa R. Crim. P. 10(4) or the distinction between the two provisions that defendant asserts,

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[1]Motions hereunder, except a motion for a bill of particulars, shall be filed either within thirty days after arraignment or prior to the impaneling of the trial jury, whichever event occurs earlier, unless the period for filing is extended by the court for good cause shown.

Iowa R. Crim. P. 10(4).

[2]Defense of insanity or diminished responsibility. If a defendant intends to rely upon the defense of insanity or diminished responsibility at the time of the alleged crime, the defendant shall, within the time provided for the filing of pretrial motions file written notice of such intention. The court may for good cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

Iowa R. Crim. P. 10(10)(b)(1).

other than that Iowa R. Crim. P. 10(10)(L)(1) allows additional forms of relief. Trial court correctly considered Iowa R. Crim. P. 10(4) in making its ruling.

On the merits, defendant contends he proved good cause existed to allow the filing of the late notice of his defense of insanity or diminished responsibility. The basis of defendant's argument is that he failed to advise his attorney of his epileptic condition until just before trial, and consequently beyond the required filing period, because defendant thought he would be turned over to Illinois authorities and would not be tried in Iowa on this charge. Defendant contends once he realized he would be tried in Iowa he wished to defend against the charge on the grounds of insanity or diminished responsibility, based in part on his epileptic condition. We find defendant failed to prove the trial court erred in failing to find good cause to extend the time for filing of his defense or grant other appropriate relief.

The matter of good cause is to be determined by the court in the exercise of judicial discretion. Pines v. District Court of Woodbury County, 233 Iowa 1284, 1302, 10 N.W.2d 574, 583 (1943). Good cause means a substantial reason affording a legal excuse. Id. Determination of good cause requires the trial court to engage in an ad hoc balancing process to evaluate the reasons offered versus the need for statutory compliance. The issue here becomes essentially whether the trial court abused its discretion in refusing to allow the late notice be filed. Abuse of discretion means the action was unreasonable and clearly untenable in light of the attendant circumstances and resulted in prejudice to the rights of the complaining party. See State v. Gartin, 271 N.W.2d 902, 910 (Iowa 1978). We presume the trial court properly exercised its discretion, and the burden of proving abuse rests on the complaining party. Id.

The facts and circumstances of this case fail to support defendant's proof of abuse. There was no showing of a reasonable cause for his belief that because he might be transferred to Illinois authorities he would never be tried on the Iowa charge. Consequently, his failure to inform his attorney of his epileptic condition to prepare for trial is inexcusable. Defendant was incarcerated for about six months prior to trial and met at least three times with his attorney, yet waited until a few days before trial to inform defense counsel of this possible defense. Defendant failed to produce any other evidence on which an insanity or diminished responsibility defense could be based.

Trial court acted within its discretion in overruling defendant's application to file a late notice of an insanity or diminished responsibility defense.

Trial court is affirmed.

AFFIRMED.