FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

vs.

BRUCE DAMON WILLIAMS,

Defendant-Appellant.

Filed September 23, 1980

0-192
63294

Appeal from Black Hawk District Court, Forest Eastman, Associate District Judge, Peter Van Metre, District Judge.

Defendant appeals conviction for criminal trespass in violation of former section 729.1(2)(b) and (c), The Code 1977, and the appeal procedures applied in district court. - Vacated and Remanded.

W. H. Gilliam, of Rapp & Gilliam, Waterloo, for defendant-appellant.

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

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

PER CURIAM

Defendant, Bruce Damon Williams, appeals his conviction for criminal trespass in violation of section 729.1(2)(b) and (c), The Code 1977. He argues (1) the statute is unconstitutionally vague and overbroad, (2) he was denied a speedy trial, and (3) he was denied a trial de novo according to the law in effect at the time. We vacate and remand.

Williams was charged by county attorney's information on December 15, 1977. The charge arose from Williams' conduct at the Waterloo offices for Job Service of Iowa. Williams, upset over a delay in receiving unemployment benefits, entered the office of the claims manager and refused to leave or to permit the manager to leave until the dispute was resolved. Williams filed demurrer challenging the constitutionality of section 729.1(2), which was overruled. The case was tried to a jury before an associate district judge. On March 16, 1978, Williams was found guilty. He was sentenced on April 4, 1978, and filed notice of appeal pursuant to section 762.43, The Code 1977, on that same date. On July 14, 1978, the district court ordered the appeal to be governed by Iowa R. Crim. P. 54, as amended by 66th General Assembly, and transcripts submitted for the purpose of determining whether a decision on the appeal could be made from the record.

Williams filed motions to dismiss and reconsider on the grounds the matter had not been prosecuted within 60 days and amended rule 54 was not applicable in this appeal. These motions were overruled. The district court affirmed the associate district court's conviction and judgment on February 16, 1979. Williams appeals from that judgment and prior orders and rulings. Both parties agree provisions of the Code of Iowa, 1977, control this case.

I. Constitutionality.

Williams alleges the provisions in 729.1(2)(b) and (c) were overly broad in that they might apply to activity protected by the Constitution. He raises the argument the phrases "legal justification" and "unduly interferring" infringe on protected speech and are impossible for the ordinary person to ascertain. These issues have been addressed in State v. Williams, 238 N.W.2d 302 (Iowa 1975) and we find that decision is controlling in this case. The phrase "without legal justification" expressly allows and protects entry

on public property for the purpose of reasonably exercising constitutional rights. Id. at 308. Similarly, the words "unduly interfering" sufficiently apprise a person with common intelligence of the conduct prohibited; namely, unnecessary, improper, illegal or excessive interference with the normal use of public property. Id. The lower court's ruling in this issue was correct.

II. Speedy trial.

Williams sought dismissal on the grounds he was denied his right to speedy trial pursuant to section 795.2, The Code 1977, because his appeal in the form of trial de novo to the district court was not heard within 60 days of the conviction before the associate district court. In City of Des Moines v. Elliott, 267 N.W.2d 44 (Iowa 1978), the court held the speedy trial guarantee had no application to charges for non-indictable misdemeanors. The district court ruled this was such an offense. According to the statutes, definitions, and facts of the case, this public offense was a non-indictable simple misdemeanor. See sections 729.2 and 762.1. Therefore, section 795.2, The Code 1977, is not applicable. City of Des Moines, 267 N.W.2d at 46.

III. Trial de novo.

Williams argues his public offense occurred before January 1, 1978, therefore, without waiver the trial court improperly applied Iowa R. Crim. P. 54 to the appeal in district court. We agree. See State v. Kantaris, 280 N.W.2d 389, 393 (Iowa 1979); § 801.5, The Code 1979. The State, nonetheless, urges the error was harmless. Under the prior law Williams would have been entitled to a "trial anew in the district court in the same manner as it originally should have been tried." Section 762.43, The Code 1977. We find this to reach constitutional dimensions, and we are therefore required to determine beyond a reasonable doubt, the harmless effect of the error. A heavy burden is on State to overcome the implied prejudicial effect. See State v. Lawrence, 167 N.W.2d 912, 918 (Iowa 1969). The State suggests the record submitted for review was adequate and revealed no error at the associate district court level. They urge the legislative intent of the new law lessens the prejudice, and they indicate a need for judicial economy in cases such as this. However, we are not persuaded. Under the law, Williams was entitled to a public hearing of all evidence presented to a jury. These conditions were not met by review of a transcript.

We find the district court judge erred in his determination and in doing so was without authority to proceed as he did in the appeal of this matter. We vacate his order on appeal and remand for trial anew pursuant to section 762.43, The Code 1977.

VACATED AND REMANDED.