STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1877

State of Minnesota,
Respondent,

vs.

Jimmy Lee Faulkner,
Appellant.

Filed March 3, 2009
Reversed
Lansing, Judge

Pine County District Court
File No. 58-CR-06-862

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

John Carlson, Pine County Attorney, Pine County Courthouse, 315 Main Street South, Pine City, MN 55063-1693 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Worke, Presiding Judge; Lansing, Judge; and Klaphake, Judge.

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

LANSING, Judge

Jimmy Faulkner appeals from conviction for possession of a firearm by an ineligible person based on a stipulated-fact trial after the district court denied Faulkner's pretrial-dismissal motion. In his pretrial-dismissal motion, Faulkner argued that his right to a speedy trial had been violated by delay in proceedings under Minn. R. Crim. P. 20.01. Because we conclude that an unaccounted-for 88-day delay in the competency proceedings constituted, on balance, a violation of Faulkner's right to a speedy trial, we reverse.

F A C T S

The charges in this case arose from an altercation in June 2006 between Jimmy Faulkner and the son of his long-time girlfriend over the use of a car that was kept at the Pine County residence where Faulkner resided with his girlfriend. The initial argument escalated to a physical exchange of blows with sticks. Faulkner retreated to the interior of the house and retrieved a gun as the son and a friend attempted to leave in the friend's truck. Faulkner, who is visually impaired by diabetes, shot twice from inside the house and hit the truck, damaging its windshield with one of the shots. Faulkner contended that the shot contained only rock salt and sand because the gun was used to scare away bears. At the time, Faulkner had prior convictions which made it illegal for him to possess a firearm. He was charged with two counts each of attempted second-degree murder and second-degree assault and one count of being an ineligible person in possession of a firearm. The court ordered him held on $25,000 bail.

Faulkner appeared with counsel in court on the charges on July 10, 2006. He pleaded not guilty, waived his omnibus hearing, and demanded a speedy trial. The case was set on the August 2006 jury-trial calendar. Faulkner appeared at the calendar call on August 14 and renewed his speedy-trial demand; trial was set for the following day. Before the trial began, Faulkner's attorney requested an examination of Faulkner's competence to proceed because jail personnel reported that Faulkner showed signs that he needed mental-health services. The reports were based on Faulkner's severe depression and a self-inflicted injury that required treatment in a Duluth facility. On August 16 the court issued a written order for proceedings under Minn. R. Crim. P. 20.01. The order suspended the criminal case and required that a doctor examine Faulkner and file a report. It also provided that the parties would be served with a copy of the report when it was filed.

Dr. Elizabeth Caven examined Faulkner at Five County Mental Health Center on September 20. While her report was pending, Faulkner again was removed from Pine County Jail for several days of medical treatment, this time at Cambridge Medical Center. When he left Cambridge, he was sent to Kandiyohi County Jail because it was better able to handle an inmate with Faulkner's medical issues. Dr. Caven filed her rule 20 examination report with the district court on October 13. Based on the doctor's examination of Faulkner, the report concluded that Faulkner was not competent to stand trial for a criminal offense and recommended hospitalization.

The record does not show any action taken on the rule 20 report by the district court, the state, Faulkner's attorney, or Faulkner. Faulkner simply remained in jail in

Kandiyohi County. The next event affecting Faulkner's status was a precommitment screening on December 26. The state then filed, on January 9, 2007, a petition to civilly commit Faulkner as a mentally ill and dangerous person. The district court, proceeding on the commitment petition, held a hearing on January 12 and noted that after the rule 20 report was filed by Dr. Caven there had been no court determination of Faulkner's status. The court stated, "I'm not sure why Mr. Faulkner is still in jail" and ordered him released and hospitalized for a commitment examination by Dr. Harlan Gilbertson. Faulkner was transferred to Cambridge Medical Center. His lawyer moved for appointment of an additional examiner, and the court appointed Dr. Kayla Else on January 17.

After interviewing Faulkner and performing various psychometric and cognitive tests, Dr. Gilbertson concluded that Faulkner was feigning incapacity. Dr. Gilbertson reported that treatment was not necessary and recommended instead that Faulkner be "remanded to the criminal justice system" and "immediately and consistently held legally accountable whenever appropriate." Dr. Else's report expressed concern about Faulkner's prior history of depressive behavior, did not suggest that Faulkner was feigning incapacity, but concluded that commitment was not necessary. On January 26 the state withdrew its commitment petition, and the district court ordered a new rule 20 examination, again ordering that Faulkner not be held in jail because "if he has mental health issues he should be in a hospital setting." The district court also reinstated bail. Faulkner remained at Cambridge Medical Center and was examined at St. Peter by Dr. Shane Wernsing.

Dr. Wernsing's report was pending when Dr. David Olson from the Cambridge Medical Center wrote to the court to request that Faulkner be moved to a different setting. Dr. Olson stated that Faulkner did not need to be in the hospital and that beds were both expensive and scarce. At a hearing on February 15, the district court returned Faulkner to Pine County Jail and set trial for March. Eleven days later, the court received Dr. Wernsing's report, which concluded that Faulkner was competent and that criminal proceedings should recommence.

On March 1, Faulkner agreed to a stipulated-fact trial on the possession of a firearm by an ineligible person. Because Faulkner's attorney wanted more time to prepare documents and argument, Faulkner agreed to extend the time for submission beyond the trial date of March 12. He explicitly preserved his right to argue that his speedy-trial right had been violated prior to March 1, but waived any argument that proceedings after March 1 violated that right. Faulkner and the state submitted stipulated documents and argument to the district court. In his submission, Faulkner primarily argued that his speedy-trial right had been violated. On April 11 the district court rejected that argument and found Faulkner guilty, on the submitted record, of possession of a firearm by an ineligible person.

While awaiting sentencing, the district court transferred Faulkner as a presumptive commitment to the corrections commissioner, because the state alerted the court that Faulkner was unable to have needed eye surgery while being held at the Pine County Jail. On July 3, he was sentenced to 61 months, at the upper end of the applicable guidelines

range. Faulkner now appeals the district court's decision denying his motion to dismiss for violation of his right to a speedy trial.

D E C I S I O N

The United States and Minnesota Constitutions guarantee a speedy trial in criminal cases. U.S. Const. amends. VI, XIV, § 1; Minn. Const. art. I, § 6. Whether delays in bringing a defendant to trial violate constitutional rights is a question of law, which we review de novo. *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004).

Minn. R. Crim. P. 11.10 requires that a trial begin within 60 days of the defendant's demand for a speedy trial, unless good cause is shown for the delay. Four factors are examined in determining whether delay amounts to a constitutional violation: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) whether the delay prejudiced the defendant. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). Consideration of the first factor is essentially a determination of whether the 60-day time period has expired, in which case the delay is presumptively prejudicial and the remaining factors must be weighed. *Id.*; *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989). None of the remaining three factors is dispositive; they must all be balanced with "other circumstances as may be relevant." *Windish*, 590 N.W.2d at 315.

Length of delay

For purposes of determining the length of the delay, we begin when a defendant asserts a speedy-trial demand, but the time period cannot begin to run before the

defendant enters a plea of not guilty. Minn. R. Crim. P. 11.10. In calculating total delay under the *Windish* factors, time is not tolled for rule 20 proceedings. *See State v. Bauer*, 299 N.W.2d 493, 498 (Minn. 1980) (including, as part of computation, period of time during which defendant had been deemed incompetent to proceed). Faulkner first pleaded not guilty and made a request for speedy trial on July 10, 2006. The parties agreed to submit the case as a stipulated-fact trial on March 1, 2007. These two dates cover a total of 234 days, or approximately seven and a half months, which exceeds the 60-day trigger and requires examination of the other three factors.

Reason for delay

Ultimate responsibility for expeditiously bringing a case to trial rests with the state. *Barker v. Wingo*, 407 U.S. 514, 529, 92 S. Ct. 2182, 2191 (1972). If a delay is chargeable to the state, its weight varies based on the reason for the delay. *Id*. at 531, 92 S. Ct. at 2192; *Cham*, 680 N.W.2d at 125. A state's deliberate attempt to impede preparation for the defense weighs more heavily in favor of dismissal than negligent delay. *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192.

Of the 234 days of delay, 39 days are attributable to the normal time necessary for scheduling trial: 36 days passed between Faulkner's speedy-trial request and the day trial was set to begin on August 15 and another 3 days passed between the final rule 20 report and the commencement of the stipulated-fact trial. This 39-day period weighs against neither party. The only question is the period between August 15 and February 26, which is the time it took for the assessment of Faulkner's mental health under the rules of

criminal procedure. Faulkner contends that this amounted to improper delay that weighs against the state's speedy-trial obligations.

Under Minn. R. Crim. P. 20.01, subd. 1, the court may not try a defendant or accept a plea when, because of mental illness or deficiency, the defendant is "incapable of understanding the proceedings or participating in the defense." When motion by any party creates "reason to doubt" a defendant's competency, the court "shall suspend the criminal proceedings" and proceed as outlined in the rule. *Id.*, subd. 2. The court must appoint an examiner and may order the defendant confined for up to 60 days if he is not otherwise entitled to release. *Id.*, subd. 2(3). The examiner must provide the court with a written report based on the examination and, if either party objects in writing within 10 days, the court "shall hold a hearing" on competence. *Id.*, subds. 2(4), 3(1). If neither party objects, the court "may determine" competency on the basis of the report alone. *Id.*, subd. 3(5).

Whether the court finds the defendant competent or incompetent, it "shall enter an order" stating its finding. *Id.*, subd. 3(6). If the defendant is competent, the court must resume the criminal proceedings. *Id.*, subd. 4(1). But when a felony defendant is incompetent because of mental illness, the court "shall cause civil commitment proceedings to be instituted" and shall retain supervision over the commitment proceedings. *Id.*, subd. 4(2)(a). Reports are thereafter received and if, after a hearing, the court determines the defendant has attained competence, the criminal proceedings "shall be resumed." *Id.*, subd. 5.

Faulkner's rule 20 proceedings began with an initial request for examination on

August 15, 2006, after Faulkner showed signs of depression and self-injurious behavior. He was incarcerated at the time in the Pine County Jail. It took 59 days for the examiner to file a report with the court and, while it was pending, Faulkner was transferred first to Cambridge Medical Center for further medical treatment and then to the jail in Kandiyohi County, where his ongoing medical needs could be better addressed. After the examiner filed her report concluding that Faulkner was incompetent to stand trial, the parties made no comment on the report and the court made no finding.

Another 88 days passed, with Faulkner in the Kandiyohi County Jail, before the state filed a petition for commitment as mentally ill and dangerous on January 9, 2007. After a probable cause hearing on the petition 3 days later, Faulkner was moved to the Cambridge Medical Center. The examinations took 14 days, resulting in the state withdrawing the petition, the court ordering a second rule 20 examination on January 26, and the reinstatement of bail. Twenty days later, before the rule 20 examiner had filed his report, the court reset a trial date and ordered Faulkner brought from the medical center back to jail. The examiner issued his report 11 days later on February 26. Again, no hearing or finding on competency ensued, but the stipulated-fact process began 3 days later, resulting in a finding of Faulkner's guilt.

Of the 195 days from August 15 to February 26, a majority is attributable to proper proceedings under rule 20. The problematic period is the 88 days between the first report finding Faulkner incompetent and the commencement of commitment proceedings. This is the period Faulkner claims as the crux of the speedy-trial violation.

The state correctly notes in its brief that rule 20 provides for specific procedural steps, but it does not set a hard-and-fast timeline for each step. The most the rule says on time limits is that a defendant not otherwise entitled to be free cannot be committed to a mental hospital for examination for more than 60 days. *Id.*, subd. 2(3). It also gives both parties a 10-day window in which to respond once an examination report is filed, but only says that if they do not respond the court "may determine" competency without a hearing. *Id.*, subd. 3(1), (5). The rule does not say that the court *must* do so on day ten. The rule requires the court to issue an order finding the defendant competent or not and also requires the court to either seek commitment or resume prosecution based on that finding. But, again, it does not provide a time limit within which the court must act.

The district court's legal conclusions on this issue state that Faulkner was entitled to expect that commitment proceedings would start "within a reasonable time" of the doctor's conclusion that he was incompetent. And the court determined that Faulkner failed to show "that the [s]tate took an unreasonably long period of time" or that he suffered "any true injury during this period of time."

We agree with the district court that speedy-trial requirements demand that proceedings under rule 20, even if not bound by strict statutory time limits, must occur within a reasonable amount of time. We are influenced in this conclusion by other issues pertinent to speedy trial. For example, the state must proceed with reasonable diligence in obtaining witnesses. *Windish*, 590 N.W.2d at 317. Obtaining witnesses is an important process, but likely no more important than proceeding under rule 20, which insures safeguards for the mentally ill and undergirds the fundamental concept of

determining capacity for criminal liability.

Improper rule 20 delays should not be completely removed from speedy-trial considerations because rule 20 is part of the criminal process. A request for examination may result in the suspension of criminal proceedings. Minn. R. Crim. P. 20.01, subd. 2. But even if civil commitment is ultimately ordered, the district court retains supervision over the criminal charge and is required to reinstate prosecution if the defendant attains competence. *Id.*, subds. 2, 4(2)(a), 5.

On appeal, the state argues that a rule 20 delay, even if improper, is not grounds for speedy-trial dismissal, and it cites *State v. Thurmer*, No. C9-02-2211, 2004 WL 61115 (Minn. App. Jan. 13, 2004), *review denied* (Minn. Mar. 30, 2004). We do not read *Thurmer* as opposing the need for reasonable expedition in rule 20 proceedings. *Thurmer* does not address rule 20 in light of the *Windish* factors because the speedy-trial delay in *Thurmer* was less than 60 days, occurred before any speedy-trial request, and was beyond the state's control. *Id.* at *5-*6.

The troublesome issue in this case, as identified by Faulkner, is the unexplained 88-day lapse between October 13, 2006, and January 9, 2007, when Faulkner was held in the Kandiyohi County Jail, a significant distance from his home. The state has provided no explanation for what caused this lapse, and the lack of explanation raises the unavoidable impression that Pine County, unfortunately, may have simply lost track of Faulkner. The judge who initiated the commitment proceedings on January 12 appropriately raised questions about this unexplained time period and also appropriately proceeded with dispatch going forward. But no explanation has been offered that

accounts for that time period. We are convinced that, so long as Faulkner was being held in jail, his speedy-trial interests required timely proceedings.

We do note that a small portion of the 88-day period might be excusable. Under rule 20, the court *has* to wait at least 10 days after receipt of an examination report to allow for possible responses. Also, even though the commitment petition was not filed until January 9, a Pine County health-services worker did perform a prepetition screening of Faulkner more than a week before the state filed its commitment petition, and this action could be considered part of the commencement of the commitment proceedings. But these considerations account for little more than three weeks of a three-month delay. And the fact remains that Faulkner—for whom the examination report had recommended hospitalization due to his "significant depressive and psychotic symptoms"—was in custody the entire time, not in a hospital, not based on any court finding, and not based on the lawful commencement of civil proceedings. Even when the state timely commences civil-commitment proceedings against a person, it still cannot hold the person in jail without findings and an order by the court. Minn. Stat. § 253B.045, subd. 1 (2006).

The majority of the 88-day delay is thus unjustified and attributable to the state. No evidence suggests that this delay was deliberate or that it was imposed to impede Faulkner's defense against the charges. But the state did act negligently on a responsibility completely within its control, and the delay must weigh against the state in the speedy-trial calculus.

The state argues that Faulkner bears some responsibility for the rule 20 delay. We agree that because Faulkner initiated this process and the process moved forward

appropriately from August 15 to October 13 and from January 9 to March 1, these periods do not weigh against the state. But because the proceedings are appropriate procedures provided under the criminal-procedure rules, neither do they weigh against Faulkner. Although one expert evaluation suggests that Faulkner was feigning lack of capacity or malingering, the report did not suggest that Faulkner feigned the depressive and self-destructive behavior that triggered the rule 20.01 process in August 2006. The suggested feigning is also unrelated to the unexplained 88-day incarceration. Furthermore, the other doctors did not reach a similar conclusion, and the district court made no finding other than to note the statement in the one report.

We conclude that the period of delay from October 13, 2006, to January 9, 2007, cannot be attributed to proper proceedings under rule 20 or to any actions taken by Faulkner. This unaccounted-for lapse is attributable to the state, and, on balance, it weighs in favor of Faulkner's claimed speedy-trial violation.

Assertion of the right

The manner in which a defendant asserts his right to a speedy trial "is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 N.W.2d at 531-32, 92 S. Ct. at 2192-93. It is undisputed that, from the beginning, Faulkner pressed for his case to be brought to trial. Upon first pleading not guilty, he demanded a speedy trial and was given the calendar-call date of August 14, 2006. He reiterated his request that day, even when informed that his case was "number one for trial" because all other cases for the month had reached a plea agreement. The prosecution was suspended the next day for the rule 20 proceedings. In late January,

when it seemed he would ultimately be found competent, he renewed his demand for speedy trial. In agreeing to a stipulated-fact trial, he reserved the speedy-trial issue and argued it as the principal ground for dismissal when the case was submitted to the district court.

Faulkner persistently and plainly asserted his right to a speedy trial, and this factor provides "strong evidentiary weight" in his favor. *Id.*

Prejudice

Prejudice arises through a speedy-trial violation based on interference with three interests: avoiding oppressive pretrial incarceration, minimizing anxiety and concern, and impairing the presentation of a defense. *Windish*, 590 N.W.2d at 318. A detrimental effect on the defendant's case is the most serious type of prejudice. *Id.* But we have, in some circumstances, located prejudice in emotional strain on one's family and employment, *State v. Stitzel*, 351 N.W.2d 409, 411 (Minn. App. 1984), in anxiety and financial strain, *State v. Brooke*, 381 N.W.2d 885, 889 (Minn. App. 1986), or in a combination of financial strain and deterioration of health due to incarceration, *State v. Christensen*, No. C7-02-909, 2003 WL 1701893, at *4-*5 (Minn. App. Apr. 1, 2003).

Faulkner does not argue that the delay impeded his defense, so only the other two types of prejudice are relevant: avoiding oppressive pretrial incarceration and minimizing anxiety and concern. Faulkner argues primarily that being held for 234 days took a heavy toll on his mental and physical health. He was in a wheelchair part of the time because of injury to his foot. Poor vision in one eye, caused by diabetes, apparently worsened while he was incarcerated. Faulkner also claims that the delay strained his

"friendships and associations" and caused anxiety and stress for him and his family. Faulkner's attorney at various appearances noted Faulkner's health concerns, and reiterated them to the court in his stipulated-fact-trial submission.

The state argues that Faulkner was not prejudiced because the time that he spent waiting for rule 20 proceedings was credited when he was sentenced. But, certainly, posttrial credit is not an equalizer for impermissible pretrial incarceration.

We recognize that Faulkner had to address numerous health issues while awaiting trial, but it is less clear that these issues were in any way exacerbated by the incarceration. Even when he was being held in jail instead of in a hospital, he received appropriate treatment whenever necessary, and his jailers were commendably vigilant in monitoring Faulkner's health and bringing issues to the court's attention.

It is true that the most egregious delay, and thus the greatest potential for anxiety or oppression, came during the time when Faulkner's health was at its worst. But aside from causing that delay, as discussed under factor two, the state at every turn took the necessary steps to avoid harm to Faulkner. We conclude that the prejudice factor is not significant, which tends to weigh in favor of the state.

Balancing and Conclusion

The balance to be struck in this case must in the end, however, weigh in favor of Faulkner. Faulkner's assertions of his right were plainly legitimate, particularly in light of his persistent desire to go to trial and testify about his claim of self-defense. The other factor in his favor, the negligent and unexplained delay in the rule 20 proceedings, weighs even more heavily, and prejudice is the only factor weighing against finding a

speedy-trial violation. But the lack of prejudice is not so overwhelming as to compensate for the other factors. On the whole, it took 234 days to give Faulkner a trial. This exceeds the 60-day limit by 174 days, almost half of which was caused by negligence on the state's part. The state is the only party clearly shown to have delayed trial without cause, and the speedy-trial balance ultimately weighs in Faulkner's favor, even without a significant demonstration of prejudice.

Faulkner insisted on a speedy trial, and the state offered no explanation for a delay of nearly three months in rule 20 proceedings. While the delay does not appear to have caused significant detriment to Faulkner's health, well-being, or defense, it was nonetheless unreasonable and remains unjustified. The balance of speedy-trial factors weighs in favor of dismissing the charges against him for violation of his right to a speedy trial.

Reversed.