

**IN THE COURT OF APPEALS OF IOWA**

No. 6-159 / 05-0786  
Filed May 10, 2006

**STATE OF IOWA**

Plaintiff-Appellee,

**vs.**

**DONALD EDWARD McVEY,**

Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, James D. Birkenholtz,  
District Associate Judge.

Defendant appeals the district court's refusal to order the State to process  
outstanding arrest warrants against him. **AFFIRMED.**

Christopher Kragnes, Sr. and Tiffany Koenig of Kragnes, Tingle & Koenig,  
P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Christina M. Gonzalez,  
Assistant County Attorney, for appellee.

Considered by Miller, P.J., and Hecht, J., and Schechtman, S.J.\*

\*Senior Judge assigned by order pursuant to Iowa Code section 602.9206  
(2005).

**SCHECHTMAN, S.J.*****I. Background Facts & Proceedings***

Donald McVey was charged with domestic abuse assault causing injury, in violation of Iowa Code section 708.2A(2)(b) (2003). An order was entered prohibiting him from having contact with the victim, Ksea Parker. McVey pled guilty to domestic abuse assault causing injury. He was sentenced to one year in prison, consecutive to a parole revocation in a different case. The no-contact order was extended until April 30, 2004.

While McVey was imprisoned he continued to write and remit letters to Parker. On September 26, 2003, an assistant county attorney filed an affidavit attesting McVey had engaged in thirteen counts of violating the no-contact order. The district court found probable cause existed to detain McVey on these charges. An arrest warrant was issued on September 29, 2003. The State has taken no action to execute this warrant.

On February 17, 2004, the State again filed an affidavit asserting that McVey had engaged in four more counts of violating the no-contact order. An arrest warrant was issued that same day, but it also has not been served. McVey's attorney, Ted Prine, advised McVey that the charges would be held in abeyance until McVey was released from prison.

McVey sent the clerk of court a letter requesting new counsel. He stated, "I furthermore would like this new attorney for a motion to dismiss my current charges of violation of no-contact for failure to prosecute." McVey signed an application for appointment of counsel. The district court appointed Prine for the

matter of the pending warrants. The court subsequently permitted Prine to withdraw. A notation on the order states, "D. is in prison – State does not request D. to be brought back for VNCO matter – to be addressed when D. is released from prison."<sup>1</sup>

McVey sent a letter to the district court judge, again asking for the appointment of new counsel, and enclosing a copy of his application for appointment of counsel. McVey reiterated that he wanted to file a motion to dismiss the pending warrants for failure to prosecute. The district court responded by stating it would take no action beyond filing the letter. The order provided:

At this time the request is denied. D. is in prison on other charges – a warrant is issued on this case and the warrant will be processed when D. is released from prison and this charge will be addressed at that time. D. can reapply for an attorney at such time.

McVey filed a pro se appeal of the district court's decision. Counsel was appointed for the appeal.

## ***II. Appeal***

McVey contends the district court violated due process by failing to prosecute the arrest warrants. See *State v. Brown*, 656 N.W.2d 355, 363 (Iowa 2003) (finding that a defendant's due process rights may be violated if the State delays filing charges in order to intentionally gain a tactical advantage over the defendant).

However, the district court's decision did not address McVey's claims that the arrest warrants should be dismissed due to failure to prosecute. There was

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<sup>1</sup> By D., the court was referring to defendant. The abbreviation VNCO stands for violation of a no-contact order.

no final ruling by the district court on the issue which McVey raises on appeal. Issues must be raised and ruled upon by the district court before they can be raised and decided on appeal. *State v. Jefferson*, 574 N.W.2d 268, 278 (Iowa 1997). This court may not consider an issue raised for the first time on appeal, even if it is of a constitutional dimension. *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994).

**AFFIRMED.**

Hecht, J., concurs; Miller, P.J., concurs specially.

**MILLER, P.J.** (concurring specially)

I concur in the result.