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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1484**

State of Minnesota,
Respondent,

vs.

Dennis Marquis Davenport,
Appellant.

**Filed January 15, 2008
Affirmed
Peterson, Judge**

Olmsted County District Court
File No. K5-03-2478

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Mark A. Ostrem, Olmsted County Attorney, Eric M. Woodford, Senior Assistant County Attorney, Olmsted County Government Center, 151 Fourth Street Southeast, Rochester, MN 55904-3710 (for respondent)

John M. Stuart, State Public Defender, Renee Bergeron, Special Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Peterson, Presiding Judge; Willis, Judge; and Wright, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of third-degree controlled-substance crime, appellant argues that he was denied his right to counsel and his right to a speedy trial. We affirm.

FACTS

In January 2003, a police informant made a controlled purchase of crack cocaine from appellant Dennis Marquis Davenport, and in June 2003, Davenport was charged with third-degree controlled-substance crime. In August 2005, Davenport made his first appearance¹ before the district court, and the court ordered that a public defender be appointed for Davenport. On September 12, 2005, Davenport waived formal reading of the complaint and omnibus issues, pleaded not guilty, and made a speedy-trial demand.

On October 14, 2005, the district court held a settlement conference. At the conference, Davenport asserted that his public defender was not properly representing him and requested that a different public defender be appointed to represent him. Davenport also refused to represent himself. The district court did not discharge the public defender and suggested to Davenport that he contact the public defender's office to see if he could get a different attorney. The district court indicated that it would keep Davenport's trial scheduled for October 26, 2005, due to his speedy-trial demand. At the

¹ Davenport was not apprehended until more than two years after the complaint and warrant were issued in June 2003.

end of the hearing, Davenport waived his right to a jury trial and agreed to have a bench trial.

On October 26, 2005, the district court held a status conference to determine whether the parties were ready for trial. Davenport did not discharge his public defender and stated that if his public defender met with him before trial, he would continue with the public defender. Davenport also stated that if his public defender did not meet with him, he would represent himself at trial.

On October 31, 2005, the district court held a pretrial hearing regarding the status of the trial, which was scheduled to begin that day. Before the hearing, Davenport's public defender, the supervising public defender, and the prosecutor met with the judge in chambers. The supervising public defender indicated that she declined to appoint another attorney for Davenport. She also stated that Davenport did not want to work with his appointed attorney because he wanted to make all of the decisions regarding trial strategy and questioning. The supervising public defender requested that the court explain to Davenport the public defender's obligations and prerogatives regarding trial strategy and questioning and determine whether Davenport wanted to proceed with a public defender or proceed pro se with standby counsel.

At the hearing after the discussion in chambers, the supervising public defender moved to have Davenport's competency evaluated under Minn. R. Crim. P. 20.01. Davenport opposed the motion and requested to proceed to trial without a competency evaluation. Davenport also asserted that he had discharged the public defender at the October 14, 2005 settlement conference and that he was proceeding pro se. The county

attorney did not take a position on whether a competency examination should be ordered. The district court ordered a competency evaluation and stayed the speedy-trial demand pending the outcome of the evaluation.

In November 2005, the neutral evaluator sent the district court his report indicating that Davenport was competent to proceed to trial. On December 5, 2005, the district court vacated the stay it ordered in October. The following day, the district court held a hearing to address Davenport's request to discharge his public defender. Davenport unequivocally stated that he freely and voluntarily gave up his right to be represented by a public defender. He acknowledged that if he changed his mind and wanted a public defender reappointed, the court might not grant his request. The district court appointed standby counsel. Davenport also requested an omnibus hearing and reasserted his speedy-trial right. The district court explained to Davenport that if he requested an omnibus hearing, his request for a speedy trial would be reset.

On January 11, 2006, the district court held a hearing regarding Davenport's motion for an omnibus hearing. Davenport indicated that the issues he wanted to raise in the omnibus hearing were his speedy-trial request and the late disclosure of the informant's identity. The district court determined that Davenport's speedy-trial right was not infringed and that the delay was minimal. The district court found that the prosecution disclosed the identity of the informant in a timely manner and that even if it had violated the rules of discovery, the violation was not prejudicial given the trial date and the date when disclosure occurred. At the end of the hearing, Davenport requested that the public defender be reappointed. The district court inquired about whether

Davenport's standby counsel could step in, and standby counsel indicated that it would "be a quick prep to be ready [for trial]" because he had four other cases on the calendar. Standby counsel stated that it would be up to the supervising public defender to appoint someone. The district court did not reappoint the public defender, and standby counsel stated that he would contact the supervising public defender.

On January 20, 2006, Davenport's trial began. Before the prosecution's opening argument, Davenport stated that he was ready to proceed to trial. On the first day of trial, Davenport did not request that his standby counsel or other public defender be appointed.

On January 23, 2006, the court held the second day of Davenport's trial. Before any further testimony was taken, Davenport requested that his standby counsel take over his representation because he had been denied access to the law library over the weekend. Davenport's standby counsel indicated that he could take over the representation, but he would need at least a couple of days to prepare and review the files. The district court denied Davenport's request.

In February 2006, the district court issued its findings and order, finding Davenport guilty of third-degree controlled-substance crime. The court denied Davenport's posttrial motions for acquittal or a new trial and sentenced Davenport to 39 months in prison. This appeal followed.

DECISION

I. Right to counsel

Davenport argues that the district court abused its discretion when it refused to reappoint the public defender to represent him. A district court's decision to deny a

defendant's request to relinquish self-representation is reviewed for an abuse of discretion. *State v. Clark*, 722 N.W.2d 460, 469 (Minn. 2006). “[O]nce a defendant waives [the] right to counsel, the defendant does not have an absolute right to relinquish the right of self-representation.” *Id.* “Rather, a defendant will only be permitted to relinquish self-representation if the request is timely, reasonable, and reflects extraordinary circumstances.” *Id.* In exercising its discretion in determining whether to grant a defendant's request to relinquish self-representation, the district court should balance the defendant's “request against the progress of the trial to date, the readiness of standby counsel to proceed, and the possible disruption to the proceedings.” *Id.* (quotation omitted).

It is undisputed that Davenport properly waived his right to a public defender after the court conducted a thorough inquiry regarding Davenport's right to counsel. On January 11, 2006, a week before the trial was scheduled to begin, Davenport requested that the public defender be reappointed. Although Davenport did not request that his standby counsel be appointed and apparently attempted to waive any standby counsel, the district court inquired about standby counsel's ability to proceed. Standby counsel left the decision up to the supervising public defender and indicated that it would be difficult for him to prepare for trial because he had four other cases on the calendar. Although both the district court and standby counsel indicated that they would try to contact the public defender's office, the record does not indicate whether they did or whether the public defender's office declined representation.

On the first day of trial, Davenport indicated that he was prepared to proceed pro se and did not reiterate his request for standby counsel or the public defender to be appointed. On the second day of trial, Davenport requested that his standby counsel take over the representation because Davenport had not been able to access the law library over the weekend.

Davenport's request to relinquish self-representation on the second day of trial was not timely. *See Clark*, 722 N.W.2d at 469 (holding that the district court did not abuse its discretion when it refused to grant a defendant's request to relinquish self-representation on the third day of trial.) Furthermore, although Davenport argues that his circumstances were extraordinary because the law library was closed on the weekend and he was not able to prepare his defense, he does not explain why he could not have done the research earlier. Without some additional difficulty, a law library that is closed on the weekend does not constitute extraordinary circumstances.

Even if Davenport's January 11 request to have a public defender reappointed to represent him was timely, Davenport does not identify any extraordinary circumstances that required reappointment. He does not claim that the law library was closed before January 20, so that was not an issue on January 11. Because neither of Davenport's requests reflected extraordinary circumstances, the district court did not abuse its discretion when it refused to grant Davenport's request to relinquish self-representation.

II. Speedy Trial

Davenport argues that his right to a speedy trial was violated. A district court's speedy-trial determination is reviewed de novo. *State v. Cham*, 680 N.W.2d 121, 124

(Minn. App. 2004), *review denied* (Minn. July 20, 2004). Criminal defendants have a constitutional “right to a speedy and public trial.” Minn. Const. art. I § 6. Minnesota rules require that a “trial shall be commenced within sixty (60) days from the date of the demand unless good cause is shown upon the prosecuting attorney’s or defendant’s motion or upon the court’s initiative why the defendant should not be brought to trial within that period.” Minn. R. Crim. P. 11.10. Minnesota courts consider four factors in determining whether a defendant’s speedy-trial right has been violated. *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977). “These four factors include: (1) the length of the delay; (2) the reason for the delay; (3) whether and when the defendant asserted his right to a speedy trial; and (4) the prejudice to the defendant caused by the delay.” *Cham*, 680 N.W.2d at 124 (citing *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972)).

A. *Length of the delay*

“The length of the delay is a ‘triggering mechanism’ which determines whether further review is necessary.” *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). Delays beyond 60 days from the date of the demand raise a presumption that a violation occurred and require an inquiry into the remaining factors of the test. *Id.* at 315-16. Davenport made his speedy-trial demand on September 12, 2005, and the trial began on January 20, 2006. The state argues that, from October 31, 2005 to December 5, 2005, the proceedings were suspended for Davenport’s competency evaluation. But the state concedes that even if those days are not considered, the delay extended more than 30 days beyond the 60-day period, and further inquiry into the other factors is required.

B. Reason for the delay

The competency evaluation was a significant reason for the delay. However, the competency evaluation occurred at the request of Davenport's counsel, and the district court allowed the examination over Davenport's objection because it was concerned about Davenport's ability to assist in his own defense. The other delays resulted from Davenport's motions to discharge his public defender and his motion for an omnibus hearing. There was also a slight administrative delay because the court had another speedy-trial case on its calendar. None of the delays can be attributed to the state, which was ready to proceed with the trial in October 2005. *See Cham*, 680 N.W.2d at 125 (weighing this factor in favor of the state when unavailability of interpreter and administrative issues caused a delay and when the state did not act in bad faith to delay the proceeding); *see also State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993) (noting that supreme court has "held on numerous occasions that when the overall delay in bringing a case to trial is the result of the defendant's actions, there is no speedy trial violation").

C. Defendant's assertion of the right

It is uncontested that Davenport asserted his speedy-trial right several times.

D. Prejudice caused by the delay

In reviewing the prejudice caused by the delay, three specific interests must be considered: "(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired." *Windish*, 590 N.W.2d at 318. The third factor is the most significant. *Id.*

Although Davenport asserts that he “suffered the oppression of pretrial incarceration, as well as anxiety and concern over his predicament,” he does not indicate that his defense was impaired. Further, as discussed above, much of the delay occurred as a result of efforts to make sure that Davenport was competent to proceed to trial and understood his rights to counsel and self-representation. These delays directly address the issue of preventing Davenport’s defense from being impaired. Based on all of the above factors, Davenport’s right to a speedy trial was not violated.

Affirmed.