

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.

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

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STATE'S BRIEF IN CHIEF

*On appeal from the Ninth Judicial District Court
Curry County, New Mexico
The Honorable Robert S. Orlik, Children's Court Judge*

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SUMMARY OF PROCEEDINGS

On March 16, 2009, the State filed a delinquency petition charging Child with nine felonies, including two youthful offender offenses - aggravated burglary with a deadly weapon and armed robbery. RP 1-3. Child was being held in the detention center at the time the delinquency petition was filed. RP 4. On March 17, 2009, the trial court held a detention hearing, found that the nature of the charges warranted holding Child in detention in this case, and agreed that if the Child is not bound over for trial as an adult, then a new detention hearing would be held. RP 5-8; CD 3-17-09, 9:23:03. The court also set the adjudicatory hearing for April 10, 2009. Id.

On March 23, 2009, the State filed a Notice of Intent to Seek Adult Sanctions. RP 13. As a result, the State was required to proceed within fifteen days - on or before April 7, 2009 - with either a preliminary hearing or a Grand Jury hearing for determination of probable cause to believe the child committed a youthful offender offense. Rule 12-213(B) NMRA. A Grand Jury hearing was scheduled for March 27, 2009, but was cancelled because the district court was closed for a "snow day." RP 20. Not realizing that Rule 12-213(B) had been

amended¹ and, therefore, believing that she had only ten days, to April 2, 2009, to proceed to the Grand Jury, the prosecutor requested a one-day extension of time to conduct a Grand Jury hearing on April 3, 2009. *Id.* The trial court granted the unnecessary motion and, on April 3, 2009, the Grand Jury found no probable cause to believe the child committed a youthful offender offense. Stipulated Transcript, ¶ 11.²

After the Grand Jury failed to find probable cause on the youthful offender offenses, the trial court set the adjudicatory hearing on the delinquency petition for April 17, 2009. RP 22. On April 13, 2009, the prosecutor filed a motion for extension of time to commence the adjudicatory hearing, asserting that the time limit for commencing the adjudicatory hearing would expire on April 17, 2009, and that the trial court would be unable to accommodate the adjudicatory hearing

¹ 2008 amendments to the Children's Court Rules, effective on January 15, 2009, included an amendment to require the Grand Jury hearing within fifteen days of the filing of the notice of intent to invoke an adult sentence. Rule 10-213(B) NMRA. The judge and the parties were apparently unaware of the amendments.

² Although the Stipulated Transcript (¶ 11) indicates that the Grand Jury returned a no-bill, without indicating whether the no-bill applied only to the youthful offender offenses, a reasonable inference from the fact that that Child continued to be held on the delinquency petition in this case is that the delinquent offender offenses were not presented to the Grand Jury and, therefore, the no-bill applied only to the youthful offender offenses. Indeed, defense counsel made such an inference. RP 26 (Child's motion to deny State's motion for extension of time, ¶ 17, noting that, because of the no-bill, the only issues remaining were the delinquent offender offenses.).

by that date. RP 23. In the motion, the prosecutor erroneously requested the extension pursuant to Rule 5-604(C) NMRA and requested a 90-day extension. Id.

On April 14, 2009, Child's counsel filed a motion to deny the State's motion for extension of time, pointing out the State's error in citing to Rule 5-604. Child's counsel also asserted that the time limit for commencing the adjudicatory hearing would expire on April 16, 2009, not April 17, as asserted by the prosecutor, and that the State failed to provide good cause for an extension. RP 26-27.

On April 17, 2009, the trial court held an evidentiary hearing on the prosecutor's motion and Child's motion. In arguing against dismissal, the prosecutor changed her previous view that the time limit would expire on April 17, 2009, and argued that the time for commencing the adjudicatory hearing was tolled by the filing of the notice of intent to invoke an adult sentence, and that the time re-started on April 3, 2009 when the Grand Jury reached its decision. Stipulated Transcript, ¶ 18. The trial court dismissed the delinquency petition. RP 34. In announcing its decision, the court indicated that the State had failed to comply with "numerous time requirements under the Children's Court Rules." Stipulated Transcript, ¶ 20. However, the court did not indicate which time limits were violated, besides the time limit for commencing the adjudicatory hearing. Id. The trial court's order of dismissal does not indicate the grounds for dismissal. RP 34.

This is the State's appeal of the trial court's order dismissing the delinquency petition with prejudice.

ARGUMENT

THE TRIAL COURT ERRED IN DISMISSING THE DELINQUENCY PETITION FOR FAILURE TO MEET TIME REQUIREMENTS OF THE CHILDREN'S COURT RULES.

A. Introduction and standard of review.

In dismissing the delinquency petition, the trial court applied Rule 10-243(A) NMRA. That rule establishes a 30-day time limit, and events that trigger the time limit, for commencing an adjudicatory hearing when the alleged delinquent offender is placed in detention. The question on appeal is whether the trial court correctly applied that rule in this case. Thus, the question on appeal is a matter of rule interpretation, which is reviewed de novo. *See Apodaca v. AAA Gas Co.*, 2003-NMCA-85, ¶ 87, 134 N.M. 77, 73 P.3d 215 (interpretation of court rule is a question of law that is review de novo); *State v. Anthony M.*, 1998-NMCA-65, ¶ 4, 125 N.M. 149, 958 P.2d 107 (appellate court reviews de novo the trial court's application of children's court rule to facts of the case).

In construing a court rule, this Court "applies the same rules of construction" it applies in construing statutes. *In the matter of Dominick Q.*, 113 N.M. 353, 354, 826 P.2d 574, 575 (Ct.App. 1992). Thus, the Court's primary goal in construing a court rule is "to discern and give effect to the author's intent." *Id.* (internal

quotation marks omitted). In so doing, the Court will apply a common sense approach so as to avoid an absurd, unreasonable, or unjust application of the rule.

Id.

- B. The 30-day time limit for commencing an adjudicatory hearing was tolled by the filing of a notice of intent to invoke an adult sentence and began anew when the Grand Jury failed to find probable cause on the youthful offender offenses alleged in the delinquency petition.

As noted above, Rule 10-243(A) provides a 30-day time limit for commencing an adjudicatory hearing on a delinquency petition when the alleged delinquent offender is in detention. Rule 10-243(A) NMRA. The rule provides triggering events for the 30-day time limit, such as the date the petition is served on the child, Rule 10-243(A)(1) NMRA, or the date the child is placed in detention, Rule 10-243(A)(2) NMRA.

The rule also provides tolling events – events that toll the running of the time limit until the occurrence of another triggering event. For example, Rule 10-243(A)(3) states, “if an issue is raised concerning the child’s competency to participate at the adjudicatory hearing, [the adjudicatory hearing shall commence within thirty days of] the date an order is entered finding the child is competent to participate at the adjudicatory hearing.” Rule 10-243(A)(3) NMRA. Thus, under Rule 10-243(A)(3), the raising of an issue concerning the child’s competency tolls the 30-day time limit, and an order finding the child competent re-starts the 30-day time limit. Id. Other tolling events include an order staying proceedings on a

finding of incompetency to stand trial, Rule 10-243(A)(4) NMRA, a mistrial or order for a new trial, Rule 10-243(A)(5) NMRA, an appeal, Rule 10-243(A)(6) NMRA, and the withdrawal or rejection of a plea, Rule 10-243(A)(7) NMRA.

This case involves another tolling event: the filing of a notice of intent to invoke an adult sentence alleging the child is a youthful offender. Rule 10-243(A)(9) provides that “if a notice of intent has been filed alleging the child is a ‘youthful offender,’” the adjudicatory hearing shall commence within thirty days of “the return of an indictment or the filing of a bind over order that does not include a ‘youthful offender’ offense.” Rule 10-243(A)(9) NMRA. Clearly, the rule provides for the tolling of the time limit for commencing an adjudicatory hearing by the filing of a notice of intent to invoke an adult sentence. It is also clear that the rule provides for re-starting the time when the grand jury is presented with both the youthful offender offenses and the delinquent offender offenses alleged in the delinquency petition and returns an indictment charging only delinquent offender offenses.

The question presented in this case is whether the rule also provides for re-starting the time limitation when the grand jury is presented only with the youthful offender offenses and, therefore, does not make any findings regarding the delinquent offender offenses alleged in the delinquency petition. When the grand jury is presented only with the youthful offender offenses, and returns a “no-bill”

on those offenses, it has not “returned an indictment that does not contain a youthful offender offense.” However, that is not because the grand jury considered the delinquent offender offenses and found no probable cause for those offenses. It is because the grand jury did not consider those offenses at all. Therefore, a strict application of the language of the rule would be contrary to the purpose of the rule and would lead to an absurd result.

The purpose of the rule is to protect the constitutional right to a grand jury or preliminary hearing while adhering to the dichotomy of procedures established by the Legislature in the Delinquency Act. The Delinquency Act recognizes and protects the right of a person accused of committing a felony to a determination of probable cause by a grand jury or by a judge in a preliminary hearing. In so doing, the Act establishes a dichotomy of procedures for adjudication of juvenile offenders: a set of procedures for adjudication of alleged delinquent offenders and a set of procedures for adjudication of alleged youthful offenders and serious youthful offenders.

The Delinquency Act establishes three categories for juveniles accused of delinquent acts, which are defined as acts “committed by a child that would be designated as a crime under the law if committed by an adult.” NMSA 1978, § 32A-2-3(A) (2009). A delinquent offender is a juvenile who has committed a delinquent act and “is subject to juvenile sanctions only.” NMSA 1978, § 32A-2-

3(C) (2009). A youthful offender is a juvenile “fourteen to eighteen years of age at the time of the offense and who is adjudicated for at least one” of several enumerated offenses, including aggravated burglary and robbery.³ NMSA 1978, § 32A-2-3(J)(1) (2009). A youthful offender is eligible for an adult sentence, but only if the State files a notice that it intends to seek an adult sentence within ten days of filing a delinquency petition alleging one or more youthful offender offenses. NMSA 1978, § 32A-2-20(A) (2009). A serious youthful offender is a juvenile “fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder.” NMSA 1978, § 32A-2-3(H) (2009). A serious youthful offender found guilty of first degree murder is sentenced as an adult, and a serious youthful offender not found guilty of first degree murder, but found guilty of a youthful offender offense, is eligible for an adult sentence. NMSA 1978, § 31-18-15.3 (1993); NMSA 1978, § 32A-20(G) (2009).

Whether a juvenile’s adjudication under the Delinquency Act amounts to a felony conviction depends on whether the juvenile is sentenced as an adult. “A judgment in proceedings on a petition under the Delinquency Act resulting in a juvenile disposition shall not be deemed a conviction of crime . . .” NMSA 1978 § 32A-2-18(A) (1996). Thus, although all felony offenses prescribed by the

³The statute provides two other definitions of a youthful offender, neither of which applies in this case. NMSA 1978, § 32A-2-3(J)(2) and (3) (2009).

Criminal Code and some felony offenses prescribed by the Motor Vehicle Code are delinquent acts, NMSA 1978, § 32A-2-3(A) (2009), a juvenile's adjudication for a felony offense is not always a felony conviction; it is a felony conviction only if the juvenile is a youthful offender or serious youthful offender sentenced as an adult. Id. The constitutional right of an accused to a finding of probable cause by a grand jury or by a judge after a preliminary hearing extends only to those accused of a felony. N.M.Const. Art. II, § 14. Thus, a delinquent offender, whose adjudication can never result in a felony conviction, does not have a right to a grand jury or preliminary hearing.

The Delinquency Act and this Court's rules reflect such limitations on a juvenile's right to a grand jury or preliminary hearing. The Delinquency Act requires neither a grand jury nor a preliminary hearing to determine whether probable cause exists to support the allegations of a delinquency petition unless the children's court attorney files a notice of intent to seek an adult sentence for a youthful offender, or the juvenile is a serious youthful offender. NMSA 1978, § 32A-2-20(A) (2009) (requiring preliminary hearing or grand jury within ten days of filing notice of intent to invoke an adult sentence on a youthful offender); NMSA 1978, § 32A-2-13(A) (2009) (requiring informal, non-adversarial probable cause hearing on allegations against a delinquent offender held in detention); NMSA 1978, § 32A-2-3(H) (2009) (providing that a serious youthful offender is

not a delinquent child but is a juvenile “fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder.”).

The Children’s Court Rules reflect these statutory provisions. *See* Rule 10-213(B) NMRA (requiring probable cause determination within 15 days of the filing of a notice of intent to invoke an adult sentence on a youthful offender); Rule 10-222 NMRA (requiring informal, non-adversarial probable cause hearing on allegations against a delinquent offender held in detention); Rule 10-101(A)(2) NMRA (providing that the “Rules of Criminal Procedure for the District Courts govern the procedure . . . in all proceedings in the district court in which a child is alleged to be a ‘serious youthful offender. . .’”).

The Legislature’s recognition that a delinquent offender has no constitutional right to a grand jury or preliminary hearing is at least one basis for the Legislature’s adoption of a dichotomy of procedures. While the Legislature may have recognized the benefits of a less adversarial system, to both society and juveniles accused of delinquent acts, the Legislature clearly recognized the necessity of protecting the constitutional rights of juveniles subject to conviction and sentence for felonious acts. The result is a system in which delinquent offenders, who are not subject to conviction or sentence for committing a felony, are adjudicated under procedures provided in the Children’s Court Rules, and youthful offenders and serious youthful offenders, who are subject to conviction

and sentence for committing a felony, are adjudicated under the Rules of Criminal Procedure.

For serious youthful offenders, the decision regarding which set of procedures applies is automatic – juveniles charged as serious youthful offenders are tried under the Rules of Criminal Procedure. Rule 10-101(A)(2)(a) NMRA. For youthful offenders, however, the decision regarding which set of procedures applies depends on whether the children’s court attorney files a notice of intent to invoke an adult sentence and the outcome of a preliminary hearing or grand jury hearing. Rule 10-101(A)(2)(b) NMRA. With respect to which set of procedures will apply, the tolling of the time limit provided by Rule 10-243(A)(9) accomplishes two things: (1) it protects the juvenile’s constitutional right to a grand jury or preliminary hearing, and (2) it provides time for a determination of whether the adjudicatory hearing will be held under the Children’s Court Rules or the Rules of Criminal Procedure.

Moreover, because the time is tolled, the Court obviously recognized the need for a mechanism for re-starting the time in the event that the adjudicatory hearing will proceed under the Children’s Court Rules. The adjudicatory hearing will not proceed under the Children’s Court Rules if there is a finding by the grand jury, or the judge, that there is probable cause to support the alleged youthful offender offenses. In that case, the adjudication will proceed under the Rules of

Criminal Procedure. Rule 10-101(A)(2)(b) NMRA. The adjudicatory hearing will proceed under the Children's Court Rules only if there is no finding of probable cause to support the youthful offender offenses. After all, it is the youthful offender offenses that subject the juvenile to a felony conviction and adult sentence. Thus, to establish a mechanism for re-starting the time for commencing the adjudicatory hearing, the rule provides that the adjudicatory hearing shall commence within 30 days after "the return of an indictment or the filing of a bind over order that does not include a 'youthful offender' offense." Rule 10-243(A)(9) NMRA.

This language appears to apply only when both youthful offender and delinquent offender offenses are presented for a finding of probable cause in a grand jury or preliminary hearing. Such an interpretation of the rule, however, is belied by the clear purpose of the rule, which, as discussed above, is to provide for tolling the time limit in order to (1) provide a juvenile subject to a felony conviction his constitutional right to a grand jury or preliminary hearing, and (2) determine under which procedural rules the adjudicatory hearing will proceed. The first purpose is not at issue with regard to delinquent offender offenses because, as discussed above, a juvenile does not have a constitutional right to a grand jury or preliminary hearing on such offenses. However, even when the delinquent offender offenses are not presented to the grand jury, there is still the

necessity of tolling the time for commencing the adjudicatory hearing in order to determine under which procedural rules the hearing will proceed.

Therefore, the language used in Rule 10-243(A)(9) should be read as simply describing the outcome that would require proceeding under the Children's Court rules and, thus, re-starting the time limit for commencing an adjudicatory hearing under those rules. So viewed, the rule provides for re-starting the time limit for commencing an adjudicatory hearing on the date the grand jury, or a judge, finds no probable cause to support the youthful offender offenses alleged in the delinquency petition. Under such a view, the time limit for commencing the adjudicatory hearing in this case was 30 days after the grand jury returned a "no-bill" on the youthful offender offenses. That date was May 3, 2009.

The only other possible interpretation of the language in Rule 10-243(A)(9) is that all of the charges – youthful offender offenses and delinquent offender offenses – were dismissed without prejudice by the grand-jury's no-bill. Such an interpretation would, however, lead to an absurd result. Upon such a dismissal, the children's court attorney could simply file a new delinquency petition alleging the delinquent offender offenses. *See State v. Issac M.* 2001-NMCA-088, ¶¶ 1, 8, 131 N.M. 235, 34 P.3d 624 (the State may proceed by information after the return of a

no-bill).⁴ The result of such re-filing would be a new time limit for commencing the adjudicatory hearing within thirty days of the service of the new petition. *See* Rule 10-243(A)(1) NMRA. Thus, the juvenile obtains no benefit from including the delinquent offender offenses in the “no-bill” even though the grand jury did not consider those offenses. Such an interpretation of the rule should be rejected as creating an absurd and meaningless result. *See Walker v. Walton*, 2003-NMSC-014, ¶ 11, 133 N.M. 766, 70 P.3d 756 (This Court interprets rules “with logic and common sense to avoid absurd results.”).

In this case, the notice of intent to invoke an adult sentence, filed March 23, 2009, tolled the time limit for commencing the adjudicatory hearing. On April 3, 2009, the grand jury found no probable cause to support the youthful offender offenses. That decision re-set the time limit, requiring commencement of the adjudicatory hearing on or before May 3, 2009. Therefore, the trial court erred in dismissing, on April 17, 2009, the delinquent offender charges alleged in the delinquency petition for failure to commence the adjudicatory hearing within the required time limit.

⁴ Indeed, the children’s court attorney could file a new delinquency petition, a notice of intent to invoke an adult sentence, and proceed with a preliminary hearing on the youthful offender offenses. *See State v. Issac M.* 2001-NMCA-088, ¶¶ 1, 8.

- C. The trial court erred in relying on the violation of numerous time requirements as grounds for dismissal when no such violations occurred and, even if they had, such violations would not have warranted dismissal.

As noted above, in dismissing the delinquent offender charges, the trial court relied on the State's failure to comply with "numerous time requirements under the Children's Court Rules." Stipulated Transcript, ¶ 20. However, the record does not support the trial court's finding of numerous violations of time limits. Indeed, the record establishes that the State met each of the time limitations required under the Children's Court Rules.

The Children's Court Rules establish several time limitations for various stages of proceedings in the children's court. For example, Rule 10-211(C) NMRA requires a delinquency petition to be filed within two days of the date the Child is placed in detention. This rule cannot apply where, as here, the child is not placed in detention on the charges contained in the delinquency petition until after the petition is filed. Rather it applies only when the child is arrested prior to the filing of the delinquency petition. In this case, there is no indication in the record that Child was arrested prior to the filing of the delinquency petition. He was, however, ordered detained on the charges alleged in the delinquency petition at a detention hearing held one day after the delinquency petition was filed. RP 7; CD 3-17-09, 9:23:03. Thus, not only was the time limit in Rule 211(C) not applicable,

the time limit provided in Rule 10-225(A) NMRA for a detention hearing within one day of the filing of the delinquency petition was met.

Rule 10-223(A) NMRA requires appointment of counsel to represent a child alleged to be a delinquent child within 5 days of the filing of the delinquency petition or at the commencement of the detention hearing, whichever occurs first. The trial court appointed the public defender to represent Child in this case at the beginning of the detention hearing on March 17, 2009. RP 6, 9; CD 3-17-09, 9:23:03. Thus, this time requirement was also met.

Rule 10-213(A) NMRA requires a notice of intent to invoke an adult sentence, if filed, to be filed within 10 days of the filing of the delinquency petition. In this case, the prosecutor filed the notice of intent on March 23, 2009, 7 days after filing the delinquency petition. This time limit was also met.

Rule 10-213(B) NMRA requires a grand jury or preliminary hearing to determine whether the youthful offender offenses for which the State is seeking to invoke an adult sentence are supported by probable cause. This hearing must be held within fifteen days of the filing of the notice of intent to invoke an adult sentence. In this case, the grand jury hearing was held on April 3, 2009, 11 days after the filing of the notice of intent to invoke an adult sentence. Stipulated Transcript, ¶ 11. Therefore, this time requirement was also met.

Even if the trial court's view that the State failed to meet numerous time requirements is considered a finding of fact to which this Court normally gives deference, it is clearly not supported by substantial evidence and, therefore, is not entitled to such deference. *See State v. Jason L.*, 2000-NMSC-018, ¶¶ 10, 19, 129 N.M. 119, 2 P.3d 856 (the Court defers to the trial court's findings of historical fact "so long as they are supported by substantial evidence.").

Moreover, none of these rules – 10-221(C), 10-225(A), 10-223(A), 10-213(A), 10-213(B) – provide for dismissal as a remedy for failure to comply with the time requirements. Rule 10-144 NMRA provides that the failure to comply with time limits is not grounds for dismissing a delinquency petition, unless dismissal is necessary for substantial justice or is required expressly by the Children's Court Rules. The trial court made no finding that dismissal was necessary for substantial justice. The State asserts that such a finding would not be supported by the record. Indeed, as noted above, the time limits required under the Children's Court Rules were met in this case. Therefore, dismissal was not warranted under the Children's Court Rules. *See State v. Stephen F.*, 2006-NMSC-030, ¶ 16, 140 N.M. 24, 139 P.3d 184.

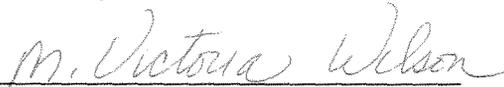
CONCLUSION

For the foregoing reasons, the State respectfully requests this Court to reverse the trial court's order dismissing the delinquency petition and remand for

an adjudicatory hearing on the delinquent offender offenses alleged in the delinquency petition.

Respectfully submitted,

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