

IN THE COURT OF APPEALS OF IOWA

No. 2-1007 / 12-0470
Filed January 9, 2013

REX ALAN COUSINS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Andrea J. Dreyer, Judge.

A postconviction relief applicant appeals the district court's partial denial of relief. **AFFIRMED.**

John J. Sullivan, Oelwein, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews until withdrawal and Kevin Cmelik, Assistant Attorney General, Tom Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ. Bower, J., takes no part.

VOGEL, J.

Rex Cousins appeals the district court's decision denying him postconviction relief after his conviction for manufacturing methamphetamine, second offense. He claims his trial counsel was ineffective for failing to move to dismiss the charge because the State did not bring him to trial within ninety days of filing the trial information.¹

The original trial information was filed on January 3, 2006, charging Cousins with possession of methamphetamine, second offense, in violation of Iowa Code section 124.401(5) (2005) an aggravated misdemeanor. On February 24, with court approval, the trial information was amended and added a second count of manufacturing methamphetamine as a second offense in violation of Iowa Code section 124.401(1)(c), a class B felony. The case went to trial on May 23, 2006—eighty-eight days after the filing of the amended trial information but well beyond the ninety-day period commencing January 3 for count 1.

We review ineffective-assistance-of-counsel claims de novo. *State v. Bearse*, 748 N.W.2d 211, 214 (Iowa 2008). Though rulings on postconviction relief are usually reviewed for a correction of errors at law, when an applicant asserts a constitutional claim as the basis for postconviction relief, we review that claim de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to

¹ Cousins was also convicted of count 1, possession of methamphetamine, second offense, but the district court partially granted his application for postconviction relief finding that Cousins's right to a speedy trial was violated as to that count only. The State has not cross-appealed that finding, therefore the dismissal of the possession charge is not part of this appeal.

the extent it denied applicant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2008).

The constitutional guarantee to a speedy trial under both the Sixth Amendment of the United States Constitution, as well as Article I, section 10 of our Iowa Constitution, is implemented through Iowa Rule of Criminal Procedure 2.33(2)(b), providing, “If a defendant indicted for a public offense has not waived the defendant’s right to a speedy trial the defendant must be brought to trial within 90 days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary be shown.” Other sections of this rule have been held to be charge specific and Cousins provides no reasoning to distinguish this subsection. See e.g. *State v. Edwards*, 571 N.W.2d 497, 499-500 (Iowa Ct. App. 1997) (holding the plain language of the rule governing speedy indictments restricts speedy indictment mandate to offense or offenses for which defendant was arrested, and does not extend to a different offense not charged in a complaint related to arrest). Separate charges from one episode are not a single charge for purposes of statutory speedy indictment and speedy trial guarantees. *State v. Burton*, 231 N.W.2d 577, 578 (Iowa 1975) (rejecting the argument that speedy trial limitations relating to a previously filed charge were applicable to the separate charge even though they arose from the same episode).

The two counts here are separate charges, each containing elements not included in the other. See *Id.* A second arraignment was held on the manufacturing charge. Because the manufacturing charge was a separate charge, and was tried before the expiration of the ninety-day speedy trial period,

Cousins's counsel had no duty to seek a dismissal of that charge and therefore counsel was not ineffective for not doing so. We therefore affirm the district court's denial of postconviction relief as it pertained to the manufacturing conviction.

AFFIRMED.