

IN THE COURT OF APPEALS OF IOWA

No. 8-858 / 07-0350
Filed January 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KOREY LINN CHRISTIAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A defendant appeals following his conviction for manufacturing a controlled substance. **AFFIRMED.**

Shane Michael, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

VOGEL, P.J.

Korey Christian pled guilty to manufacture of methamphetamine in violation of Iowa Code section 124.401(1)(c) (2003). He appeals from the judgment and sentence following his guilty plea and asserts that his counsel was ineffective for failing to file a motion to dismiss pursuant to Iowa Rule of Criminal Procedure 2.33(2)(a) and (b). Upon our de novo review of the record, we conclude that neither Christian's right to a speedy indictment nor his right to a speedy trial was violated. *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998).

I. Speedy Indictment.

Pursuant to Iowa Rule of Criminal Procedure 2.33(2)(a), a defendant must be indicted within forty-five days of his arrest, absent good cause. In the present case, on March 8, 2006, Christian was charged by trial information with manufacture of methamphetamine while he was incarcerated in the Clarinda Correctional Facility on unrelated charges. Subsequently, on April 10, 2006, Christian was "arrested" when he was transported from the Clarinda Correctional Facility to the Black Hawk District Court where he was arraigned on this charge. See *State v. Waters*, 515 N.W.2d 562, 566 (Iowa Ct. App. 1994) ("A person must be in the custody of county authorities of the county issuing the arrest warrant for a person to be under 'arrest' in that county."); see also *State v. Edwards*, 571 N.W.2d 497, 499-500 (Iowa Ct. App. 1997) (stating that "there is nothing to suggest [rule 2.33(2)(a)] extends to the commission of an offense which has not resulted in an arrest"). Thus, Christian was actually indicted prior to his arrest and there was therefore no violation of Iowa Rule of Criminal Procedure 2.33(2)(a). See *State v. Mason*, 203 N.W.2d 292, 294 (Iowa 1972) (holding no

violation of thirty-day speedy indictment rule occurred with respect to charge of false uttering of a check where, although defendant was incarcerated on January 3 and not indicted until March 20, incarceration on January 3 was on a charge unrelated to the March 20 charge).

II. Speedy Trial.

Pursuant to Iowa Rule of Criminal Procedure 2.33(2)(b), a defendant must be brought to trial within ninety days of his indictment, absent good cause. As noted above, on March 8, 2006, Christian was indicted by trial information. On April 10, 2006, Christian was arraigned and a final pretrial conference was scheduled for May 12, 2006, with trial scheduled for May 16, 2006. On May 12, 2006, Christian requested “the case be set for further proceedings,” rather than remain on the trial schedule. The court entered an order scheduling “further proceedings” for June 26, 2006, and noted that this was pursuant to the defendant’s request and attributed the delay to the defendant. On June 26, 2006, Christian was to appear “for the entry of a guilty plea” but remained incarcerated in Clarinda. The court ordered Christian’s return to Black Hawk County for a July 21, 2006 hearing for the entry of the guilty plea. Subsequently, the guilty plea hearing was rescheduled several times. On January 29, 2007, Christian pled guilty and was sentenced.

Once Christian indicated his intent to plead guilty and requested a hearing be scheduled to do so, he effectively waived his right to a speedy trial. Thus, there was no violation of Iowa Rule of Criminal Procedure 2.33(2)(b). See *State v. Warmuth*, 532 N.W.2d 163, 166 (Iowa Ct. App. 1995) (“Once a defendant indicates the choice to forego trial by . . . advising the State that a plea of guilty is

forthcoming, the case is removed from the trial calendar and the State discontinues trial preparations. There is little, if any, need for either the State or the defendant to prepare for trial.”); see also *State v. Clark*, 351 N.W.2d 532, 534 (Iowa 1984) (holding that when a defendant enters a guilty plea and subsequently withdraws the guilty plea, the State must try the defendant within ninety days of the withdrawal of the guilty plea), *superseded by statute on other grounds*, *State v. Spoonemore*, 598 N.W.2d 311, 311-12 (Iowa 1999); *State v. Belieu*, 314 N.W.2d 382, 384 (Iowa 1982) (same).

Because neither Christian’s right to a speedy indictment nor his right to a speedy trial was violated, his trial counsel was not ineffective for failing to file a motion to dismiss. Thus, we affirm pursuant to Iowa Court Rule 21.29(1)(a) and (e).

AFFIRMED.