

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2007

STATE OF FLORIDA,
Appellant,

v.

JORGE JESUS LEON,
Appellee.

No. 4D07-1003

[October 31, 2007]

PER CURIAM.

The State charged the defendant, Jorge Jesus Leon, with bigamy in violation of section 826.01, Florida Statutes. Although another assistant state attorney was in attendance, when the filing attorney for the State failed to appear as ordered by the trial court, the trial court sua sponte entered an order of dismissal dismissing the case without prejudice and concluding that the State wasted the court's time and acted in bad faith in initiating the prosecution. The State appeals the order of dismissal. The defendant concedes error and we agree that reversal is required because the trial court's action in dismissing the case was an abuse of discretion and constituted an improper infringement upon the State's discretion to prosecute. *State v. Wheeler*, 745 So. 2d 1094, 1096 (Fla. 4th DCA 1999). Therefore, we reverse and remand for reinstatement of the bigamy charge against the defendant.

Reversed and Remanded.

GUNTHER, WARNER and GROSS, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Edward A. Garrison, Judge; L.T. Case No. 2006CF005444AXX.

Bill McCollum, Attorney General, Tallahassee, and Georgina Jimenez-Orosa, Senior Assistant Attorney General, West Palm Beach, for

appellant.

Carey Haughwout, Public Defender, and James W. McIntire, Assistant Public Defender, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing