

SUPREME COURT OF NORTH DAKOTA

State v. Mohamud

2019 ND 101 · No. 20180333 · Decided April 11, 2019

SUMMARY

The North Dakota Supreme Court affirmed Abdiwali Mohamud’s criminal judgment for aggravated assault—domestic violence, interference with a telephone during an emergency call, and terrorizing. The court rejected his claims concerning unnecessary delay, speedy-trial violations, and insufficient evidence. The court held that the no-contact order concerning his minor child was a condition of probation rather than an independently imposed sentence.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jon J. Jensen; Jerod E. Tufte; Lisa Fair McEvers; Daniel J. Crothers; Gerald W. VandeWalle
JURISDICTION	North Dakota
DECIDED	April 11, 2019
DOCKET	20180333
DISPOSITION	affirmed
PROCEDURAL POSTURE	Abdiwali Mohamud appealed a criminal judgment entered after a jury convicted him of aggravated assault—domestic violence, interference with telephone during an emergency call, and terrorizing.
STANDARD OF REVIEW	The denial of a motion to dismiss for unnecessary delay was reviewed for abuse of discretion. The speedy-trial decision was reviewed de novo, with factual findings reviewed under the clearly erroneous standard. Sufficiency of the evidence was reviewed by determining whether the record contained evidence from which a jury could reasonably infer guilt, viewing the evidence in the light most favorable to the verdict and without reweighing conflicting evidence or judging witness credibility. Sentencing decisions were reviewed to determine whether the district court acted within statutory limits or substantially relied on an impermissible factor; statutory interpretation was reviewed de novo.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.

TOPICS

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion under N.D.R.Crim.P. 48 by denying dismissal for unnecessary delay after the State dismissed the original charges without prejudice and refiled them approximately eight months later.
2. Whether the eight-month delay violated Mohamud's constitutional and statutory right to a speedy trial.
3. Whether sufficient evidence supported the convictions for aggravated assault—domestic violence, interference with telephone during an emergency call, and terrorizing.
4. Whether the no-contact order concerning Mohamud's minor child was an illegal sentence or a permissible condition of probation.

HOLDINGS

1. The district court did not abuse its discretion by denying Mohamud's motion to dismiss for unnecessary delay. A criminal charge dismissed without prejudice may be refiled within the applicable statutory period, and the record did not establish irregularity or prejudice requiring dismissal.
2. The eight-month interval between dismissal without prejudice and refiling did not violate Mohamud's speedy-trial rights under the United States Constitution, the North Dakota Constitution, or N.D.C.C. § 29-01-06(5).
3. Sufficient evidence supported all three convictions.
4. The no-contact order concerning Mohamud's minor child was permissible as a condition of probation rather than an illegal, perpetual component of the criminal judgment.

KEY QUOTATIONS

“Rule 48(b), N.D.R.Crim.P., “acts as a vehicle for enforcing the Sixth Amendment right to a speedy trial. The court can dismiss whenever there has been unnecessary delay without being required to decide whether the unnecessary delay was of such a nature as to deprive the defendant of a constitutional right.”” (¶ 6)

“If there are two reasonable interpretations of a judgment, one which is lawful and another that is unlawful, this Court will interpret the judgment using the lawful interpretation.” (¶ 24)

FACTUAL BACKGROUND

The charges arose from an incident involving Mohamud's wife on March 12, 2016. His wife testified that Mohamud strangled her, threatened to break her neck and kill her, and interfered with her attempt to call 911; medical testimony indicated her injuries were consistent with strangulation. After the State dismissed and later refiled the charges because the witness was temporarily unavailable, Mohamud was convicted of all three offenses. The criminal judgment included a no-contact order concerning his minor child while he was also subject to three years of supervised probation.

PROCEDURAL HISTORY

Mohamud was initially charged in March 2016, and a preliminary hearing resulted in a probable-cause finding. The State obtained a dismissal without prejudice in September 2016 because of an unavailable witness and refiled the charges approximately eight months later. The district court denied Mohamud's motions to dismiss, a jury convicted him on all three charges, and the court imposed a sentence including supervised probation and a no-contact order involving his minor child. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Gwyther, 1999 ND 15, ¶¶ 11-12, 589 N.W.2d 575
- State v. Moos, 2008 ND 228, ¶ 30, 758 N.W.2d 674
- State v. Jones, 2002 ND 193, ¶ 23, 653 N.W.2d 668
- State v. Moran, 2006 ND 62, ¶¶ 8-9, 711 N.W.2d 915
- Barker v. Wingo, 407 U.S. 514 (1972)
- State v. Owens, 2015 ND 68, ¶ 9, 860 N.W.2d 817
- State v. Moore, 2003 ND 83, ¶ 8, 662 N.W.2d 263
- United States v. MacDonald, 456 U.S. 1, 7 (1982)
- City of Bismarck v. Schaffner, 2018 ND 168, ¶ 6, 914 N.W.2d 500
- State v. Carlson, 1997 ND 7, ¶ 36, 559 N.W.2d 802
- State v. Laib, 2005 ND 191, ¶ 8, 705 N.W.2d 815
- State v. Booth, 2015 ND 59, ¶ 4, 861 N.W.2d 160
- State v. Klein, 2014 ND 166, ¶ 7, 851 N.W.2d 159
- State v. Corman, 2009 ND 85, ¶ 15, 765 N.W.2d 530
- State v. Wilder, 2018 ND 93, ¶ 19, 909 N.W.2d 684
- Silbernagel v. Silbernagel, 2007 ND 124, ¶ 10, 736 N.W.2d 441
- Seher v. Woodlawn Sch. Dist. No. 26, 59 N.W.2d 805, 810 (N.D. 1953)
- Zent v. Zent, 281 N.W.2d 41, 47 (N.D. 1979)

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