

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

vs.

No. 29,557

OSCAR CASTRO H.

Child-Appellee.

COPY

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
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Christina M. Wilson

STATE'S REPLY BRIEF

*Appeal from the Ninth Judicial District Court
Curry County, New Mexico
The Honorable Robert S. Orlik*

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ARGUMENT

THE PURPOSE OF RULE 10-243(A)(9) IS TO TOLL THE 30-DAY TIME LIMIT FOR COMMENCING AN ADJUDICATORY HEARING WHEN THE STATE FILES A NOTICE OF INTENT TO INVOKE AN ADULT SENTENCE FOR YOUTHFUL OFFENDER OFFENSES.

In arguing that Rule 10-243(A)(9) should not be read as including the return of a “no-bill” as an event triggering a new 30-day time limit for commencing the adjudicatory hearing, Child misconstrues the State’s argument. The State does not argue, as Child suggests, that a no-bill is a triggering event under Rule 10-243(A)(9) simply to give the State more time to commence an adjudicatory hearing. This case is not about whether the State was entitled to an “extension” under Rule 10-243(A)(9). Rather, it is about what happens when the State files a notice of intent to invoke an adult sentence for youthful offender offenses alleged in the delinquency petition. Under subsection (1) of Rule 10-243(A), when the child is in detention, the time for commencing an adjudicatory hearing begins to run on “the date the petition is served on the child.” Rule 10-243(A)(1) NMRA. The remaining subsections of Rule 10-243(A) provide exceptions that allow for the time limit to be calculated based on events that occur later than the service of the petition. Those exceptions include (1) placement of the child in detention, Rule 10-243(A)(2) NMRA, (2) a finding that the child is competent to participate in the adjudicatory hearing, Rule 10-243(A)(3) & (4) NMRA, (3) a declaration of mistrial or order for new adjudicatory hearing, Rule 10-243(A)(5) NMRA, (4) issuance of a

mandate disposing of an appeal, Rule 10-243(A)(6) NMRA, (5) the date the child is taken into custody after he has failed to appear in court, Rule 10-243(A)(7) NMRA, and (6) the date the court allows withdrawal of a plea, Rule 10-243(A)(8) NMRA.

What Child's argument ignores is that these later triggering events – events that trigger the time limit for commencing the adjudicatory hearing at a time later than the service of the petition – can apply only if there is first an event that tolls the time limit at some point after the service of the petition. For example, for the date of a mandate disposing of an appeal to trigger the time limit, there must first be an appeal that tolls the time limit; for a finding of competency to trigger the time limit, there must first be a finding of incompetence that tolls the time limit.

This case involves the triggering event under Rule 10-243(A)(9), which is the finding, by either a grand jury or a judge after preliminary hearing, that there is no probable cause to believe the child committed a youthful offender offense. *See* Rule 10-243(A)(9) NMRA. Thus, the filing of a notice of intent to invoke an adult sentence is the tolling event that must occur before the finding of no probable cause can trigger a new 30-day time limit to commence the adjudicatory hearing. Id.

The issue in this case is why the Supreme Court provided a rule to toll the time for commencing an adjudicatory hearing when the State files a notice of intent

to invoke an adult sentence. Contrary to Child's suggestion, the State does not argue that the purpose of Rule 10-243(A)(9) is simply to provide the State with an extension of time. Rather, the State presents two reasons the time limit must be tolled when a notice of intent to invoke an adult sentence is filed.

First, a notice of intent to invoke an adult sentence raises the possibility that the child will be convicted of and sentenced for the felony youthful offender offenses alleged in the delinquency petition. Thus, the notice triggers the child's constitutional and statutory rights to a finding of probable cause by a grand jury or by a judge in a preliminary hearing. *See* N.M.Const.Art. II, § 14; NMSA 1978, § 32A-2-20(A) (2009). The time limit for commencing the adjudicatory hearing, therefore, must be tolled to ensure the child's rights. Second, the notice of intent triggers the child's right to be tried under the Rules of Criminal Procedure for the District Courts, rather than the Children's Court Rules. *See* Rule 10-101(A)(2)(b) NMRA. The time for commencing the adjudicatory hearing must be tolled pending the outcome of the grand jury or preliminary hearing so that the trial court and the parties know whether the hearing must proceed under the District Court rules or the Children's Court rules.

Once the time is tolled and the reason for the tolling has been met, it is necessary to identify the event that triggers a new time limit for commencing the adjudicatory hearing. That is the purpose of Rule 10-243(A)(9); it identifies the

triggering event for commencing the adjudicatory hearing after the grand jury or preliminary hearing. It necessarily applies only when the result of the grand jury or preliminary hearing is that the youthful offender offenses alleged in the petition are not supported by probable cause. Any other finding by the grand jury or the judge after preliminary hearing would result in a criminal trial conducted under the District Court rules, not an adjudicatory hearing conducted under the Children's Court rules. So, regardless of the language used in the rule to accomplish this purpose, ultimately, the application of the rule must result in a new 30-day time limit to commence an adjudicatory hearing when there are no youthful offender offenses remaining after the grand jury or preliminary hearing.

That is what happened in this case; after the grand jury returned the no-bill, only delinquent offender offenses remained. The notice of intent tolled the time limit; the no-bill triggered a new time limit for commencing an adjudicatory hearing on the delinquent offender offenses. Therefore, the trial court erred in dismissing the delinquency petition less than thirty days after the grand jury found no probable cause to support the youthful offender offenses.

Child argues that the plain language of Rule 10-243(A)(9) is unambiguous in its non-application when the grand jury returns a no-bill, rather than an indictment on delinquent offender charges only. Child's argument fails for several reasons. First, Child points to no authority requiring the grand jury to consider delinquent

offender offenses when the State files a notice of intent to invoke adult sanctions for youthful offender offenses. Thus, although it is clear that the purpose of Rule 10-243(A)(9) is to provide a triggering event after the time limit has been tolled by the filing of the notice of intent, Child reads the rule as intentionally including no provision for a triggering event when the delinquent offender offenses are not presented to the grand jury. In other words, Child's argument ignores the fact that Rule 10-243(A)(9) not only provides a triggering event, but implicitly provides for the tolling of the time limit by the filing of a notice of intent to invoke an adult sanction. Because the language of the rule appears to exclude those cases in which the delinquent offender offenses were not presented to the grand jury, the rule is not unambiguous, as Child suggests.

Second, Child ignores rules of construction that require looking beyond the language of the rule to determine its application in this case. This Court must "exercise caution in applying the plain meaning rule" because "[i]ts beguiling simplicity may mask a host of reasons why a [rule], apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) difference of opinion concerning the [rule]'s meaning." State v. Smith, 2004-NMSC-032, ¶ 9, 136 N.M. 372, 98 P.3d 1022 (internal quotation marks and citation omitted). The guiding principle in statutory or rule interpretation is the purpose of the statute or rule. *See Id.* In determining the

purpose of the rule, the Court must reject any interpretation that would lead to results that would be “absurd, unreasonable, or contrary to the spirit of the [rule].” Id. at ¶ 10. Finally, the Court must consider the rule in the overall scheme of the Children’s Court Rules and the statutes they help to implement. *See Id.*; State v. Martinez, 1998-NMSC-023, ¶ 9, 126 N.M. 39, 966 P.2d 747.

When examined under these rules of construction, the simple fact that Rule 10-243(A)(9) does not mention the return of a no-bill as triggering the time limit for commencing the adjudicatory hearing does not answer the question presented in this case. It is absurd and inconsistent with the purpose of the rule to conclude, as Child suggests, that, in adopting Rule 10-243(A)(9), the Supreme Court intended that a whole category of delinquency cases terminate with the filing of a notice of intent to seek adult sanctions. In that category are the cases in which the prosecutor files a delinquency petition alleging delinquent offender and youthful offender offenses, files a notice of intent to seek adult sanctions for the youthful offender offenses, but, in presenting the youthful offender offenses to a grand jury, does not include the delinquent offender offenses. As discussed above, under Rule 10-243(A)(9), a notice of intent necessarily tolls the time limit for commencing an adjudicatory hearing. Thus, under Child’s interpretation of the rule, the rule operates to terminate those cases in which the prosecutor did not present delinquent offender offenses to the grand jury and the grand jury found no

probable cause for the youthful offender offenses. The practical effect of such a view is a Court rule that infringes on the prosecutor's discretion to charge the delinquent offender and youthful offender offenses in the same petition. *See Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) ("So long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor's] discretion."); *State v. Ogden*, 118 N.M. 234, 240, 880 P.2d 845, 851 (1994) (same).

Finally, Child argues that policy reasons support the view that, because Rule 10-243(A)(9) does not apply to this case, the State had to commence with the adjudicatory hearing on the delinquent offender offenses as if it had not filed the notice of intent – in other words, within the original 30-day time limit. One such reason cited by Child is the policy of the Children's Code of providing expeditious resolution of delinquency petitions, especially when the child is in custody. This argument fails for at least two reasons. First, Child ignores, not just the clear intent of the rule to toll the time limit when a notice of intent to seek adult sanctions has been filed, but the necessity for such tolling under the Delinquency Act. As discussed above, tolling at this point is necessary to ensure the child's constitutional right to a determination of probable cause to support felony charges, as well as the child's right to a trial under the District Court Rules of Criminal


Procedure on felony charges for which adult sanctions may be imposed. Second, as a practical matter, Child's argument ignores the fact that the solution he suggests – the re-filing of charges by the prosecutor – thwarts rather than supports the goal of expeditious disposition. Re-filing charges would likely take more time than the 30 days the prosecutor would have to commence the hearing after the grand jury finds no probable cause for the youthful offender offenses.

CONCLUSION

For the foregoing reasons, and the reasons stated in the Brief in Chief, the State respectfully requests this Court to reverse the trial court's order dismissing the delinquency petition and remand for an adjudicatory hearing.

Respectfully submitted,

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