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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

NO. 33,466

DEBORAH M. PULITI,

Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI

Douglas R. Driggers, District Judge

Gary K. King, Attorney General
Martha Anne Kelly, Assistant Attorney General
Santa Fe, NM

for Petitioner

McGraw & Strickland, L.L.C.
Margaret Strickland
Mollie C. McGraw
Las Cruces, NM

for Respondent

DECISION

1 **Chávez, Justice.**

2 {1} This matter came before the full Court on a petition for writ of certiorari to the
3 New Mexico Court of Appeals to review its memorandum opinion affirming the
4 district court’s denial of the State’s request for an extension of time within which to
5 commence trial pursuant to Rule 5-604 NMRA. The Justices have considered the
6 briefs and the record on appeal and agree that there is no reasonable likelihood that
7 a written decision or opinion will affect the disposition of this appeal or advance the
8 law of the State. Acting within this Court’s discretion under Rule 12-405(B)(1)
9 NMRA to dispose of a case by order or decision rather than formal opinion where the
10 “issues presented have been previously decided” by the this Court, the Court enters
11 this decision.

12 **PROCEEDINGS BELOW**

13 {2} On May 29, 2008, Las Cruces Police Officer Amador Martinez filed a criminal
14 complaint in Dona Ana County Magistrate Court charging Deborah Puliti with
15 aggravated DWI, NMSA 1978, Section 66-8-102(D)(2) (2008) (amended 2010), and
16 failure to use due care to avoid a collision, NMSA 1978, Section 66-7-301(B)(1)
17 (2002). On June 4, 2008, Puliti entered a plea of not guilty and waived arraignment.
18 On August 14, 2008, Magistrate Judge Oscar Frieze scheduled a jury trial for
19 October 22, 2008. On September 11, 2008, the State, represented by an assistant
20 district attorney, dismissed the case in Dona Ana County Magistrate Court. The State
21 had already filed a three-count criminal information against Puliti in the Third
22 Judicial District Court on September 5, 2008, for the same occurrence that gave rise

1 to the magistrate court filing.

2 {3} On November 25, 2008, the State filed a petition for extension of time within
3 which to commence trial because the district court had not yet scheduled the trial and
4 the time within which the trial was to commence under Rule 5-604 would expire on
5 December 4, 2008. A hearing on the petition for extension of time was held on
6 December 3, 2008. The district court granted a sixty-day extension and scheduled
7 the case for a jury trial to take place on January 16, 2009.

8 {4} Two days later on December 5, 2008, Puliti filed a motion to reconsider the
9 extension of time, arguing that Magistrate Court Rule 6-506 applied and that the State
10 had not shown good cause for an extension of time. The district court agreed with
11 Puliti, reconsidered its previous order, and—applying Rule 6-506—denied the State
12 an extension of time within which to try the case and dismissed the complaint.
13 Undeterred, the State filed a motion to reconsider the denial of the petition for an
14 extension of time, arguing that the district court erred in applying Rule 6-506. The
15 district court agreed with the State that Rule 6-506 did not apply, but concluded that
16 Rule 5-604 applied and, under the good cause provision of that rule, continued to
17 deny the State an extension of time within which to try the case.

18 {5} The Court of Appeals affirmed in a memorandum opinion, *State v. Puliti*, No.
19 29,509, slip op. at 1, 9 (N.M. Ct. App. Oct. 5, 2009). We granted the State’s petition
20 for writ of certiorari on December 7, 2009, and held the appeal in abeyance pending
21 our resolution of *State v. Savedra*, 2010-NMSC-025, 148 N.M. 301, 236 P.3d 20. On
22 July 16, 2010, we quashed certiorari and remanded to the Court of Appeals for

1 consideration in light of our *Savedra* opinion. The Court of Appeals continued to
2 affirm the district court in a memorandum opinion, *State v. Puliti*, No. 29,509, slip
3 op. at 3, 8 (Ct. App. Dec. 16, 2010), opining that *Savedra* did not apply to Puliti’s
4 case, *id.* at 2. We granted the State’s petition for writ of certiorari on January 27,
5 2011, but quashed certiorari on June 14, 2011, and remanded to the Court of Appeals
6 for consideration in light of our opinion in *State v. Martinez*, 2011-NMSC-010, 149
7 N.M. 370, 249 P.3d 82.

8 {6} The Court of Appeals again affirmed the district court, holding that although
9 Rule 5-604 did not apply to this case because it was abrogated in *Savedra*, the district
10 court had the inherent authority to control its docket, and the State’s delay in
11 scheduling witness interviews justified dismissal of the case. *State v. Puliti*, No.
12 29,509, slip op. at 2-3 (N.M. Ct. App. Jan. 23, 2012). We granted the State’s petition
13 for writ of certiorari and the case was submitted on October 31, 2012. We reverse
14 both the Court of Appeals and the district court and remand for proceedings
15 consistent with this decision.

16 **DISCUSSION**

17 {7} In *Savedra*, we addressed the State’s occasional practice of dismissing
18 complaints filed by the State in magistrate court and refileing the same or similar
19 charges in district court. *Savedra*, 2010-NMSC-025, ¶ 1. In that case we
20 acknowledged that under New Mexico precedent, when the State initially files
21 charges in magistrate court and then re-files the case in district court, the six-month
22 rule in district court begins to run as of the time the defendant was arraigned in

1 magistrate court. *Id.* ¶ 5. We also recognized that Rule 5-604 had “become an
2 unnecessary and sometimes counterproductive method for protecting a defendant’s
3 right to a speedy trial,” and therefore chose to withdraw Rule 5-604 “for all cases
4 pending” on the May 12, 2010 filing date of the *Savedra* opinion. *Id.* ¶ 9. In
5 *Martinez* we clarified that “*Savedra* controls . . . all [cases] that were pending before
6 any court at the time we issued our Opinion” in *Savedra*. *Martinez*, 2011-NMSC-
7 010, ¶ 12.

8 {8} Puliti’s case was pending in the appellate courts at the time we issued our
9 opinion in *Savedra*. Therefore, Rule 5-604, as it existed at the time the district court
10 dismissed the State’s case, did not apply. Instead of applying Rule 5-604, *Savedra*
11 required district courts to use constitutional speedy trial considerations when deciding
12 motions for extensions of time. *Savedra*, 2010-NMSC-025, ¶¶ 5, 9. Although the
13 district court could not have known that we would withdraw Rule 5-604
14 retroactively, the appropriate disposition of this case is to remand to the district court
15 to decide the State’s motion for extension of time by analyzing constitutional speedy
16 trial considerations as articulated in *State v. Garza*, 2009-NMSC-038, 146 N.M. 499,
17 212 P.3d 387.

18 {9} However, in a right-for-any-reason analysis, the Court of Appeals concluded
19 that the district court could have dismissed the case because of the State’s delay in
20 scheduling witness interviews based on a “district court’s inherent authority to
21 control its docket and sanction parties for their behavior.” *Puliti*, No. 29,509, slip op.
22 at 2. We disagree with this analysis and conclusion because the district court was

1 never asked to exercise its inherent authority to dismiss this case due to the State's
2 alleged delay in scheduling witness interviews. Such a request would have required
3 a much different analysis than was argued by the parties and employed by the district
4 court. We recently analyzed the factors to be considered when a court is considering
5 sanctions for the delayed scheduling of witness interviews in *State v. Harper*, 2011-
6 NMSC-044, ¶ 21, 150 N.M. 745, 266 P.3d 25.

7 {10} In *Harper* the district court verbally instructed the attorneys to conduct all
8 witness interviews by a certain date. When the district court learned that two
9 witnesses had not been interviewed by the court-imposed deadline, the district court
10 precluded the State from calling the two witnesses at trial. *Id.* ¶ 1. We reversed the
11 district court because the record did not support a finding that the State acted in bad
12 faith or completely blocked access to evidence and because the defendant did not
13 prove that the delay in scheduling the witnesses prejudiced him. *Id.* ¶¶ 22, 24. We
14 repeated a well-established principle of law, which is that the exclusion of witnesses,
15 like the outright dismissal of a case, should not be imposed except in extreme cases,
16 and only after an adequate hearing to determine the reasons for the delay and the
17 prejudicial effect on the opposing party. *Id.* ¶ 21.

18 {11} In this case, Puliti did not seek the sanction of dismissal alleging that the State
19 acted in bad faith in delaying the scheduling of the witness interviews which resulted
20 in tangible prejudice to her. Puliti's argument was simply that the State was not
21 entitled to an extension of time to try the case because the State did not have good
22 cause for an extension of the six-month rule. The district court's findings of fact and

1 conclusions of law were limited to the question of whether the State had
2 demonstrated good cause for an extension of time. The district court's findings
3 cannot fairly be interpreted to mean that the district court found that the State acted
4 in bad faith in delaying the scheduling of the witness interviews and that Puliti was
5 prejudiced by the delay.

6 **CONCLUSION**

7 {12} We therefore reverse the Court of Appeals, vacate the district court's order of
8 dismissal, and remand this matter to the district court with instructions to conduct
9 such further proceedings as are consistent with this decision.

10 {13} **IT IS SO ORDERED.**

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12 **EDWARD L. CHÁVEZ, Justice**

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14 **PETRA JIMENEZ MAES, Chief Justice**

15 _____
16 **RICHARD C. BOSSON, Justice**

17 _____
18 **CHARLES W. DANIELS, Justice**

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PAUL J. KENNEDY, Justice