

IN THE COURT OF APPEALS OF IOWA

No. 8-1041 / 08-0595
Filed January 22, 2009

JACOB ERNEST BOHI,
Plaintiff-Appellant,

vs.

JOHN B. MARTIN,
Davis County Magistrate,
Defendant-Appellee.

Appeal from the Iowa District Court for Davis County, Joel D. Yates,
Judge.

Petitioner claims that the district court erred in dismissing his petition for writ of certiorari. **REMANDED WITH INSTRUCTIONS.**

Richard Gaumer of Webber, Gaumer & Emanuel, P.C., Ottumwa, for
appellant.

John Martin, Bloomfield, appellee pro se.

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

VAITHESWARAN, J.

Jacob Ernest Bohi was charged with failure to maintain or use a seatbelt. After Bohi notified the prosecution that he had a medical exemption, the prosecutor moved to dismiss the charge. On October 10, 2007, a magistrate entered an order of dismissal but ordered Bohi to pay court costs of \$50. The order was served on Bohi on the same day.

On February 18, 2008, Bohi filed a petition for writ of certiorari in the Iowa District Court, claiming that the magistrate illegally taxed court costs to him. Following a hearing, the district court concluded that “[b]ased upon the evidence presented,” the petition for writ of certiorari should be denied. Bohi appealed.

The record discloses a jurisdictional issue: the timeliness of Bohi’s petition for writ of certiorari to the district court. Under Iowa Rule of Civil Procedure 1.1402(3), the petition must be “filed within 30 days from the time the tribunal, board or officer exceeded its jurisdiction or otherwise acted illegally.” As noted, the order taxing costs to Bohi was entered on October 10, 2007. Bohi’s petition for writ of certiorari was filed on February 18, 2008, a full 122 days after the order being challenged. The petition, therefore, was untimely.

“An untimely petition for writ of certiorari deprives the reviewing court of subject matter jurisdiction.” *Sergeant Bluff-Luton School Dist. v. City Council*, 605 N.W.2d 294, 297 (Iowa 2000). Subject matter jurisdiction can be challenged at any time, and the issue may even be raised by an appellate court sua sponte. *State ex rel. Vega v. Medina*, 549 N.W.2d 507, 508 (Iowa 1996). Because the petition was untimely, the district court had no jurisdiction to consider it. *Director*

of Iowa Dep't of Human Servs. v. Iowa Dist. Ct., 621 N.W.2d 189, 192 (Iowa 2001).

We remand the case to the district court with instructions to dismiss Bohi's petition.

REMANDED WITH INSTRUCTIONS.