

IN THE COURT OF APPEALS OF IOWA

No. 2-714 / 11-2001
Filed October 31, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT JOHN YOUNG,
Defendant-Appellant.

Appeal from the Iowa District Court for Floyd County, Peter B. Newell,
District Associate Judge.

Robert John Young appeals his conviction and sentence, asserting the district court erred in denying his motion to dismiss based upon an alleged violation of Iowa's speedy-trial rule. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, Kate Cigrand, Legal Intern, Norman Klemesrud, County Attorney, and
Todd Prichard, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Robert John Young appeals his conviction and sentence following a trial on the minutes of testimony, asserting the district court erred in denying his motion to dismiss based upon an alleged violation of Iowa's speedy-trial rule. Because Young filed a waiver of his right to a speedy trial, we affirm.

I. Background Facts and Proceedings.

On March 25, 2011, the State filed a complaint alleging that Robert Young committed an assault resulting in bodily injury after he grabbed the arm of his son, causing bruising and discomfort. On that date the district court issued a warrant for Young's arrest; however, for unknown reasons the warrant went unserved.

On April 11, 2011, the State filed a trial information charging Young with a violation of Iowa Code sections 708.1(1) and 708.2(2) (2011). Arraignment was set for May 2, 2011; however, Young, having no notice of the charges against him, failed to appear. Young was finally arrested on June 10, 2011. The public defender was appointed to represent him.

On June 17, 2011, the arraignment was reset for June 27, 2011. The same day the public defender's office filed a notice of potential conflict, as it had previously represented a significant witness in the case. On July 25, 2011, the court relieved the public defender of its duty to represent Young, appointed other counsel, and rescheduled the arraignment for August 8, 2011. Young did not resist the additional delay.

At the August 8, 2011 arraignment, Young demanded a speedy trial. Trial was set for August 29, 2011. On August 15, 2011, Young filed a motion to dismiss asserting that the State violated his right to a speedy trial. The court heard the motion on August 22, 2011, and took the issue under advisement. However, on August 26, 2011, Young filed a waiver of his right to a speedy trial and filed a motion to continue the trial date.

On August 29, 2011, the court denied Young's motion to dismiss and granted his motion to continue. The court determined Young contributed to the delay by failing to appear for the arraignment on May 2, 2011, even though he was unaware of the hearing. The court further held Young responsible for the delay following the notice of potential conflict filed by his first appointed attorney. Finally, the court determined Young was not prejudiced by the relatively short delay because he did not suffer the anxiety of awaiting trial during the period between filing the trial information and his actual arrest two months later.

A trial on the minutes of testimony was held on November 7, 2011. The court found Young guilty of assault causing bodily injury. On December 5, 2011, the court sentenced Young to thirty days in jail with all but two days suspended.

On appeal, Young argues Iowa Rule of Criminal Procedure 2.33(2)(b) provides that the time for speedy trial commences with the filing of the trial information, and that he is not responsible for the delay. While Young concedes he filed a waiver of his speedy-trial rights, he alleges the waiver was filed after the period permitted by the statute had passed and after he had filed a motion to

dismiss; thus, the subsequent waiver was contingent on the court's denial of his pending motion to dismiss.

II. Standard of Review.

We review a ruling on a motion to dismiss based on speedy-trial grounds for an abuse of discretion. *State v. Winters*, 690 N.W.2d 903, 907 (Iowa 2005). However, the discretion afforded the court narrows when speedy-trial grounds are at issue. *Id.*

III. Discussion.

Iowa Rule of Criminal Procedure 2.33(2)(b) provides:

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.

Exceptions to the speedy-trial deadline include: (1) defendant's waiver of his right, (2) delay attributable to the defendant, or (3) good cause for the delay. *Winters*, 690 N.W.2d at 908.

Here, Young filed a written waiver of his right to speedy trial on August 26, 2011, three days before the court ruled on his motion to dismiss. The waiver states in part:

Defendant deems it to be in his or her best interest to waive speedy trial rights at this time and trial be postponed until such dates as it may be scheduled for trial by the Court. Defendant reserves the right to subsequently withdraw his Waiver upon written notice thereof to the Court and the State of Iowa.

Under these facts we conclude Young expressly consented or acquiesced to the delay. Therefore, we need not analyze whether the delay was attributable to the defendant or other good cause existed for the delay.

Young also failed to cite authority in support of his arguments that the waiver was contingent or ineffective because he filed the waiver after he alleges the violation was complete, and thus, waived these issues on appeal. Iowa R. App. P. 6.903(2)(g)(3). Moreover, Young acquiesced in rescheduling his arraignment for August 8th. He then filed his waiver and a motion to continue trial on August 26, 2011, so he would have more time to prepare his defense. These actions belie his concern that his trial be held within the period provided by the statute.

IV. Conclusion.

Because Young filed a waiver of his right to a speedy trial, we find the district court did not abuse its discretion in denying his motion to dismiss.

AFFIRMED.

Vogel, P.J., concurs; Mullins, J., concurs specially.

MULLINS, J. (concur specially)

I respectfully specially concur. I would reach the same result, but not on the basis that the August 26 waiver of speedy trial waived the rights asserted by the defendant in his motion to dismiss.

The initial delays in giving notice to the defendant of the original arraignment date are attributable to the State. After the defendant was arrested, the delays in reaching the arraignment and in scheduling the trial are attributable to the defendant, as a result of the conflict issue presented by his counsel, the public defender. As trial was set for August 29, 2011, the defendant's motion to dismiss, which was heard on August 22, should have been overruled for reasons attributable to defendant. His August 26, 2011 waiver of speedy trial did not waive the rights previously asserted in his motion, which were under advisement at the time of the waiver, and only applied prospectively.