129 Nev., Advance Opinion

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM ANDREW WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57481

Appeal from a judgment of conviction, pursuant to a bench trial, of sex offender failure to notify appropriate agencies of change of address. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Reversed.

Karla K. Butko, Verdi,
for Appellant.

Catherine Cortez Masto, Attorney General, Carson City; Richard A. Gammick, District Attorney, and Joseph R. Plater, Deputy District Attorney, Washoe County,
for Respondent.

David M. Schieck, Las Vegas,
for Amicus Curiae Nevada Attorneys for Criminal Justice.

BEFORE PICKERING, C.J., GIBBONS, HARDESTY, PARRAGUIRRE, DOUGLAS, CHERRY and SAITTA, JJ.

OPINION[1]

PER CURIAM:

In this appeal, we consider whether the State's failure to file a responsive pleading in justice court, leading to dismissal of a criminal

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

complaint, constitutes conscious indifference to a defendant's procedural rights and/or important procedural rules barring a new prosecution for the same offense. First, we consider whether a conscious indifference analysis applies where, as here, the State's failure to oppose a defendant's motion to dismiss results in the dismissal of a criminal complaint. We conclude that it does because the analysis is appropriate where an action or inaction by the State causes the dismissal of a complaint. Second, we consider whether the State's inaction here constituted conscious indifference. We conclude that the State's failure to file an opposition demonstrated conscious indifference to an important procedural rule. We therefore conclude that the district court erred by denying appellant William Andrew Woods' pretrial petition for a writ of habeas corpus and reverse the judgment of conviction.

RELEVANT FACTS AND PROCEDURAL HISTORY

Woods was charged via criminal complaint with one count of sex offender failure to notify appropriate agencies of change of address. After one continuance at Woods' request, the preliminary hearing was set for November 17, 2009. On that date, Woods' counsel, Karla K. Butko, filed and personally served the deputy district attorney who appeared at the preliminary hearing, Michael Mahaffey, with a motion to dismiss.[2] Woods asserts, and the State does not contest, that the parties agreed to

[2]The motion to dismiss asserted that the sex offender registration statute, NRS 179D.550, was unconstitutional in violation of the Ex Post Facto Clauses of the United States and Nevada Constitutions; retroactive application of NRS 179D.550 violated Woods' plea agreement in his prior case; and he was wrongfully prosecuted because the registration period, if any, expired prior to the date of the alleged offense.

reset the preliminary hearing so that the State could file an opposition. The State, however, did not file an opposition. On December 9, 2009, before the preliminary hearing took place, the justice court granted the motion and dismissed the case due to the lack of an opposition.

Five days later, on December 14, 2009, the State—through Deputy District Attorney Patricia Halstead—filed a motion for reconsideration of the dismissal. Therein, Ms. Halstead conceded that the motion to dismiss was properly served, but argued that it was not brought to her attention "through office procedure" and Ms. Butko neither placed a courtesy call when no opposition was filed nor filed a request for submission. She also pointed out in her reply that Ms. Butko knew that Ms. Halstead was the deputy assigned to the case but that the motion to dismiss was not served on her through "traditional means." The justice court granted the State's motion for reconsideration but stated:

> The State is hereby put on notice that this Court does not intend in any manner to validate the State's failure to properly respond in a timely manner to motions that are filed by the defendants in cases pending before this Court. The State's argument that the Defendant did not provide them with a courtesy call is specious, at best. Neither the Defendant, nor this Court, has any obligation to remind counsel when responses are due to various motions that are filed in this Court.

The justice court then ordered the State to file an opposition to the motion to dismiss. The parties agree, however, that the justice court later determined that it lacked jurisdiction over the matter due to the prior dismissal and again dismissed the case.

On March 10, 2010, the State obtained an indictment against Woods for the same offense charged in the criminal complaint. Woods filed a pretrial petition for a writ of habeas corpus and/or motion to dismiss the indictment alleging, inter alia, that the State willfully failed to comply with important procedural rules and acted with conscious indifference to his procedural rights when it failed to oppose the motion to dismiss. This conscious indifference, he argued, barred a subsequent prosecution for the same offense.

The State filed a response to the petition, pointing out that Ms. Butko provided a copy of the motion to Mr. Mahaffey even though she knew that Ms. Halstead was the deputy assigned to the case. The State asserted that the motion was not properly served or submitted through a request for submission. It also alleged that the justice court articulated that it believed that the State had not acted improperly.[3] Finally, the State declared that it "clearly abided by all procedural rules."

After a hearing, the district court issued a written order denying the petition and concluding that the State did not exhibit willful or conscious indifference to Woods' rights. Specifically, the court determined that:

> [t]he State undeniably made a substantial error in failing to oppose the Motion to Dismiss, however, there has been no showing of conduct that rises to the level of willful or conscious indifference. Upon realizing that the Motion to Dismiss was granted, the State filed a Motion for

[3]There is no support for this assertion in the record on appeal.

> Reconsideration. . . . [T]he State's Motion for Reconsideration was not filed with conscious indifference to the rights of the defendant. It was filed in good faith with legal support. . . . The State made a mistake in failing to oppose the Motion to Dismiss, but neither that mistake nor the subsequent filings by the State indicate any conscious indifference to Woods' procedural rights.

Woods was subsequently convicted of sex offender failure to notify appropriate agencies of change of address. This appeal follows.

DISCUSSION

On appeal, Woods contends that the district court abused its discretion by denying his pretrial petition for a writ of habeas corpus because the State's failure to oppose his motion to dismiss constituted willful or conscious indifference to his procedural rights. He asserts that the State is barred from initiating new criminal proceedings where the original proceedings were dismissed due to the State's demonstration of conscious indifference. First, however, we consider the threshold question, not addressed by the parties but implicated by the written order, of whether the conscious indifference analysis applies to the factual scenario presented by this case.

Applicability of conscious indifference analysis

This court first announced the conscious indifference rule over 40 years ago, holding that "[a] new proceeding for the same offense (whether by complaint, indictment or information) is not allowable when the original proceeding has been dismissed due to the willful failure of the prosecutor to comply with important procedural rules." Maes v. Sheriff, 86 Nev. 317, 319, 468 P.2d 332, 333 (1970). This rule was initially promulgated as a means to strictly limit continuances in justice court so

that cases could be handled in a timely manner. See, e.g., McNair v. Sheriff, 89 Nev. 434, 436-37, 514 P.2d 1175, 1176 (1973). Accordingly, most of the cases undertaking a conscious indifference analysis consider the procedure surrounding continuances of preliminary hearings. See Joseph John H., a Minor v. State, 113 Nev. 621, 621-24, 939 P.2d 1056, 1057-58 (1997); Sheriff v. Roylance, 110 Nev. 334, 337, 871 P.2d 359, 361 (1994); Sheriff v. Simpson, 109 Nev. 430, 432-34, 851 P.2d 428, 430-31 (1993); Sheriff v. Menendez, 98 Nev. 430, 431-32, 651 P.2d 98, 98-99 (1982); Downey v. Sheriff, 88 Nev. 14, 15, 492 P.2d 989, 990 (1972); Bustos v. Sheriff, 87 Nev. 622, 623-24, 491 P.2d 1279, 1280-81 (1971); State v. Austin, 87 Nev. 81, 82-83, 482 P.2d 284, 284-85 (1971); Maes, 86 Nev. at 318, 468 P.2d at 332.

This court has, however, considered claims of conscious indifference in other contexts. For example, in Johnson v. Sheriff, we considered whether the State exhibited conscious indifference to appellant's rights where the justice court dismissed the case after the State failed to corroborate the testimony of appellant's accomplice. 89 Nev. 304, 305, 511 P.2d 1051, 1051-52 (1973). In State v. Lamb, we considered whether the State exhibited willful or conscious indifference when a criminal complaint was dismissed after the prosecutor failed to establish probable cause. 97 Nev. 609, 610-11, 637 P.2d 1201, 1202-03 (1981). And in Phillips v. Sheriff, we concluded that the State did not act in a consciously or willfully indifferent manner where its case was dismissed in justice court due to the unavailability of a witness. 93 Nev. 309, 310-11, 565 P.2d 330, 331 (1977). See also Sheriff, Nye County v.

Davis, 106 Nev. 145, 149, 787 P.2d 1241, 1243 (1990); Watson v. Sheriff, 93 Nev. 236, 237-38, 562 P.2d 1133, 1133 (1977); State v. Maes, 93 Nev. 49, 51, 559 P.2d 1184, 1185 (1977). These cases establish that a conscious indifference analysis is appropriately applied where some action or inaction by the State results in the dismissal of a criminal complaint. Accordingly, we conclude that a conscious indifference analysis is appropriate here, where the State's failure to oppose Woods' motion to dismiss resulted in the dismissal of the criminal complaint.

Conscious indifference

Woods alleges that the State acted with willful and conscious indifference to his right to defend against the charge in a timely manner[4] by failing to oppose the motion to dismiss. The State concedes that its failure to oppose the motion to dismiss "might amount to negligence" but asserts that the failure does not constitute willful or conscious indifference. The State reiterates that the motion was served on "stand-in counsel" and emphasizes that Ms. Halstead filed a motion for reconsideration as soon as she learned of the order of dismissal.[5] We agree with Woods and conclude that the district court erred by concluding that

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[4]Woods also references the statutory requirement that a magistrate conduct a preliminary hearing within 15 days unless the time is extended for good cause. See NRS 171.196(2).

[5]The State does not contend, as it did in the district court, that the motion to dismiss was not properly served. The State also abandons its complaints that Ms. Butko failed to file a request for submission of the motion and place a courtesy call when no opposition was filed.

the State's failure to oppose the motion to dismiss did not constitute willful or conscious indifference.

Conscious indifference is described as conscious indifference to a defendant's procedural rights, or "willful failure of the prosecution to comply with important procedural rules." Bustos, 87 Nev. at 623, 491 P.2d at 1280. To demonstrate conscious indifference, a defendant need not show that the prosecution acted intentionally or with "calculated bad faith." Lamb, 97 Nev. at 611, 637 P.2d at 1202 (internal quotation marks omitted). The district court's determination regarding conscious indifference is a factual determination, id., which this court will not disturb so long as substantial evidence in the record supports that determination, Roylance, 110 Nev. at 337, 871 P.2d at 361.

Our prior cases indicate that a finding of willful or conscious indifference is warranted when the State completely fails to comply with a procedural rule, see Davis, 106 Nev. at 149, 787 P.2d at 1243; McNair, 89 Nev. at 439-40, 514 P.2d at 1178-79; Austin, 87 Nev. at 82-83, 482 P.2d at 284-85; Maes, 86 Nev. at 318-20, 468 P.2d at 332-33, or engages in outlandish or clearly deficient behavior that results in a delay of the proceedings, see Joseph H., 113 Nev. at 623-24, 939 P.2d at 1058; Davis, 106 Nev. at 149, 787 P.2d at 1243; Watson, 93 Nev. at 237-38, 562 P.2d at 1133-34; Salas v. Sheriff, 91 Nev. 802, 803-04, 543 P.2d 1343, 1343-44 (1975); Broadhead v. Sheriff, 87 Nev. 219, 220-23, 484 P.2d 1092, 1093-94 (1971). Conversely, willful or conscious indifference is not indicated when the State attempts to comply with procedural rules but is thwarted by circumstances outside of its control, see Roylance, 110 Nev. at 337, 871 P.2d at 361; Simpson, 109 Nev. at 431-34, 851 P.2d at 429-31; Luckett v.

Sheriff, 93 Nev. 429, 429-30, 566 P.2d 1129, 1129-30 (1977); Phillips, 93 Nev. at 310-11, 565 P.2d at 331; Vandermark v. Sheriff, 89 Nev. 101, 102-03, 507 P.2d 137, 137-38 (1973); Bustos, 87 Nev. at 624, 491 P.2d at 1280-81, or occasions a dismissal after a less-than-perfect performance in the justice court proceedings, see Lamb, 97 Nev. at 610-11, 637 P.2d at 1202-03; Johnson, 89 Nev. at 305, 511 P.2d at 1051-52. See also Maes, 93 Nev. at 51, 559 P.2d at 1185 (no conscious indifference where State elected to proceed on an indictment where defense alleged State was aware probable cause may not be found after a preliminary hearing); Downey, 88 Nev. at 15, 492 P.2d at 990 (no conscious indifference where prosecutor's affidavit in support of motion for continuance contained inaccurate facts due to a lack of diligent preparation).

Here, the State was personally served with Woods' motion to dismiss and did not oppose it, despite the fact that the preliminary hearing was postponed expressly for that purpose and it was required to file an opposition within 10 days. JCRRT 11(c). The State was on notice that its failure to file an opposition could be construed as an admission that the motion had merit and consent to grant the motion. See id. Moreover, the State did not offer any explanation, in the justice court, district court, or on appeal, for Mr. Mahaffey's failure to act on the motion or forward it to Ms. Halstead. See McNair, 89 Nev. at 440, 514 P.2d at 1178 (noting the prosecution's failure to offer any explanation for its lack of compliance with procedural rules). Finally, Ms. Halstead's prompt filing of the motion for reconsideration with legal support does not excuse the State's complete failure to respond to Woods' motion in a timely manner. Under these circumstances, we conclude that the State acted with conscious indifference to important procedural rules and the district

court therefore erred by denying Woods' pretrial petition for a writ of habeas corpus.[6]

Accordingly, we reverse the judgment of conviction.[7]

Pickering, C.J.

Gibbons, J.

Hardesty, J.

Parraguirre, J.

Douglas, J.

Cherry, J.

Saitta, J.

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[6]The State implies that any error was harmless because Woods was not prejudiced. We conclude, however, that a harmless error analysis is not appropriate because its application would defeat the purpose of the rule—to strictly limit delays in justice court so that cases can be handled in a timely manner.

[7]In light of our reversal of the judgment of conviction, we decline to address Woods' remaining contentions on appeal.