Cite as 2012 Ark. 73

# SUPREME COURT OF ARKANSAS

No. 11-753

| | |
|---|---|
| STATE OF ARKANSAS<br>APPELLANT<br><br>V.<br><br>S.L.<br>APPELLEE | **Opinion Delivered** February 23, 2012<br><br>APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, TENTH DIVISION<br>[NOS. JD2009-669, JD-2010-1463]<br><br>HONORABLE JOYCE WILLIAMS WARREN, JUDGE<br><br>APPEAL DISMISSED. |

**JIM HANNAH, Chief Justice**

The State of Arkansas appeals from an order of the Pulaski County Circuit Court granting a motion to dismiss for violation of speedy trial filed by appellee S.L., a minor. On March 20, 2009, S.L. was charged with one count of rape in the juvenile division of circuit court. S.L. was served with a summons on April 2, 2009, which started the running of the speedy-trial clock. On October 20, 2009, the circuit court granted S.L.'s motion for mental health evaluation, and on May 3, 2010, the circuit court found S.L. competent and fit to proceed, noting that the time between October 20, 2009, and May 3, 2010, was tolled for speedy-trial purposes. S.L.'s adjudication hearing was set for August 17, 2010.

At the August 17 hearing, the State informed the court that it was not ready to proceed, and the court noted that S.L. had failed to appear at the hearing. Neither party requested a continuance, but the court, on its own motion, ruled that it would not grant a

continuance. After noting that the State had failed to subpoena witnesses and S.L. had failed to appear, the court, on its own motion, nolle prossed the delinquency petition.

The State refiled the delinquency petition on September 1, 2010, alleging the previously charged rape offense and adding a charge of failure to appear. After service by summons on February 8, 2011, S.L. appeared on March 29, 2011, at which time an adjudication hearing was set for April 25, 2011.

Before the adjudication hearing, S.L. filed a motion to dismiss for violation of his right to speedy trial, alleging that 425 days had passed from the time of filing the original delinquency petition, excluding the time period from October 20, 2009, until August 17, 2010. In response, the State contended that the circuit court lacked the authority to nolle pros the delinquency petition and, as such, S.L.'s failure to appear at the August 17 hearing was the operative action that affected the tolling of time for speedy-trial purposes. The State further contended that the period between August 17, 2010, and March 29, 2011, should be excluded and that the totaling of all excludable periods of time resulted in no speedy-trial violation.

In an order entered April 19, 2011, the circuit court denied S.L.'s motion to dismiss, finding that it lacked the authority to nolle pros the delinquency petition and "concur[ring] with the State's position that since [S.L.] failed to appear for the August 17, 2010 adjudication hearing . . . the time for speedy trial should be tolled until [S.L.] next appeared in court on March 29, 2011." Based on its findings, the circuit court determined that the scheduled adjudication date—April 25, 2011—was within the 365-day limit for speedy-trial purposes.

On April 25, 2011, S.L. again filed a motion to dismiss for lack of speedy trial. In his motion, S.L. contended that the time for speedy trial could not properly be tolled beginning on August 17, 2010, because Arkansas Rule of Criminal Procedure 28.3(f) requires a showing of "good cause" before speedy-trial time can be tolled following a nolle pros, and the State failed to show good cause. Alternatively, S.L. argued that, even if time were tolled on August 17, 2010, speedy trial had still run because time began running again on February 8, 2011, when he was served with a summons to appear in court. After a hearing, the circuit court granted S.L.'s motion to dismiss:

> It was a nolle pros straight. It wasn't a nolle pros with good cause. Nolle pros with good cause would have allowed the time to be tolled when the petition was re-filed and then when he was served. It was a straight nolle pros, Court's error, I already acknowledged that. And you are right, the State did not have a right to object, but that probably would have been a good thing. State did not seek to correct the Court's error by asking for a - - a motion to reconsider and/or appealing. So the time is gone, period. So nothing would have been tolled after the nolle pros 'cause it was not a nolle pros with good cause even though the Court erred by entering the nolle pros sua sponte in the first place.

The State appeals.

As a threshold matter, the court must determine whether the State may appeal the circuit court's order granting S.L.'s motion to dismiss for lack of speedy trial. In delinquency cases, the State may appeal only under those same circumstances that would permit it to appeal in criminal proceedings. Ark. R. App. P.– Civ. 2(c)(1) (2011); *see also* Ark. Code Ann. § 9-27-343(b) (Repl. 2009). Unlike the right of a criminal defendant to bring an appeal, the State's right to appeal is limited to the provisions of Rule 3 of the Arkansas Rules of Appellate Procedure–Criminal (2011). *E.g.*, *State v. Richardson*, 373 Ark. 1, 280 S.W.3d 20

(2008). Under Rule 3, the State's appeal must require this court's review for "the correct and uniform administration of the criminal law." Ark. R. App. P.–Crim. 3(d). The correct and uniform administration of justice is at issue when the question presented is solely a question of law independent of the facts in the case appealed. *E.g.*, *State v. S.G.*, 373 Ark. 364, 284 S.W.3d 62 (2008). Where the appeal relies on facts unique to the case, the appeal will not lie. *Id.*

S.L. contends that this case is not appealable under Rule 3 because the State has no right to appeal from a dismissal based on an alleged violation of speedy trial when the appeal involves the application of our speedy-trial rules to the unique facts of a case. For its part, the State contends that "the issue raised is the more distinct question of whether the circuit court's reliance on the nolle pros, which was in essence a nullity, as a basis for finding that time had passed for speedy-trial tolling purposes—in lieu of the only other controlling consideration in this matter, [S.L.'s] own actions which caused the delay in proceeding, i.e., his failure to appear—was erroneous as a matter of law."

We do not allow appeals by the State merely to demonstrate the fact that the circuit court erred; the appeal must require a holding that will establish precedent important to the correct and uniform administration of justice. *E.g.*, *State v. Johnson*, 374 Ark. 100, 286 S.W.3d 129 (2008). This court has previously held that a court does not have the authority to nolle pros a charge on its own motion. *See Hammers v. State*, 261 Ark. 585, 599, 550

S.W.2d 432, 439 (1979).[1] After acknowledging its error in sua sponte nolle prossing the delinquency petition, the circuit court determined which periods of time were excludable for the purposes of speedy trial. In making this determination, the circuit court reviewed unique circumstances and decided mixed questions of law and fact; therefore, we must conclude that the correct and uniform administration of justice is not at issue. *See Johnson*, 374 Ark. at 103, 286 S.W.3d at 131–32 (noting that the State's argument on appeal that it was entitled to have time excluded "for other good cause" was an appeal of a factual determination made by the circuit court and holding that the State's appeal was not proper because it involved unique facts and circumstances and did not involve the interpretation of our rules with widespread ramifications); *State v. Tipton*, 300 Ark. 211, 212, 779 S.W.2d 138, 139 (1989) (dismissing appeal because the State's point for reversal involved the application of our speedy-trial rules and not the correct and uniform administration of the criminal law). Accordingly, we dismiss the appeal.

Appeal dismissed.

---

[1]A prosecutor has the discretion to request that the court nolle pros a charge, *see Webb v. Harrison*, 261 Ark. 279, 281, 547 S.W.2d 748, 749 (1977), and the court has the discretion to grant or deny the prosecutor's request, *see Noland v. State*, 265 Ark. 764, 770, 580 S.W.2d 953, 956 (1979). But "[n]either the trial court nor the appellate court may compel a nolle prosequi; they can only suggest it." *Hammers*, 261 Ark. at 599, 550 S.W.2d at 439 (citing Annot, 35 L.R.A. 701 (1895)); *see also Johnson v. Johnson*, 343 Ark. 186, 200, 33 S.W.3d 492, 500 (2000) (stating that a circuit judge cannot order a prosecutor to nolle pros a case because that authority resides solely within the bailiwick of the prosecutor).