

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

vs.

COURT OF APPEALS OF NEW MEXICO
FILED
SEP 23 2011
Ben H. ...

No. 29,557

OSCAR CASTRO H.

Child-Appellee.

APPEAL FROM THE NINTH JUDICIAL DISTRICT COURT
CURRY COUNTY, NEW MEXICO
THE HONORABLE ROBERT S. ORLIK

CHILD-APPELLEE'S SUPPLEMENTAL BRIEF

Jacqueline Cooper
Acting Chief Public Defender

Mary Barket
Assistant Appellate Defender
Public Defender Department
301 N. Guadalupe Street
Santa Fe, N.M. 87501
(505) 476-0730

Attorneys for Child-Appellee

TABLE OF CONTENTS

INTRODUCTION..... 1

ARGUMENT 1

 A. Further action by the State should normally be required if all of the charges were considered and rejected by the grand jury..... 1

 B. If the State is permitted to continue to prosecute the delinquency charges without taking further action following the return of a no-bill, then the prosecution should be treated as a continuous action under Rule 10-243 as well..... 3

CONCLUSION 5

STATEMENT OF COMPLIANCE

Pursuant to this Court’s Order dated September 12, 2011, the body of the attached supplemental brief contains 1,075 words (not to exceed 1,470 words).

NOTE REGARDING CITATIONS

Citations to the transcript of proceedings contained on the compact disc are set forth as [CD hour:minute:second] and those to the Stipulated Transcript are [Stipulated Transcript paragraph]. Citations to the Record Proper are [RP page], while citations to the State’s Brief in Chief are [BIC page].

TABLE OF AUTHORITIES

New Mexico Cases:

State v. Stephen F., 2006-NMSC-030, 140 N.M. 24, 139 P.3d 184 3

Rules:

Rule 10-101 NMRA 3

Rule 10-222 NMRA 2

Rule 10-222 NMRA.....passim

INTRODUCTION

This Court has ordered the parties to file a brief “showing why this Court should affirm or should not affirm the district court’s dismissal of the delinquency petition on the ground that the grand jury was presented with, addressed, and returned a no-bill on all of the charges alleged in the delinquency petition.” Oscar’s Answer Brief expressly addressed this scenario. To the extent Oscar’s argument was unclear, however, he now reiterates his assertion that this Court should decline to read the return of a no-bill by a grand jury into Rule 10-243 and maintains that his case was properly dismissed. Specifically, the return of a no-bill should either require further action by the State for *any* prosecution to continue, or if the delinquency prosecution continues unabated, the return of a no-bill should not interrupt the delinquency prosecution at all since the State is being allowed to continue to pursue questionable charges without having to undertake any further action.

ARGUMENT

A. Further action by the State should normally be required if all of the charges were considered and rejected by the grand jury.

As a policy matter, the return of a no-bill from a grand jury should not be read into Rule 10-243 as a triggering event in and of itself since the return of a no-bill *on all of the charges* implies that further action by the State is required for its prosecution to continue. Rule 10-222 specifically indicates that probable cause is

required – even for delinquency charges – if the child is to remain in detention. Rule 10-222 NMRA. Additionally, as the State pointed out in its Brief in Chief, the State has a number of options available to it after the grand jury returns a no-bill ranging from the dismissal of the charges to the filing of a new delinquency petition that does not include youthful offender offenses. [BIC 14]. Whatever the State decides to do, however, it would seem that the grand jury’s rejection of all of the charges requires some further act by the State in order for it to continue to hold and prosecute a child.

Assuming a court’s initial finding of probable cause for the delinquency petition may continue to stand despite a grand jury’s findings, a no-bill from a grand jury should at least give the State pause as to the wisdom of expending limited resources to continue with a questionable prosecution.

In its Reply Brief, the State asserts that the filing of the notice of intent to invoke an adult sentence is inherently a tolling event. The only question becomes what subsequent event restarts the 30 days. [RB 2-4]. As pointed out above and in the Answer Brief, however, *none of the triggering events listed in Rule 10-243 occurred subsequent to the filing of the notice of intent to invoke adult sentence.* Thus, despite its protestations otherwise, the State is asking for the return of a no-bill to be read into the statute as a triggering or retriggering event. As Oscar has at all times maintained, however, there are policy reasons which caution against

doing so. Moreover, as set forth below, where the State is permitted to continue to pursue the delinquency petition without any subsequent triggering event occurring, it would be unfair to automatically give the State additional time simply because it unwisely chose to seek adult sanctions on questionable charges. To do so would reward the State for improperly charging a juvenile and it would encourage the State to seek adult sanctions (however meritless) simply to get around the time limits set forth in the rules.

B. If the State is permitted to continue to prosecute the delinquency charges without taking further action following the return of a no-bill, then the prosecution should be treated as a continuous action under Rule 10-243 as well.

Either a grand jury's return of a no-bill on all charges against a child has an impact on the State's delinquency case or it does not. If the return of a no-bill does not hinder the State's pursuit of delinquency charges in any way, then it should not encumber a child's rights under the Children's Court Rules in any way either.

The Children's Court Rules "are intended to provide for the just determination of children's court proceedings" and "shall be construed to secure simplicity in procedure, fairness in administration, elimination of unjustifiable expense and delay and to assure the recognition and enforcement of constitutional and other rights." Rule 10-101(C) NMRA; *see also State v. Stephen F.*, 2006-NMSC-030, ¶ 11, 140 N.M. 24, 139 P.3d 184 ("Clearly, the child must be protected from indefinite periods of custody while awaiting disposition").

In this case, the State was clearly being allowed to pursue the delinquency charges against Oscar despite the grand jury's determination that the charges lacked probable cause. Presumably, it was permitted to do so because the grand jury's findings did not negate or impact the original finding of probable cause. As the State was allowed to continue its prosecution of the delinquency charges as though the grand jury proceedings had not occurred, the limitations placed upon the State by the Children's Court Rules similarly continued to apply as though the grand jury proceedings had not occurred. This, in fact, appears to have been the State's understanding of the situation up until the motion to dismiss hearing. After the Grand Jury returned a no-bill, the State specifically requested a continuance for the adjudicatory hearing. [RP 23]. In its request, it based its calculation of when the hearing had to occur under Rule 10-243 on the date Oscar was initially detained on the delinquency charges and not on the date the grand jury returned a no-bill. [RP 23].

The State never terminated its prosecution of the delinquency petition it filed against Oscar. Even after the grand jury returned a no-bill on all of the charges, the State's prosecution of the delinquency petition continued unabated. Because the State was permitted to continue to pursue the delinquency petition despite the grand jury's findings, there was no reason to give the State additional time because of the grand jury's findings and, under the plain language of Rule 10-243, there

was no requirement that the Children's Court do so. The lower Court's dismissal of the petition was, therefore, appropriate.

CONCLUSION

For the reasons set forth above and those contained in his Answer Brief, Oscar asks this Court to affirm the trial court's dismissal of the charges against him.

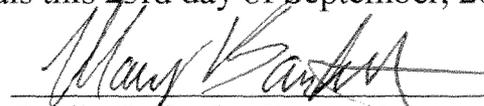
Respectfully submitted,

Jacqueline Cooper
Acting Chief Public Defender



Mary Barket
Assistant Appellate Defender
301 North Guadalupe Street
Santa Fe, NM 87501
(505) 476-0730

I hereby certify that a copy of this pleading was served by hand delivery to the Attorney General's Box in the Court of Appeals this 23rd day of September, 2011.


Public Defender Department