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In re Woods v. State, 129 Nev. Adv. Op. 1 (January 17, 2013)¹

CRIMINAL PROCEDURE – STATE’S CONSCIOUS INDIFFERENCE
TO DEFENDANT’S PROCEDURAL RIGHTS

Summary

An appeal addressing whether the State’s failure to oppose a defendant’s motion to dismiss constitutes a conscious indifference to a defendant’s procedural right to defend the charge in a timely manner.

Disposition

The Court held that a conscious indifference analysis is appropriate where the State’s failure to oppose the defendant’s motion to dismiss results in the dismissal of the criminal complaint. To demonstrate conscious indifference, the defendant need not show that the State acted intentionally. Conscious indifference is a factual analysis and under the facts of this case, the State acted with conscious indifference by failing to comply with important procedural rules. Therefore, the State forfeited the opportunity to charge Woods again for the same offense.

Factual and Procedural History

The State charged William Woods with one count of sex offender failure to notify appropriate agencies of a change of address² and the justice court set a preliminary hearing for November 19, 2009. At the hearing, Woods’ attorney, Karla A. Butko, served the prosecutor with a motion to dismiss. The prosecutor present at the hearing, Michael Mahaffey, was standing in for Deputy District Attorney Patricia Halstead, the prosecutor assigned to the case. In light of the motion to dismiss, the parties agreed to postpone the preliminary hearing to allow the State time to file an opposition to the motion. When the State failed to timely oppose the motion to dismiss, the justice court granted Woods’ motion and dismissed the case. After learning of the dismissal, Halstead filed a motion for reconsideration of the dismissal. The justice court ordered the State to file the opposition, but later dismissed the case again when it determined it lacked jurisdiction after the original dismissal.

On March 10, 2010, the State obtained an indictment against Woods for the same offense charged in the criminal complaint. Woods filed a pretrial petition for a writ of habeas corpus and/or motion to dismiss the indictment alleging, inter alia, that the State willfully failed to comply with important procedural rules and acted with conscious indifference to his procedural rights when it failed to oppose the motion to dismiss. This conscious indifference, he argued, barred a subsequent prosecution for the same offense. After a hearing, the district court denied the petition, concluding that the State’s action, or inaction, did not constitute willful or conscious indifference to Woods’ rights. Woods was subsequently convicted of sex offender failure to notify appropriate agencies of change of address. The appeal followed.

¹ Benjamin K. Reitz

² NRS 179D.550

Discussion

The Supreme Court of Nevada issued a per curiam opinion.

I. Whether the conscious indifference analysis applies to the facts present in this case.

The Supreme Court of Nevada first announced the conscious indifference rule in 1970, holding that "[a] new proceeding for the same offense (whether by complaint, indictment or information) is not allowable when the original proceeding has been dismissed due to the willful failure of the prosecutor to comply with important procedural rules."³ Originally, the rule served mainly to limit prosecutors' use of requests for continuances in criminal proceedings. However, the Court applied the analysis in other contexts as well, including, among other cases, *Johnson v. State*, where the Court applied a conscious indifference analysis when the State failed to corroborate the testimony of appellant's accomplice.⁴ The Court determined that the conscious indifference analysis was appropriate under the facts in this case.

II. Whether the district court abused its discretion by denying his pretrial petition for a writ of habeas corpus because the State's failure to oppose his motion to dismiss constituted willful or conscious indifference to his procedural rights.

The Court defined conscious indifference as "conscious indifference to a defendant's procedural rights, or 'willful failure of the prosecution to comply with important procedural rules.'"⁵ Conscious indifference is not limited to intentional acts or acts committed with "calculated bad faith."⁶

Despite the unorthodox service of the motion to dismiss (delivered to the stand-in prosecutor) and the State's timely motion for reconsideration of the dismissal, the State clearly failed to comply with an important procedural rule. The State was personally served with Woods' motion to dismiss and was fully aware that failure to oppose could be construed as an admission that the motion had merit and consent to grant the motion. In addition, the State offered no explanation for its failure to oppose and no evidence of extraordinary circumstances leading to the failure to oppose. Accordingly, the State acted with conscious indifference to Woods' procedural rights.

Conclusion

The Court found that the district court erred when it denied Woods' pretrial motion for habeas corpus and/or to dismiss. The State was willfully and consciously indifferent to Woods' procedural rights when it failed to oppose Woods' motion to dismiss and which subsequently resulted in the dismissal of the case. Because the State exhibited conscious indifference and the case was dismissed, the State cannot subsequently prosecute Woods for the original offense. The Court reversed the conviction.

³ *Maes v. Sheriff*, 86 Nev. 317, 319, 468 P.2d 332, 333 (1970)

⁴ 89 Nev. 304, 305, 511 P.2d 1051, 1051-52 (1973).

⁵ *Woods v. State*, 129 Nev. Adv. Op. 1, 8 (2013) (quoting *Bustos v. Sheriff*, 87 Nev. at 623, 491 P.2d at 1280.)

⁶ *Woods*, 129 Nev. Adv. Op. 1 at 8 (quoting *State v. Lamb*, 97 Nev. at 611, 637 P.2d at 1202).