

IN THE COURT OF APPEALS OF IOWA

No. 1-677 / 11-0130
Filed September 8, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TIMOTHY ALLEN COKER,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,
Judge.

A defendant contends the district court abused its discretion in failing to
continue his sentencing hearing. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia A. Reynolds,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, Michael J. Walton, County Attorney, Jay Sommers, Assistant County
Attorney, and Tyler J. Buller, Student Legal Intern, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

VAITHESWARAN, J.

Timothy Coker agreed to plead guilty to second-degree theft. The plea agreement contained the following statement: “The State will recommend against incarceration on the condition that Defendant have restitution in hand at the time of sentencing.” Following a plea hearing, the district court accepted the guilty plea and scheduled a sentencing hearing for the ensuing month. That hearing was subsequently postponed because Coker needed additional time to obtain the restitution funds. The hearing was again postponed because Coker failed to appear, and was postponed a third time for reasons not apparent in the record.

The hearing eventually took place approximately two months after the originally-scheduled date. At that time, Coker’s attorney advised the court that a restitution check deposited in Coker’s bank account had been seized by the Child Support Recovery Unit. He asked for another continuance to allow family and friends to collect the restitution sum. The district court summarily denied the request and proceeded to sentence Coker to a prison term. On appeal, Coker contends the district court abused its discretion in failing to continue his sentencing hearing for a fourth time.

A court may continue trials only upon a showing of good and compelling cause. *State v. Artzer*, 609 N.W.2d 526, 530 (Iowa 2000) (citing what is now Iowa Rule of Criminal Procedure 2.9(2)). Coker is challenging the court’s refusal to continue his sentencing hearing rather than a refusal to continue trial, but “the symmetry afforded the trial process” also “precludes unnecessary delay in sentencing.” *Id.* at 531.

Coker's sentencing hearing was delayed three times. When it finally occurred, Coker did not have the restitution sum in hand. Under these circumstances, we conclude the district court did not abuse its discretion in denying his motion for a fourth continuance. *See id.*

We affirm Coker's judgment and sentence for second-degree theft.

AFFIRMED.