STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0323

State of Minnesota,
Respondent,

vs.

Daniel Lee Nyssen,
Appellant.

Filed February 12, 2008
Affirmed
Crippen, Judge[*]

Nicollet County District Court
File No. 52-VB-06-432

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

Michael K. Riley, Sr., Nicollet County Attorney, Kristen E. Swanson, Assistant County Attorney, 326 South Minnesota Avenue, P.O. Box 360, St. Peter, MN 56082 (for respondent)

Daniel Lee Nyssen, 15420 Founders Lane, #302, Apple Valley, MN 55124 (pro se appellant)

Considered and decided by Toussaint, Chief Judge; Crippen, Judge; and Muehlberg, Judge.[**]

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

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

U N P U B L I S H E D O P I N I O N

CRIPPEN, Judge

Pro se appellant Daniel Nyssen challenges his misdemeanor convictions for driving while impaired, driving in violation of a limited license, and careless driving, asserting that the complaint was not filed in a timely manner and that he was denied his right to a speedy trial. Because appellant has failed to provide a complete record to show his demands for a formal complaint or for a speedy trial,[1] and because he has shown no actual prejudice, we affirm.

FACTS

On January 23, 2006, 63 days after his arrest, a complaint was filed charging appellant with two counts of fourth-degree driving while impaired, violating a limited license, and careless driving, all misdemeanors. At his first appearance on February 6, appellant entered a plea of not guilty. At a pretrial hearing on April 18, appellant appears to have requested a jury trial and a date-certain trial was set for June 21. Defense counsel asserted appellant's demand for a speedy trial in a letter to the court dated May 17, but at a May 26 scheduling conference appellant indicated that he wanted to raise a number of

[1] The state asserts that this appeal should be dismissed because appellant has failed to provide a transcript. Admittedly, appellant had the burden of providing an adequate record on appeal. *See Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). But a transcript is not a jurisdictional requirement. *See* Minn. R. Crim. P. 28.02, subd. 9 (stating that if a defendant does not intend to order "the entire transcript," the defendant must provide a description of parts of the transcript that he or she intends to order); Minn. R. Civ. App. P. 110.02, subd. 1 (stating appellant has the duty to order from the court reporter "those parts of the proceedings not already part of the record which are deemed necessary to appeal"). While the lack of a transcript adversely affects appellant's ability to prove that he is entitled to relief, it does not require dismissal of this appeal.

issues, including the validity of the stop of his vehicle. The court advised appellant that no new trial date would be set until pretrial issues he raised were resolved.

At a September 26 pretrial hearing conducted after the district court issued a decision denying appellant's pretrial motions, appellant again requested that the matter be set for jury trial, which occurred when trial was set for a date certain, January 12, 2007. Following his conviction on all counts by a jury, the district court sentenced appellant to jail time and a fine, both stayed on various supervisory conditions.

D E C I S I O N

1.

Appellant argues that the state was required to file a formal complaint within 30 days after his arrest, which is when he claims he made a demand via a telephone call to the sheriff's office. Minn. R. Crim. P. 4.02, subd. 5(3) provides that "[i]n a misdemeanor case, the complaint shall be made and filed . . . within thirty (30) days [after the demand thereof] if the defendant is not in custody." The rule further provides that "[i]f no valid complaint has been made and filed within the time required by this rule, the defendant shall be discharged, the proposed complaint, if any, and any supporting papers shall not be filed, and no record shall be made of the proceedings." Minn. R. Crim. P. 4.02, subd. 5(3).

But nothing in the record supports appellant's claim that he made a demand for a formal complaint. Unlike the case cited by appellant, *State v. Loeffler*, 626 N.W.2d 424, 424-25 (Minn. App. 2001), this record does not establish that appellant demanded a

formal complaint either in writing or on the record. Appellant has failed to show that the complaint should have been dismissed under rule 4.02.

2.

Appellant also argues that the complaint, when filed, was otherwise untimely. As the district court discussed, a prosecutor must file a complaint within three years after commission of an offense. Minn. Stat. § 628.26(j) (2004). Within this limitation period, a delay in filing a complaint is permissible unless the delay actually prejudices the defendant and was used by the state to gain some advantage at trial. *State v. Hanson*, 285 N.W.2d 487, 489 (Minn. 1979) (analyzing issue of pre-indictment delay as raising due-process violation, and requiring defendant to prove actual prejudice and improper state motive).

The district court "accept[ed]" the state's explanation that the 63-day filing delay was caused by a reassignment of prosecutorial responsibilities within the county attorney's office and by the need to conduct additional research on whether appellant should be charged with misdemeanor or gross misdemeanor level offenses. The court further recognized that although the charges could have been filed more quickly, the delay was not overly "excessive or unreasonable." And the court noted that appellant failed to identify any prejudice, other than to claim that the delay led him to believe that he was not going to be charged, which does not constitute actual prejudice. On the record before us, appellant has failed to show a pre-indictment delay that warrants dismissal of the complaint or reversal of his conviction.

3.

Arguing that he was deprived of his speedy trial right, appellant claims that he made his demand at the February 2006 arraignment, when he entered his plea of not guilty, over 11 months before trial was held on January 12, 2007. Minn. R. Crim. P. 6.06 provides that "[o]n demand made in writing or orally on the record by the prosecuting attorney or the defendant, the trial shall be commenced within sixty days from the date of the demand unless good cause is shown[.]" In determining whether or not there has been a violation of a defendant's right to speedy trial, a court must examine the defendant's assertion of his rights, the length of subsequent delays, the reason for those delays, and prejudice to the defendant. *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977) (citing *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972)); *see also State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999).

Length of Delay

The record shows a substantial delay between early 2006, when appellant claims he asserted his speedy trial right, and trial proceedings in January 2007.

Assertion of Right to Speedy Trial

A district court must assess the "the frequency and intensity of a defendant's assertion of a speedy trial demand—including the import of defense decisions to seek delays." *Windish*, 590 N.W.2d at 318.

In its memorandum attached to its order, the district court indicated that appellant's first demand for a trial was April 18, 2006. A letter in the record shows the demand for a speedy trial on May 17. But we are unable to determine without a further

record whether appellant subsequently reiterated this demand. Following the April 18 appearance, appellant's defense was assigned to a new attorney who requested a pretrial hearing. Appellant thereafter raised several new pretrial issues, which were considered at a contested pretrial hearing on June 12, 2006, and which were taken under advisement by the district court.

On September 7, 2006, the court issued a written decision and scheduled a new pretrial hearing for September 26, when the case was scheduled for a date certain of January 12, 2007, 102 days later. But without a further record, it is unknown whether appellant renewed his demand for a speedy trial or either objected or agreed to this scheduling. *See State, City of Oakdale v. Curtis*, 339 N.W.2d 10, 12 (Minn. App. 1986) (concluding that defendant's acceptance without objection of a trial date waived "strict compliance with the 60 day rule"). Thus, this factor weighs heavily against appellant for the period after September 26, which was appellant's last appearance before trial was finally conducted on January 12, 2007.

Reason for Delay

"The responsibility for an overburdened judicial system cannot . . . rest with the defendant." *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). However, "when the overall delay in bringing a case to trial is the result of the defendant's actions, there is no speedy trial violation." *State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993). And, "delay occasioned by the defendant himself often is deemed a temporary waiver of his speedy trial demand, which can only be revived when the defendant reasserts his speedy trial right." *Id.*

Prior to September 2006, much of the delay following the filing of the complaint was caused by defense requests that the matter be removed from the calendar and for a contested pretrial hearing. Delays caused by defense motions generally weigh against the defendant. *See, e.g.*, *State v. De Rosier*, 695 N.W.2d 97, 108 (Minn. 2005); *Johnson*, 498 N.W.2d at 16. This factor weighs against defendant for delays before September 12.

Prejudice to Defendant

An "affirmative demonstration of prejudice" is not necessary, but a "court should . . . also consider prejudice from interference with the [defendant's] liberty, disruption of employment, financial hardship, strain on friendships and associations and anxiety and stress to the defendant and the defendant's family." *State, City of Little Canada v. Rachie*, 427 N.W.2d 253, 257 (Minn. App. 1988), *review denied* (Minn. Sept. 20, 1988). As the district court notes in its order, appellant "is not in jail, and he shows no prejudice other than the anxiety one would have in facing charges. No witnesses have left the area. No evidence has become stale. No prejudice to defending his case is implicated by the delay." Because appellant does not claim any specific prejudice and because the record does not disclose any, this factor also weighs against him.

Appellant has failed to show that he was deprived of his right to a speedy trial.

Affirmed.