

IN THE COURT OF APPEALS OF IOWA

No. 9-432 / 08-1249
Filed July 2, 2009

EDWARD CAMPBELL,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,
Judge.

A postconviction relief applicant asserts that trial, appellate, and initial postconviction counsel were ineffective for failing to argue that applicant's trial information should have been dismissed for failure to bring the applicant to trial within one year of arraignment. **REVERSED AND REMANDED.**

Edward Campbell, Fort Dodge, pro se.

Brian Farrell, Cedar Rapids, for appellant.

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

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

Edward Campbell, adjudged guilty of delivering a controlled substance, unsuccessfully appealed his conviction and later filed this application for postconviction relief, raising several ineffective-assistance-of-counsel claims. Following a hearing, the district court denied the application.

On appeal, Campbell asserts, “trial, appellate, and postconviction counsel were ineffective for failing to challenge the violation of [his] right to be tried within one year of arraignment pursuant to rule 2.33(2)(c).” Iowa Rule of Criminal Procedure 2.33(2)(c) provides: “All criminal cases must be brought to trial within one year after the defendant’s initial arraignment pursuant to rule 2.8 unless an extension is granted by the court, upon a showing of good cause.”

Campbell filed a written arraignment on September 28, 2005. Although an “arraignment order” was not filed until October 13, 2008, the State appears to concede that the September 28 date began the one-year time period under Rule 2.33(2)(c). Campbell was not brought to trial until October 2, 2006, which was outside this time frame.

Therefore, we turn to the “good cause” exception set forth in the rule. *Id.* The principal question in determining whether good cause exists is the reason for the delay. *State v. Rodriguez*, 511 N.W.2d 382, 383 (Iowa 1994). “Other factors to be considered include the length of the delay, whether the defendant had asserted his right to a speedy trial, and whether the defendant was prejudiced by the delay.” *Id.*

There is no question that Campbell was responsible for significant portions of the delay. For example, trial was originally scheduled for December 19, 2005,

but Campbell filed a motion for substitution of counsel on the day of trial. That motion was granted, new counsel was appointed, and the trial was continued to March 13, 2006. The March 13, 2006 trial date was moved back when Campbell's motion for a psychiatric evaluation was granted and the court scheduled a competency hearing for April 27, 2006. Campbell filed a limited waiver of his right to a speedy trial until June 5, 2006, under related rule 2.33(2)(b), which requires a defendant indicted for a public offense to be brought to trial within ninety days of the indictment unless good cause is shown. The court rescheduled trial for May 30, 2006.

On May 30, Campbell demanded the presence of an expert from the Iowa Department of Criminal Investigation. The trial was continued until June 5, 2006. Also on May 30, Campbell's new attorney became aware of an ethics complaint Campbell had filed against him. Campbell asked for substitute counsel but insisted that trial proceed on June 5, 2006. The court determined that if Campbell did not waive his right to speedy trial, "any delay beyond the speedy trial expiration date shall be attributed to the conduct of the defendant as specified in the above calendar entry."

Trial was eventually rescheduled for August 7, 2006. On that date, Campbell requested DNA testing of certain evidence. The motion was granted the same day, but the court indicated that testing would take some time. The court considered Campbell's request a waiver of his demand for speedy trial. In the same order, the court found that good cause was shown to extend the commencement of trial beyond the date prescribed in rule 2.33(2)(c).

On August 10, 2006, Campbell withdrew his motion for DNA testing and rescinded his previous waiver of speedy trial deadlines. The court allowed Campbell's withdrawal of the motion and ordered its August 7, 2006 order withdrawn. The court set a scheduling conference for September 13, 2006, and rescheduled trial for September 18, 2006. This trial date was within the one-year deadline set forth in rule 2.33(2)(c). Up to this point, the delays were attributable to Campbell.

Trial did not take place on September 18, 2006. On September 13, the court moved the trial date back to September 22, 2006. According to a calendar entry, Campbell requested this postponement, but a later order stated that the continuance was due to "insufficient judicial resources."

The trial did not take place on September 22, 2006. Instead, the trial was postponed until September 29, again due to "insufficient judicial resources." The September 29, 2006 date was outside the one-year deadline.

On September 29, 2006, the State requested a continuance of the trial until October 2, 2006, as two witnesses were unavailable on September 29. The district court "reluctantly" granted the motion. A bench trial was finally held on October 2, 2006.

This history reveals that, while the initial delays were attributable to Campbell, the delays after September 18, 2006, were attributable to the court or the State. But for these additional extensions, Campbell could have been brought to trial within one year of arraignment, as prescribed by rule 2.33(2)(c). *See State v. Miller*, 637 N.W.2d 201, 205 (Iowa 2001) ("Prior cases teach that the general press of court business is insufficient to avoid dismissal under a speedy-

trial rule, even for a busy judge sitting in a high-volume court.” (quoting *State v. Nelson*, 600 N.W.2d 598, 602 (Iowa 1999))). For this reason, we conclude good cause did not exist for non-compliance with the rule. In light of our conclusion, we need not address the additional factors cited above. *Id.* (“[I]f the reason for the delay is sufficient the other factors are not needed. If the reason for the delay is insufficient the other factors will not avail to avoid dismissal.” (quoting *State v. Peterson*, 288 N.W.2d 332, 335 (Iowa 1980))).

As noted at the outset, Campbell raised this speedy trial issue under an ineffective-assistance-of-counsel rubric. Therefore, the key questions are whether his attorneys breached an essential duty in failing to seek dismissal based on the rule violation and whether Campbell was prejudiced as a result. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). On our de novo review, we are convinced both requirements are satisfied. See *Miller*, 637 N.W.2d at 206 (stating that violation of speedy trial deadline mandates dismissal of the criminal charges). Because trial took place more than a year after the arraignment and Campbell did not instigate the final three postponements which resulted in a trial date outside the one-year period, we conclude that if trial counsel had filed a motion to dismiss, there is a reasonable probability the motion would have been granted. We reverse and remand for dismissal of the trial information.

REVERSED AND REMANDED.