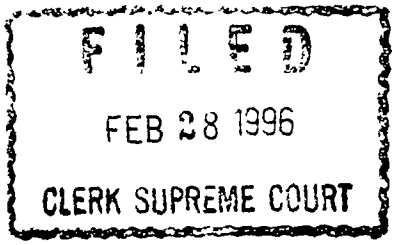
IN THE COURT OF APPEALS OF IOWA

No. 5-718 / 95-196

001235



STATE OF IOWA,

Plaintiff-Appellee,

vs.

KEITH ALAN TURNER,

Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, C. H. Pelton, Judge, and David H. Sivright, Jr., Judge.

Keith Turner appeals the judgment and sentence entered upon his conviction, following a jury trial, of second-degree theft in violation of Iowa Code sections 714.1(4) and 714.2(2) (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sarah E. Hennesy, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Lawrence H. Schultz, County Attorney, and Mike Wallace, Assistant County Attorney, for appellee.

Heard by Habhab, P.J., Cady, J., and Perkins, S.J.*

* Senior judge from the Fifth Judicial District serving on this court by order of the Iowa Supreme Court.

HABHAB, P.J.

On September 16, 1994, the State filed a trial information charging Keith Turner with second-degree theft by exercising control over a stolen vehicle. Turner entered a written arraignment, filed on September 29, in which he pleaded not guilty and demanded a speedy trial. A pretrial conference was set for November 3, and a jury trial was scheduled for November 14.

On October 3, 1994, Turner filed a motion to suppress and a hearing was set for October 27. On October 7, Turner moved, through counsel, to continue the pretrial conference due to a conflict with defense counsel's schedule. The pretrial conference was moved to October 27. On November 22, 1994, Turner wrote to the clerk of court asking when his trial would be held, noting the original trial date had passed. The State filed a motion for immediate trial setting. The court set a trial date of December 12, 1994.

On December 16, 1994, Turner filed a motion to dismiss the charge against him. At the December 29 hearing on Turner's motion, the State indicated it had been prepared to proceed with trial on December 12; however, trial was delayed due to plea negotiations. A calendar entry of the plea agreement was filed December 20. The agreement was signed by Turner, Turner's attorney, and the prosecutor. The district court denied Turner's motion, finding the State had "reasonably relied upon the Defendant's acceptance of the plea agreement to not try him within the speedy

trial time limit" and "[t]hus, passing the speedy trial time limit was attributable to the Defendant's agreement to plead guilty in lieu of the trial." The court set a January 4, 1995, date for a plea hearing.

On January 4, 1995, Turner informed the court he did not wish to enter a guilty plea. The court proceeded to set a date of January 17, 1995, for a jury trial.

Turner filed a second motion to dismiss his case pursuant to Iowa Criminal Rule of Procedure 27(b) on January 12, 1995, arguing the trial could have been held on January 9 and the delay of the trial until January 17 was not caused by him. The second motion was heard on January 17 and denied.

The jury found Turner guilty as charged. He was sentenced to a term of imprisonment not to exceed five years.

Turner appeals.

Our scope of review for speedy trial issues under Iowa Rule of Criminal Procedure 27(2)(b) is for corrections of errors at law. *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991). We recognize the trial court's discretion to refuse to dismiss within the parameters of the recognized exceptions to the speedy trial mandate. *State v. Olson*, 528 N.W.2d 651, 653 (Iowa App. 1995). Thus, we ultimately look to whether the trial court abused its discretion. *Id.*

Rule 27(2)(b) requires an accused be brought to trial within ninety days of indictment. The rule applies equally to charges brought by trial information. *State*

v. Orte, 541 N.W.2d 895, 898 (Iowa App. 1995). The burden is on the State to see the ninety-day rule is adhered to; defendants have no duty to bring themselves to trial. *State v. Hines*, 225 N.W 2d 156, 158 (Iowa 1975).

If trial is not commenced within the ninety-day period prescribed by the rule, the indictment or information must be dismissed unless the defendant has waived the speedy trial right, the delay is attributable to the defendant, or good cause exists for the delay. *State v. Finn*, 469 N.W.2d 692, 694 (Iowa 1991); *State v. Bond*, 340 N.W 2d 276, 279 (Iowa 1983). The burden is on the State to establish an exception to the ninety-day rule. *Olson*, 528 N.W.2d at 653.

The four factors examined to determine whether the good cause exception has been met are: (1) prejudice resulting from the delay; (2) the length of the delay; (3) the reason for the delay; and (4) the defendant's assertion of his or her right to a speedy trial. *State v. Todd*, 468 N.W.2d 462, 470 (Iowa 1991). We have consistently held the critical factor in the "good cause" analysis is the reason for the delay. *Olson*, 528 N.W.2d at 654; *State v. Searcy*, 470 N.W.2d 46, 48 (Iowa App. 1991). The other factors are only considered when the reason for the delay is insufficient. *State v. Petersen*, [redacted] N.W.2d 332, 335 (Iowa 1988). A weak reason for the delay may become sufficient to avoid dismissal if the delay is relatively short and does not prejudice the defendant. *Id.*

We find there was good cause for the delay.[1] On the State's initiative, the district court scheduled the case to be heard on December 12, 1994. It is clear that had it not been for the agreed-to guilty plea, the case would have been heard on December 12, 1994. Indeed, we find the plea negotiations and the agreed-to plea signed by Turner, his attorney, and the prosecutor kept the case from being tried within the ninety-day period. The delay from the expiration of ninety-day period until plea hearing on January 4 was directly attributable to Turner's actions in agreeing to a guilty plea. Trial was set less than two weeks after the plea hearing. This is a very small amount of time. Any prejudice resulting from the delay was minimal. In addition, we note Turner, through his attorney at the plea hearing,[2] agreed to scheduling the trial for January 17.

Had Turner not entered into plea negotiations and signed a written plea agreement, this delay would most likely never have occurred. In addition, Turner

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[1] There are at least two other cases that bear on the question before us. They are *State v. Clark*, 351 N W 2d 532, 535 (Iowa 1984) and *State v. Warmuth*, 532 N W.2d 163, 165 (Iowa App. 1995) Neither party mentions these cases on appeal and so we do not decide whether a new ninety-day period commences after a defendant withdraws his plan to proceed on an agreed-to guilty plea It has been decided in *Clark* and *Warmuth* that a new ninety-day period commences from the date of withdrawal of a guilty plea and the date the district court declines to accept a guilty plea.

[2] We recognize Turner expressed dissatisfaction with setting trial for January 17 At the plea hearing, the district court recognized Turner's request to set trial for the earliest possible time Both the prosecuting attorney and Turner's defense attorney agreed to the court's suggestion of setting trial for January 17 A client is bound by the acts of his attorney within the scope of the latter's authority. *State v. LaMar*, 224 N W 2d 252, 254 (Iowa 1974)

consented, through his attorney, to the setting of the trial date for January 17. We find the State has met its burden in providing good cause for the delay. We affirm the district court's ruling.

AFFIRMED.