

IN THE IOWA DISTRICT COURT IN AND FOR MONROE COUNTY

STATE OF IOWA Plaintiff, v. JOSHUA J. BURK, Defendant.	CASE NO. FECR061033 RULING ON DEFENDANT'S MOTION TO DISMISS
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This case came before the Court for hearing on June 25, 2021, on Defendant's Motion to Dismiss filed June 14, 2021. The State filed a Resistance and supporting brief on June 17, 2021. Appearing at hearing for the State of Iowa was Assistant Monroe County Attorney Laura Davis. The Defendant appeared by attorney James Underwood.

FINDINGS OF FACT

For the purposes of this Motion, the relevant facts are as follows. A criminal complaint alleging Joshua Burk had committed an attempted murder was filed December 7, 2020. Burk was then arrested by the Albia Police Department on December 22, 2020. Trial Information was filed February 5, 2021. A written arraignment demanding a speedy trial was filed April 28, 2021; however, no order on the arraignment was filed until June 11, 2021. At that time, trial was set for July 13, 2021, with the knowledge that the date was outside the original ninety days and that Burk would be filing this Motion.

CONCLUSIONS OF LAW

The right to a speedy trial is "a fundamental and venerable fixture in criminal prosecutions" and is "guaranteed by the Sixth Amendment of the United States Constitution, as well as Article

1, section 10 of our Iowa Constitution, and is now solidified in our rule of criminal procedure.” *State v. Olson*, 528 N.W.2d 651, 653 (Iowa Ct. App. 1995). Under the Sixth Amendment, the speedy trial protections apply when there is “either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge.” *United States v. Marion*, 404 U.S. 307, 463 (1971). Under the Iowa Constitution, the speedy trial and indictment provisions are embodied in Iowa Court Rule 2.33. *State v. Williams*, 895 N.W.2d at 866. Iowa Court Rule 2.33 requires that an indictment be filed within 45 days of the arrest of an individual and that trial be held within 90 days of the filing of the indictment. The Rule requires dismissal of the prosecution if these deadlines are missed without good cause excusing noncompliance.

ANALYSIS

Regarding the right to a speedy trial and speedy indictment rule, the Iowa Supreme Court has held:

the purpose of these protections, both constitutional and statutory, is to relieve one accused of a crime of the hardship of indefinite incarceration awaiting trial or the anxiety of suspended prosecution, if at liberty on bail, and to require courts and peace officers to proceed with the trial of criminal charges with such reasonable promptness as proper administration of justice demands.

State v. Williams, 895 N.W.2d 856, 866 (Iowa 2017) (quoting *State v. Allnutt*, 261 Iowa 897, 901, 156 N.W.2d 266, 268 (1968)). Iowa Rule 2.33(2)(b) is the applicable rule here and states:

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.

It is undisputed that the indictment in the case was filed on February 5, as Trial Information. Further, while it was not until April 28 that Defendant demanded a speedy trial, it is presumed under our law that defendants retain their constitutional rights unless an intentional relinquishment or abandonment of that right is shown. *State v. Taylor*, 881 N.W.2d 72 (Iowa 2016). This is further

emphasized by the language in Rule 2.33(2)(b), which does not look to whether a defendant has affirmatively demanded a speedy trial, but only to whether the defendant has waived that right. There is no evidence of such relinquishment or waiver on the part of Defendant; therefore, the Court begins the running of the 90 days in which to bring the Defendant to trial on February 5 when the Information was filed. That means the last date the State could commence trial in this matter was May 6. The Court is mindful that the State could not know with certainty whether Defendant would seek or waive his right to a speedy trial until the arraignment filed on April 28. However, “the State, not the defendant, has the obligation to bring a defendant to trial” and it is the State’s burden to adequately prepare its prosecutions within the deadlines imposed by law. *State v. Montgomery*, 232 N.W.2d 525, 527 (Iowa 1975). Therefore, the Court determines the State has failed to timely bring the Defendant to trial in this case.

The State argues good cause under Rule 2.33(2)(b) excuses the speedy trial violation due to the late arraignment, continuances, and multiple substitutions of defense counsel. The Court is unpersuaded by these arguments because the running of the 90 days is triggered by the filing of the indictment or information. The arraignment date is significant for the one year deadline under Rule 2.33(2)(c), but does not have any bearing on facts presented here. It is true that a failure to demand a speedy trial may be considered by the court in determining whether good cause exists. *State v. Goff*, 244 N.W.2d 579 (Iowa 1976). In the present case, Defendant did assert his right to a speedy trial although months after Trial Information was filed. In the Court’s view, this delay in asserting the right does not alone suffice as good cause, particularly when considered with the presumption that a defendant retains their right to a speedy trial unless relinquished or waived. Therefore, the Court finds good cause does not exist to excuse the State’s failure to timely try the case, and no reason to extend the speedy trial deadline.

RULING

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is granted. The Defendant is released from custody. All bonds are exonerated.

IT IS FURTHER ORDERED that, having dismissed the prosecution of this matter, the Motion to Consolidate filed by the State of Iowa on June 16, 2021, is moot.



State of Iowa Courts

Case Number
FECR061033
Type:

Case Title
STATE OF IOWA VS BURK, JOSHUA JAMES
DISMISSED PER COURT

So Ordered

Joel D. Yates, District Court Judge,
Eighth Judicial District of Iowa

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