STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0584

State of Minnesota,
Appellant,

vs.

Jeffrey Mark Kushinski,
Respondent.

Filed October 11, 2021
Affirmed
Smith, Tracy M., Judge

Isanti County District Court
File No. 30-CR-20-578

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Jeffrey R. Edblad, Isanti County Attorney, Joel B. Whitlock, Assistant County Attorney, Cambridge, Minnesota (for appellant)

Drake D. Metzger, Metzger Law Firm, LLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and

Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from the district court's pretrial order dismissing a criminal complaint against respondent Jeffrey Mark Kushinski due to a lack of jurisdiction, appellant State of Minnesota argues that the district court erroneously determined that dismissal was required because the six-month time limit imposed by the Uniform Mandatory Disposition of Detainers Act (UMDDA) for the disposition of the case had lapsed. The state argues that (1) the time limit had not lapsed because it was tolled by delays attributable to Kushinski; (2) Kushinski implicitly waived the time limit; and (3) in the alternative, the district court erred by failing to sua sponte determine whether good cause existed to extend the time limit. Based on the district court's unchallenged factual findings, we conclude that Kushinski did not cause delay that tolled the limitations period and did not waive the time limit. We further conclude that the district court did not err by dismissing the case without sua sponte determining whether good cause existed to extend the time limit. We affirm.

FACTS

In August 2020, while serving probation on an unrelated matter, Kushinski was charged with felony possession of pornographic works, felony predatory-offender-registration violations, and felony fleeing a peace officer in a motor vehicle. The following month, his probation was revoked, his sentence was executed, and he was imprisoned.

Kushinski signed a request for final disposition of the criminal charges pursuant to the UMDDA, which establishes a six-month deadline for the final disposition of criminal

cases against an incarcerated person. Minn. Stat. § 629.292, subds. 1, 3 (2020). His request was received by the district court and the county attorney on October 13, 2020.

Kushinski's first appearance was scheduled for November 5, but he failed to appear "[f]or reasons that are unclear," according to the district court. His first appearance was rescheduled for January 13, 2021. On January 12, a case manager informed district court administration that Kushinski would be unable to attend the scheduled hearing because his living unit was under "lockdown quarantine status." Kushinski's first appearance was then rescheduled for February 3, but, again, "[f]or reasons that are unclear," it was reset by the district court for March 18.

Kushinski made his first appearance on March 18 and, at that hearing, was appointed a public defender. On March 23, his lawyer requested discovery from the state. On March 31, the district court held Kushinski's second-appearance hearing under Minn. R. Crim. P. 8, and, at that hearing, scheduled an omnibus hearing for April 15.

At the April 15 omnibus hearing, defense counsel submitted a motion to dismiss under the UMDDA based on the argument that the six-month time limit had lapsed. The state objected and argued that there was good cause to extend the six-month time limit under the UMDDA. Defense counsel argued that the court no longer had jurisdiction to extend the deadline for good cause because the time limit had already lapsed.

The district court held a hearing on Kushinski's motion to dismiss on April 26 and thereafter issued a written order dismissing the complaint with prejudice. In its order, the district court determined that the six-month period under the UMDDA expired on April 12,

2021, and rejected the state's tolling and waiver arguments. The district court did not determine whether good cause existed to extend the deadline.

The state appeals.

DECISION[1]

The UMDDA establishes "a prisoner's right to speedy disposition of untried charges." *State v. Kurz*, 685 N.W.2d 447, 449 (Minn. App. 2004) (quotation omitted), *rev. denied* (Minn. Oct. 27, 2004). The UMDDA allows an incarcerated person to "request final disposition of any untried indictment or complaint pending against the person in this state." Minn. Stat. § 629.292, subd. 1(a). Once the request is received, the incarcerated person is entitled to a trial "[w]ithin six months after the receipt of the request . . . or within such additional time as the court for good cause shown in open court may grant." *Id.*, subd. 3. If the state fails to meet the six-month deadline, absent a good-cause extension of the deadline or the parties' agreement to a continuance, the district court no longer has jurisdiction and must dismiss the indictment with prejudice. *Id.* Whether a district court retains jurisdiction is a legal issue we review de novo. *See State v. Wilson*, 632 N.W.2d 225, 229 (Minn. 2001).

I. The UMDDA's six-month time period was not tolled.

The state first argues that the statutory time period was tolled and therefore did not expire on April 12, 2021. The UMDDA's six-month time period may be tolled for delays that the defendant caused or created. *Id.* at 230; *see also State v. Mikell*, 960 N.W.2d 230,

[1] Appellate courts do not review a pretrial order unless that order has a "critical impact" on the state's ability to prosecute the case. *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005). The district court's order dismissing the complaint with prejudice had a critical impact on the state's ability to prosecute Kushinski.

240 n.3 (Minn. 2021) (discussing *Wilson* and similar holdings of other courts in UMDDA jurisdictions). The state argues that Kushinski caused delay in three ways. None of its arguments are persuasive.

A. Nonappearance at Hearings

The state first argues that Kushinski caused delay by failing to appear at three scheduled first-appearance hearings. The district court found, and the state does not contest, that Kushinski did not appear for his initially scheduled first-appearance hearing "[f]or reasons that are unclear"; that Kushinski was unavailable for the rescheduled first-appearance hearing because his living unit was on lockdown quarantine status; and that the third scheduled first-appearance hearing was reset for March 18 "[f]or reasons that are unclear." Nothing in these factual findings supports the state's argument that Kushinski's failures to appear at the three scheduled first-appearance hearings "were attributable to" Kushinksi.

B. "Demands" by Kushinski

The state next argues that Kushinski caused delay by making "demands" at his first and second appearances—specifically, Kushinski's request for a public defender, the scheduling of a rule 8 hearing, and the scheduling of an omnibus hearing.

Kushinski was appointed counsel at his first-appearance hearing on March 18. The state does not explain how Kushinski's request for appointment of a public defender necessitated further delay in the state's prosecution. In any event, the state cites no authority for the proposition that a request for an attorney tolls the UMDDA time limit. The state's argument of delay based on Kushinski's request for counsel is unpersuasive.

As for the scheduling of a rule 8 hearing, under the rules of criminal procedure, a district court "must set a date for a Rule 8 appearance" unless a defendant waives the right to that appearance. Minn. R. Crim. P. 5.05. In its order granting the motion to dismiss, the district court noted that, at the first appearance, "the matter was scheduled for a Rule 8 hearing on March 31." The state appears to argue that, by not waiving the rule 8 hearing, Kushinski caused delay. The argument is unconvincing. At his first appearance on March 18, Kushinski did not yet have counsel. He did not cause delay by not objecting to the district court's routine setting of a rule 8 hearing for 13 days later, on March 31.

The state also relies on Kushinski's "demand" for an omnibus hearing. The district court found: "At the Rule 8 hearing [Kushinski] appeared with counsel and requested that the matter be set on for an Omnibus hearing. At the hearing the parties were provided a date of April 15, 2021 for the Omnibus hearing."

Under rule 8, if the defendant does not wish to plead guilty, the arraignment "must be continued until the Omnibus Hearing." Minn. R. Crim. P. 8.02, subd. 1. An omnibus hearing must be held within 28 days unless the court finds good cause exists to extend the time limit. Minn. R. Crim. P. 8.04. The omnibus hearing scheduled by the district court for April 15 was the procedural omnibus hearing required by rule 8. The state does not argue, and the record does not reflect, that Kushinski sought a contested omnibus hearing. Again, we are not persuaded that a defendant's request for a procedurally required hearing constitutes delay. Moreover, at the time of the rule 8 hearing on March 31, Kushinski had

not yet received responses to his recently appointed counsel's request for discovery.[2] Especially in these circumstances, we are not persuaded that Kushinski's request for a procedural hearing to which he was entitled by the rules of criminal procedure caused a delay that tolled the running of the statutory time period.[3]

C. Motion to Dismiss

Finally, the state argues that the time period was tolled by Kushinski filing a motion to dismiss for lack of jurisdiction. The argument is without merit. It is true that a defendant's motion to dismiss can toll the statutory time limit under the UMDDA while the district court is considering the motion. *See Wilson*, 632 N.W.2d at 230 (approving tolling while a defendant's motion is pending and stating that "[t]o hold otherwise would allow defendants to trigger a UMDDA violation simply by pursuing a motion to dismiss the complaint"). However, Kushinski's motion to dismiss was filed on April 15—three days *after* the six-month time period had expired. Because the UMDDA time period had already expired, there was no time period left to toll.

In sum, the district court did not err by concluding that the UMDDA's six-month time period was not tolled.

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[2] The state's disclosures were filed on April 13, after the six-month time period had lapsed.

[3] Our conclusion is reinforced by our decision in *Kurz*. In that case, we concluded that the UMDDA's time limit was tolled during the period of time reasonably needed to consider the appellant's motion to dismiss for lack of probable cause. *Kurz*, 685 N.W.2d at 448-50. Specifically, we determined that tolling began when the appellant—at a "default" omnibus hearing—"requested a contested omnibus hearing and informed the court that he planned to seek dismissal . . . for lack of probable cause." *Id.* at 448. In *Kurz*, there was no argument, and we did not conclude, that tolling began *before* the "default" omnibus hearing—the argument the state is making here. *Id.* at 448-50.

II. Kushinski did not waive the UMDDA's six-month time limit.

The state next argues that Kushinski waived his right to final disposition within the six-month time period by agreeing to the omnibus hearing date on April 15, which was three days after expiration of the time limit.

Although this case involves the UMDDA, courts may seek guidance from the Interstate Agreement on Detainers (IAD) as a statutory counterpart to the UMDDA. *Id.* at 230; *see* Minn. Stat. § 629.294 (2020). Under the IAD, a defendant may implicitly waive the 180-day time limit. *Kurz*, 685 N.W.2d at 450 (citing *State v. Wells*, 638 N.W.2d 456, 461 (Minn. App. 2002), *rev. denied* (Minn. Mar. 19, 2002)). We review de novo whether the state has established waiver; if it has, we may reverse and remand for trial. *Wells*, 638 N.W.2d at 458, 460.

At the April 26 hearing on Kushinski's motion to dismiss, defense counsel reiterated that he first appeared with his client at the March 31 rule 8 hearing, which was when he requested a speedy timeline for the procedural rule 11 omnibus hearing. That omnibus hearing was then scheduled for April 15—three days after the UMDDA time limit—with no discussion of the UMDDA. Defense counsel stated that on April 15 he received certified "verification . . . of when the State and the Court both received the Detainer Agreement" and that he drafted the motion to dismiss while waiting for other cases to be called that morning.

These facts do not support waiver. At the rule 8 hearing, when Kushinski's recently appointed counsel requested a speedy rule 11 hearing and the April 15 hearing date was set, defense counsel had not yet been notified of Kushinski's UMDDA final-disposition

request and the UMDDA was not discussed. The record shows that defense counsel received information about the UMDDA request after expiration of the time limit. On this record, we cannot conclude that the district court erred by not determining that Kushinski waived the UMDDA time limit by not objecting to the district court's scheduling of a procedural hearing after expiration of the deadline.

III. The district court did not err by not sua sponte determining whether good cause existed to extend the statutory time limit.

Finally, the state contends that the district court erred by not determining whether good cause existed to extend the statutory time limit and argues that we should issue a writ of mandamus directing the district court to vacate its dismissal order and hold a good-cause hearing.

This court denied the state's petition for a writ of mandamus on May 25, 2021, because the state was "pursuing the plain, ordinary, and adequate remedy of a pretrial appeal." The state did not file a petition for review of this court's order denying its petition and instead argues in this appeal that a writ should issue. Because the state is pursuing the ordinary remedy of a pretrial appeal, we construe the state's argument as a request for a remand to direct the district court to consider whether good cause existed to extend the UMDDA timeline.

The state did not move for a good-cause extension of the UMDDA deadline before its expiration. It argues that the district court was statutorily required to sua sponte determine whether good cause existed and that we must direct the district court to do so.

The state does not point to any statutory language requiring the district court to act sua sponte, nor do we see such language. The UMDDA states that the case must be brought to trial within six months "or within such additional time as the court for good cause shown in open court may grant." Minn. Stat. § 629.292, subd. 3. This language does not suggest that a district court has a clear statutory duty to sua sponte determine whether good cause exists.

The state relies on language in *Wilson*, where the supreme court affirmed our writ of mandamus directing the district court to vacate its dismissal order and hold a good-cause hearing under the UMDDA. The supreme court stated that "the statute requires that the district court either set trial within six months or determine whether to grant additional time for good cause shown." *Wilson*, 632 N.W.2d at 228. The state reads this language as requiring a district court to sua sponte determine whether good cause exists when the six-month period has expired.

But this is not what *Wilson* holds. In *Wilson*, the state sought mandamus when the district court dismissed the complaint *before* the statutory deadline without considering whether good cause existed to extend the deadline. *Id.* at 227. Wilson had argued to the district court that, due to the state's delay in arraigning him, he could not possibly complete discovery and prepare for trial in the time remaining in the six-month period. *Id.* The district court granted Wilson's motion to dismiss under the UMDDA without considering if there was good cause to extend the statutory time limit. *Id.* On appeal, the supreme court concluded "that a writ of mandamus is available to vacate a district court order that dismisses a complaint for violation of the UMDDA's six-month period *before expiration*

of the six-month period." *Id.* at 229 (emphasis added). The supreme court stated that, "if the court does not set trial within the six-month period, it has a clear statutory duty *within that six-month period* to exercise its discretion in determining whether to grant additional time for good cause shown." *Id.* at 228 (emphasis added).

The supreme court explained that the district court's failure to determine whether there was good cause to grant additional time within the six-month time limit "eliminated the state's ability within the statutory six-month period to demonstrate good cause." *Id.* at 228-29. Additionally, the court explained, "[i]f, after receipt of a prisoner's request, the complaint is not brought to trial within . . . the six-month period or any additional time granted, the court *shall no longer have jurisdiction over the complaint* and the court *shall* dismiss the complaint with prejudice." *Id.* at 228 (emphasis added). We have interpreted *Wilson* as recognizing that a determination of good cause "must be made prior to the end of the six-month speedy trial period" and that retroactive extensions are impermissible. *See Kurz*, 685 N.W.2d at 449.

Here, unlike in *Wilson*, the district court dismissed the complaint for lack of jurisdiction after the six-month time period expired. We do not read *Wilson* as creating a separate statutory duty of the district court to sua sponte hold a good-cause hearing if trial was not scheduled within the six-month time limit. The statutory time limit had run when Kushinski filed his motion to dismiss. Thus, the district court no longer had jurisdiction over the complaint and was required to dismiss it with prejudice.

Affirmed.