

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellant*,

v.

JOSEPH MARTIN VALDEZ, *Appellee*.

No. 1 CA-CR 17-0616
FILED 9-20-2018

Appeal from the Superior Court in Maricopa County
No. CR2013-422626-001
The Honorable Kathleen N. Carey, Judge *Pro Tempore*

REMANDED

COUNSEL

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By Andrea L. Kever
Counsel for Appellant

Maricopa County Public Defender's Office, Phoenix
By Kevin D. Heade
Counsel for Appellee

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MEMORANDUM DECISION

Presiding Judge Jennifer M. Perkins delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

P E R K I N S, Judge:

¶1 The State appeals from the trial court's dismissal of its prosecution with prejudice. We remand to the trial court to ensure the facts substantially support a finding that dismissal with prejudice is in the interests of justice.

FACTUAL AND PROCEDURAL HISTORY

¶2 On May 17, 2013, Chandler police arrested Joseph Martin Valdez on suspicion of possession of a dangerous drug and suspicion of possession of drug paraphernalia. The State then charged Valdez by direct complaint with possession of methamphetamine and possession of a glass pipe used to smoke methamphetamine. Valdez was released under supervision, but failed to appear at his preliminary hearing on the matter. The superior court issued a bench warrant and set a bond, but then quashed the warrant when Valdez appeared at a subsequent hearing, at which he requested a continuance. Valdez then again failed to appear at his re-scheduled preliminary hearing, and again the superior court issued a bench warrant.

¶3 On July 25, 2017, a Maricopa County Sheriff's deputy arrested Valdez on the second bench warrant. Now in custody, Valdez appeared at a hearing and requested to continue the preliminary hearing until August 31, 2017, with time excluded. The court granted that request then denied Valdez's motion to modify his release conditions or reduce his bond. At the August 31 hearing, Valdez once again moved to continue the preliminary hearing, which the court granted.

¶4 The superior court set the preliminary hearing for September 5, 2017, but apparently through an administrative error the hearing was calendared for September 15, 2017. At that time the State moved to dismiss the case without prejudice, after which Valdez requested the court dismiss with prejudice. The court heard argument on the matter, and the State conceded that the arresting officer was unavailable to testify at that time.

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¶5 The court granted the motion with prejudice, stating its decision was “in light of the age of this case and the fact that it apparently has been set on the calendar multiple times and that each time the State has announced not ready.” The State appeals from this dismissal.

DISCUSSION

¶6 We review an order granting a motion to dismiss criminal charges for an abuse of discretion. *State v. Jones*, 222 Ariz. 555, 558, ¶ 9 (App. 2009). “A trial court abuses its discretion when it commits an error of law, or when the record lacks substantial evidence to support the court’s finding.” *Varco, Inc. v. UNS Electric, Inc.*, 242 Ariz. 166, 170, ¶ 12 (App. 2017). Arizona Rule of Criminal Procedure 16.6 (now 16.4) “governs dismissal of prosecutions.” *State v. Huffman*, 222 Ariz. 416, 420, ¶ 10 (App. 2009).

¶7 At the time, and in relevant part, Arizona Rule of Criminal Procedure 16.6 stated:

a. On Prosecutor’s Motion. The court, on motion of the prosecutor showing good cause therefor, may order that a prosecution be dismissed at any time upon finding that the purpose of the dismissal is not to avoid the provisions of [the speedy trial rule].

* * *

c. Record. The court shall state, on the record, its reasons for ordering dismissal of any prosecution.

d. Effect of Dismissal. Dismissal of a prosecution shall be without prejudice to commencement of another prosecution, unless the court finds that the interests of justice require that the dismissal be with prejudice.

When granting a motion to dismiss with prejudice, the trial court must make findings regarding the interests of justice but need not use those exact words. *State v. Garcia*, 170 Ariz. 245, 247 (App. 1991); *see also Huffman*, 222 Ariz. at 423, ¶ 18. The trial court is not limited “to any specific list of factors” in determining the interests of justice, but instead need only “consider[] the relevant competing interests of the defendant and the state in light of the particular circumstances of each case.” *Huffman*, 222 Ariz. at 422, ¶ 15. The trial court also has “the authority and discretion to dismiss charges with prejudice when it would be unfair to allow the prosecution to continue.” *Id.* at 421, ¶ 12.

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¶8 The State argues that several cases required the trial court to make specific findings of fact regarding bad faith and actual prejudice to Valdez, rather than the more general considerations we stressed in *Huffman*. See *State v. Youngblood*, 173 Ariz. 502, 506-07 (1993); *State v. Gilbert*, 172 Ariz. 402, 404-05 (App. 1991); *Garcia*, 170 Ariz. at 245. Each of those cases is inapposite. In *Youngblood*, our supreme court held that a jury instruction sufficiently cured the State's spoliation of evidence absent any showing of bad faith on the part of the State and prejudice to the defendant. 173 Ariz. at 506-07. *Gilbert* and *Garcia* each involved speedy trial issues under Rule 8 of Criminal Procedure, a situation we explicitly distinguished from other Rule 16 dismissals in *Huffman*. 222 Ariz. at 420, ¶ 11.

¶9 Here, the court stated on the record that it was dismissing the case with prejudice in part because the State had announced "multiple times" across multiple hearings that it was not ready to proceed with the preliminary hearing. See Ariz. R. Crim. P. 5.1(a) (2017); 5.3 (2017). The State has not provided transcripts from any of these earlier hearings, and has not argued on appeal that the court erred in making this finding.

¶10 Despite this, we cannot say that substantial evidence supports the court's finding. See *State v. Meeds*, 244 Ariz. 454, 460, ¶ 10 (App. 2018) (substantial evidence is that which a reasonable person would accept as sufficient to reach a conclusion). The minute entries in the record reveal that Valdez, not the State, requested three of the continuances. Furthermore, Valdez failed to appear at other hearings, leading the trial court to issue two bench warrants. Finally, although the age of the case was due to Valdez's choice to abscond rather than any failing of the State, it appears the trial court may have relied on the case's age as a reason to dismiss with prejudice. Insofar as it did, it erred, but the record before us is too sparse to determine whether and to what extent the court relied on this fact. Accordingly, we remand to the trial court to make findings of fact in accordance with Arizona Rule of Criminal Procedure 16.6(c) and *Huffman*.

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CONCLUSION

¶11 For the foregoing reasons, we remand for the trial court to make appropriate factual findings.



AMY M. WOOD • Clerk of the Court
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