



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

Nos. 04-16-00154-CR, 04-16-00155-CR, 04-16-00156-CR, 04-16-00157-CR, 04-16-00158-CR,
04-16-00159-CR, 04-16-00160-CR, 04-16-00161-CR, 04-16-00162-CR, and 04-16-00163-CR

The **STATE** of Texas,
Appellant

v.

Andres **GARCIA**,
Appellee

From the County Court at Law, Starr County, Texas
Trial Court Nos. CR-15-315, CR-15-316, CR-15-317, CR-15-318, CR-15-319,
CR-15-320, CR-15-321, CR-15-322, CR-15-323, and CR-15-324
Honorable Romero Molina, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Jason Pulliam, Justice

Delivered and Filed: October 26, 2016

REVERSED AND REMANDED

Appellee Andres Garcia was charged with eleven counts of illegal trapping and transporting white-tailed deer. *See* TEX. PARKS & WILD. CODE ANN. § 43.0612 (West 2011). On November 10, 2015, Garcia entered a plea of guilty on each count. At that time, the trial court did not accept the guilty pleas; instead, the trial court deferred proceedings and ordered the Starr County Community Supervision and Corrections Department to prepare a pre-sentence investigation report. The cases were reset for sentencing on December 15, 2015.

At the hearing on December 15, 2015, the State requested Garcia be sentenced to probation for a term of two years and a \$1,000.00 fine in Cause No. CR-15-314. The State also requested Garcia pay restitution in the amount of \$2,461.63 to the Texas Parks and Wildlife Department and to forfeit two of the buck deer heads confiscated by the State. Finally, the State requested the trial court take into consideration five of the charges and assess punishment on the five remaining cases. *See* TEX. PENAL CODE ANN. § 12.45(a) (“A person may, with the consent of the attorney for the state, admit during the sentencing hearing his guilt of one or more unadjudicated offenses and request the court to take each into account in determining sentence for the offense or offenses of which he stands adjudged guilty.”).

At several points during the hearing, the trial court expressed dissatisfaction and frustration with the pre-sentence investigation report. “And you really think this is really a PSI, this poor excuse for a report that’s supposed to help me decide what to do?” The trial court then proceeded to sentencing. In Cause No. CR-15-314, the trial court sentenced Garcia to six-months deferred probation and assessed a fine in the amount of \$500.00. The trial court ordered Garcia to pay \$2,461.63 in restitution and to forfeit the two buck deer heads requested by the State. The trial court further ordered “[t]he other charges [be] unadjudicate[d]; and the fine is five hundred dollars plus court costs.” The State objected and the trial court responded by dismissing the remaining ten causes—trial court Cause Nos. CR-15-315, CR-15-316, CR-15-317, CR-15-318, CR-15-319, CR-15-320, CR-15-321, CR-15-322, CR-15-323, and CR-15-324. The trial court concluded, “[a]nd I hope you all communicate my [dissatisfaction] with this report to the proper authorities there in your office.”

On appeal, the State contends the trial court did not have authority to dismiss the criminal cases without the prosecutor's consent.¹ We agree.

TRIAL COURT'S AUTHORITY TO DISMISS

"It is well established that there is no general authority that permits a trial court to dismiss a case without the prosecutor's consent." *State v. Mungia*, 119 S.W.3d 814, 816 (Tex. Crim. App. 2003); *see also State v. Terrazas*, 962 S.W.2d 38, 40 (Tex. Crim. App. 1998); *State v. Frye*, 897 S.W.2d 324, 331 (Tex. Crim. App. 1995); *State v. Johnson*, 821 S.W.2d 609, 613 (Tex. Crim. App. 1991); *State v. Anderson*, 119 Tex. 110, 26 S.W.2d 174 (Tex. Comm'n App. 1930). The few exceptions allowed by the courts include: when a defendant was denied a speedy trial, when there is a defect in the charging instrument, when a defendant was detained and no charging instrument properly presented, or when a defendant was denied his constitutional rights. *Mungia*, 119 S.W.3d at 816 (citing *Johnson*, 821 S.W.2d at 612 n.2). Here, the record does not support, and neither the State nor Garcia contend, that any of the three exceptions were met.

Garcia's cases did not "languish on the docket" for an extended period of time. *See Henson v. State*, 407 S.W.3d 764, 767 (Tex. Crim. App. 2013). Moreover, Garcia was charged by indictment in each cause; and, although his name was originally misspelled in the indictments, the error was corrected and Garcia acknowledged he was the individual charged in each indictment. *See State v. Van Hoesen*, 2012 WL 664936, at *1 (Tex. App.—San Antonio Mar. 1. 2012, no pet.). Finally, Garcia did not contend before the trial court, and does not contend on appeal, that a constitutional basis warrants the dismissal. *See id.*

Based on a review of the entire record, the trial court's dismissals in Cause Nos. CR-15-315, CR-15-316, CR-15-317, CR-15-318, CR-15-319, CR-15-320, CR-15-321, CR-15-322, CR-

¹ Garcia filed a brief indicating that he does not contest the relief sought by the State.

15-323, and CR-15-324 were not based on statutory, common law, or constitutional grounds. Absent such support, the trial court lacked authority to dismiss the causes of action without the State's consent. Accordingly, we conclude the trial court's orders dismissing Cause Nos. CR-15-315, CR-15-316, CR-15-317, CR-15-318, CR-15-319, CR-15-320, CR-15-321, CR-15-322, CR-15-323, and CR-15-324 are reversed and these causes are remanded to the trial court for further proceedings consistent with this opinion.

Patricia O. Alvarez, Justice

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