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State [State of Nevada] v. Gonzales, 123 Nev. Adv. Op. 45 (Sept. 14, 2023)

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State [State of Nevada] v. Gonzales, 123 Nev. Adv. Op. 45 (Sept. 14, 2023)¹

CRIMINAL CHARGES SHOULD ONLY BE DISMISSED WITH PREJUDICE WHEN PROSECUTORIAL MISCONDUCT IS BALANCED WITH SOCIETAL INTERESTS IN PROSECUTING CRIMINAL ACTS.

Summary

The Nevada Supreme Court considered whether the district court erred in dismissing the criminal complaint against Defendant after Defendant’s due process rights were violated from a delay in receiving competency restoration treatment.

The Court reversed, holding that: (1) the Court’s precedent did not support the district Court’s decision to dismiss Defendant’s complaint with prejudice due to aggravated circumstances, and (2) the district court failed to consider the balance between deference and the need for criminal prosecution.

Background

Charged with sexual assault, Defendant was deemed incompetent for trial and was ordered to a psychiatric hospital for competency restoration treatment. Defendant’s transfer to the psychiatric hospital was delayed for over 160 days. Defendant moved to dismiss the criminal complaint, arguing that Defendant’s continued detention violated his due process rights. The State argued that the district court erroneously granting Defendant’s motion to dismiss based on an external circumstance. The district court granted Defendant’s motion to dismiss. The State appealed.

Discussion

Standard of Review

The Court first addressed whether it had the authority to review the district court’s dismissal of the criminal complaint. The Court answered yes,² stating that a district court has abused its discretion if the court’s decision is “arbitrary or capricious or if it exceeds the bounds of law or reason.”³

The district court abused its discretion in ruling that dismissal with prejudice was warranted.

Dismissing a criminal charge with prejudice is an “extreme sanction”⁴ and is only appropriate upon a “finding of aggravated circumstances” after balancing the deterrent objectives of the criminal charge with the societal interest in prosecuting violators of the law.⁵ Based on this precedent, the Court held that the district court did abuse its discretion when it dismissed the criminal charges against Defendant.

¹ By Kacee Johnson.

² *Morgan v. State*, 416 P.3d 212, 220 (Nev. 2018).

³ *Jackson v. State*, 17 P.3d 998, 1000 (Nev. 2001).

⁴ *Morgan*, 416 P.3d at 220.

⁵ *Babayan*, 787 P.2d 805, 818 (Nev. 1990).

The district court failed to apply the appropriate standard in finding aggravated circumstances.

The Court relied on its decisions in *Babayan* and *Morgan* to support its holding that the district court erred in dismissing Defendant's criminal charges.

In *Babayan*, the Court considered the same issue: whether the district court's dismissal of criminal charges with prejudice was proper. There, the district court dismissed criminal charges against Ruben Babayan with prejudice for prosecutorial misconduct.⁶ The Court reversed, holding that dismissal with prejudice was not warranted, even with a due process violation, explaining that dismissal with prejudice is only warranted when evidence against a defendant is irrevocably tainted or the defendant's case is so prejudiced that due process and fundamental fairness precludes reindictment.⁷

In *Morgan*, similar to the present case, the district court ordered for John Demon Morgan to be transferred to Lake's Crossing,⁸ and Morgan experienced an extreme delay in being transferred to Lake's Crossing. As a result, Morgan filed a motion to dismiss, and the district court denied Morgan's motion⁹ and instead ordered Morgan's prompt transfer to Lake's Crossing. On appeal, the Court affirmed that the district court did not err in denying Morgan's motion to dismiss.¹⁰ Like in *Babayan*, the Court in *Morgan* held that dismissal with prejudice is "extreme" and is only appropriate after weighing the dismissal's deterrent objective against society's interest in prosecuting crimes.¹¹

In the present case, the Court noted that dismissal may be appropriate when there is either: (1) prosecutorial misconduct; or (2) prejudice extended to the defendant. The Court highlighted *State v. Tapia* to demonstrate when dismissal of criminal charges is appropriate.

In *Tapia*, Peter Tapia was charged with embezzlement,¹² and the State violated a discovery order which resulted in an important document being excluded from the case.¹³ The district court dismissed the case, stating that the State's case was too weak without the excluded document.¹⁴ The Court affirmed, holding that "where the State's non-compliance... is inadvertent and the court takes appropriate action to protect the defendant against prejudice, there is no error" in dismissing criminal charges.¹⁵

However, factors such as "judicial economy, fair play[,] and reason" may allow the prosecution to recharge a defendant after criminal charges are dismissed.¹⁶ Reprosecution requires more than mishandling a case or exercising poor judgment and should only be prohibited when the prosecution has "wilfully disregarded or displayed a conscious indifference to procedural rules."¹⁷ Moreover, the court clarified that "aggravated circumstances" can take

⁶ Babayan, 787 P.2d at 818.

⁷ *Id.*

⁸ Morgan, 416 P.3d at 217.

⁹ *Id.*

¹⁰ *Id.* at 220.

¹¹ *Id.*

¹² State v. Tapia, 835 P.2d 22, 23 (Nev. 1992).

¹³ *Id.* at 23.

¹⁴ *Id.* at 23—24.

¹⁵ *Id.* at 24.

¹⁶ McNair v. Sheriff, 514 P.2d 1175, 1177 (Nev. 1973).

¹⁷ State v. Lamb, 637 P.2d 1201, 1202 (Nev. 1981).

form via prosecutorial misconduct¹⁸ or unalleviated prejudice towards the defendant.¹⁹ (However, the Court declined to determine whether the present situation amounted to aggravated circumstances.) Furthermore, the Court concluded that the district court failed to weigh the prosecution's misconduct with the prejudice extended to the Defendant.

The district court failed to balance dismissal's deterrent objective with society's interest in prosecuting criminal acts.

Even if a court determines that there are aggravated circumstances favoring dismissal, a court must balance these aggravated circumstances against society's interest in prosecuting criminal acts.²⁰ In *United States v. Lawson*, the district court balanced these two factors and found that a prosecutor deliberately misled the jury,²¹ and the court correctly dismissed *without* prejudice.²² The court indicated that the misconduct was committed by only one former prosecutor, not the entire prosecution.²³ The court concluded despite the former prosecutor's misconduct, the societal costs associated with dismissing the entire case was not justified and that the defendant should not be rewarded with permanent immunity.²⁴

In the present case, the Court determined that there was no deterrent objective of dismissal. The Court pointed out that the district court did not weigh the correct factors; instead, the district court balanced the State's interest in prosecuting the Defendant against the Defendant's due process rights. However, because Defendant's crime of sexual assault is so severe, society's interest in prosecuting this crime outweighs any deterrent effect. As such, the Court held that the district court erred in dismissing this case *with* prejudice, but it did not err in dismissing the case. However, the case should have been dismissed *without* prejudice.

Conclusion

The district court should not have dismissed Defendant's criminal charges *with* prejudice, but the district court should have dismissed the charges *without* prejudice. Although the Defendant's due process rights were violated, it is not in the public's best interest to dismiss the case with prejudice. Defendant was charged a sexual crime, which is so serious that the charges should not have been dismissed with prejudice. The Court reversed and remanded.

¹⁸ Babayan, 787 P.2d at 118.

¹⁹ Langford v. State, 600 P.2d 231, 234—35 (Nev. 1973).

²⁰ Babayan, 787 P.2d at 818.

²¹ *United States v. Lawson*, 502 F. Supp. 158, 161, 172-73 (D. Md. 1980).

²² *Id.*

²³ *Id.*

²⁴ *Id.*