

**IN THE COURT OF APPEALS OF IOWA**

No. 3-213 / 12-0858  
Filed May 15, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ALBERT JOHNSON BUTLER III,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Thomas G. Reidel,  
Judge.

A defendant contends that his right to a speedy trial was violated.

**AFFIRMED.**

Nathan W. Tucker, Davenport, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant  
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**VAITHESWARAN, P.J.**

We must decide whether a defendant's speedy trial right was violated.

***I. Background Proceedings***

Albert Butler was incarcerated in a federal prison in Illinois when the State of Iowa filed a trial information charging him with several crimes. The information was filed on August 9, 2011, and he was initially slated to go to trial ninety days later, on November 7, 2011. Butler was released from the federal prison and was returned to Iowa on October 7, 2011.

On October 26, 2011, Butler filed a pro se motion to dismiss, asserting his ninety-day right to a speedy trial had been violated. A week later, he waived his right to a speedy trial. The district court subsequently denied his motion to dismiss.<sup>1</sup>

The case proceeded to trial several months later. The jury found Butler guilty of (1) first-degree burglary, (2) first-degree robbery, (3) conspiracy to commit a forcible felony, (4) willful injury causing serious injury, and (5) assault while participating in a felony resulting in serious injury. The district court merged counts 3 and 5 with the remaining counts and imposed judgment and sentence.

This appeal followed.

***II. Speedy Trial***

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

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<sup>1</sup> Butler also waived his 180-day right to speedy trial under the Agreement on Detainers Compact. See Iowa Code § 821.1(3)(a) (2011). He does not challenge the State's failure to bring him to trial within this period nor does he address the interplay between our ninety-day speedy trial rule and the 180-day detainer deadline. See *Howard v. State*, 755 N.E.2d 242, 246 (Ind. Ct. App. 2001) (“[W]e find that [Indiana’s speedy-trial rule] was inapplicable for Howard’s period of incarceration in Kentucky.”).

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.

This rule applies when charges are brought against a defendant by way of a trial information. *State v. Olson*, 528 N.W.2d 651, 653 (Iowa Ct. App. 1995). The rule is "more stringent than the constitutional protection delineated in" case law. *State v. Nelson*, 600 N.W.2d 598, 600 (Iowa 1999).

Butler focuses on the portion of the rule providing that "good cause" must be shown for any delay in bringing him to trial. He contends there was no good cause for the State's delay in transferring him to Iowa, a delay that reduced his time to prepare for trial. We need not reach the good cause issue because Butler concedes he "signed a waiver of his 90-day speedy trial right" and he does not argue that the waiver was involuntary. See *State v. Kluge*, 672 N.W.2d 506, 510 (Iowa Ct. App. 2003). Absence of a waiver is a precondition to application of the speedy trial deadline. Iowa R. Crim. P. 2.33(2)(b) ("*If a defendant indicted for a public offense has not waived the defendant's right to a speedy trial . . . .*" (emphasis added)).

In light of Butler's waiver, the ninety-day speedy trial deadline was inapplicable. We affirm Butler's judgment and sentence.

**AFFIRMED.**