

A05-2066

STATE OF MINNESOTA

IN SUPREME COURT

In re State of Minnesota, Petitioner.

State of Minnesota,

Respondent,

vs.

Beth Luann Hart,

Appellant.

BRIEF OF AMICUS CURIAE STATE PUBLIC DEFENDER

MIKE HATCH

State Attorney General
1800 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2134

JANICE S. KOLB

Mille Lacs County Attorney
525 2nd Street SE
Milaca, MN 56353

ATTORNEYS FOR RESPONDENT

MARK D. KELLY

Law Office of Mark D. Kelly
2295 Waters Drive
Mendota Heights, MN 55120

ATTORNEY FOR APPELLANT

**OFFICE OF THE STATE
PUBLIC DEFENDER**

Bradford Colbert

Assistant Public Defender
License No. 166790

Lawrence Hammerling

Deputy State Public Defender
License No. 40277

2221 University Ave. SE
Suite 425

Minneapolis, MN 55414
(612) 627-6980

**ATTORNEYS FOR AMICUS
STATE PUBLIC DEFENDER**

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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postconviction levels, will identify some concerns it has with cases of the nature at issue here – pretrial, interests of justice, dismissal cases. The State Public Defender requests that the Court implement some procedural changes to address some of these concerns, and to refer an additional concern to the Court’s Criminal Rules Advisory Committee for consideration.

I

This case illustrates a number of problems with the existing rules and procedures for addressing “interests of justice” dismissals.

A trial court has both statutory and inherent authority to dismiss a complaint in the interests of justice. The statutory authority is found in Minn. Stat. § 631.21, which provides: “The court may order dismissal of an action either on its own motion or upon motion of the prosecuting attorney and in furtherance of justice.”² The inherent authority derives from the power of the court to further justice. *City of St. Paul v. Landreville*, 221 N.W.2d 532, 534 (Minn. 1974); *see also State v. Krotzer*, 548 N.W.2d 252, 254-55 (Minn. 1996) (affirming the existence of inherent judicial power to further justice through stays of adjudication). The existence of both statutory and inherent authority to dismiss in the interests of justice makes the exercise of that power particularly significant. *See The Steel Seizure Case*, 343 U.S. 579, 635 (1952) (Jackson, J. concurring)

² The State Public Defender believes the phrases “in the interests of justice” and “in furtherance of justice” mean the same thing.

(recognizing the special authority that accompanies an exercise of power approved by two branches of government).

Minn. R. Crim. P. 28.04, subd. 1(1) permits the prosecutor to appeal “in any case, from any pretrial order of the trial court,” subject to a few exceptions which are not appealable. One of those exceptions “is an order dismissing a complaint pursuant to Minn. Stat. § 631. 21.” Minn. R. Crim. P. 28.04, subd. 1(1)(b). At least in so far as furtherance of justice dismissals under § 631.21 are concerned: “The state's remedy is not an appeal but to either reissue the . . . complaint or try to get the court to reconsider its decision.” *State v. Fleck*, 269 N.W.2d 736, 737 (Minn.1978).³

In this case, the court dismissed the complaint in its Sept. 19, 2005 order, noting dismissal was in the “interests of justice,” but without referring to Minn. Stat. § 631.21. App-2.⁴ No direct appeal of the dismissal order was taken. The state attempted to file a new complaint “alleging same transaction/occurrence” as the dismissed complaint. Petition for Review, p. 2. Apparently, the district court would not make the probable cause determination required by Minn. R. Crim. P. 2.01 in order for the complaint to go forward. Subsequently, the state filed a petition for a writ of mandamus, seeking an order directing the district court to make the probable cause finding. Petition for Writ of Mandamus, p.7.

³ Though the 1978 rule relied upon in *Fleck* was somewhat different than the current rule, it is the same in the context at issue in this case.

⁴ “App” is the appendix to this brief, which is followed by the page number.

The State Public Defender submits that, regardless of how the Court chooses to address this particular case, it should reexamine how the criminal justice system addresses pretrial dismissals in the interests of justice. The history of this case illustrates a number of problems with existing procedures, including the following:

Allowing the State to simply refile its original complaint renders a dismissal founded upon our most fundamental values virtually worthless.

“Justice” can be broadly defined as the “fair and proper administration of laws.” Black’s Law Dictionary 881 (8th ed. 2004). In the context of Minnesota’s criminal rules, it has been suggested that the values encompassed by “justice” can be found in their statement of purpose. 9 Minn. Prac., Criminal Law & Procedure § 47.57 (3d ed.). Rule 1.02 says:

These rules are intended to provide for the just, speedy determination of criminal proceedings without the purpose or effect of discrimination based upon race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, handicap in communication, sexual orientation, or age. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

It is evident that what is “just” is intertwined with our most fundamental principles of fairness. Necessarily, a dismissal founded upon the interests of justice reflects a court’s judgment that some aspect of the case before it is so offensive to a fundamental tenet of our law that the prosecution must cease.

Permitting the state to simply refile a complaint dismissed in the interests of justice allows the prosecutor to pursue the case without ever addressing the bases for the court's judgment that justice requires dismissal.⁵ The State Public Defender believes that a district court's judgment about so weighty a principle as justice should not be so easily thwarted.

The time limits and procedural protections associated with other pretrial prosecution appeals are absent in writ cases.

A pretrial prosecution appeal is subject to a number of procedural limits and requirements. Minn. R. Crim. Proc. 28.04, subd. 2. Among other things, these serve to protect a defendant's rights to a speedy resolution of the charges and to appellate counsel. *See State v. Barrett*, 694 N.W.2d 783 (Minn. 2005). These rules also protect the judicial process by permitting the Attorney General to intervene and dismiss the appeal. Minn. R. Crim. Proc. 28.04, subd. 2(4). And they provide procedural protections like shifting the cost of pretrial appeal to the prosecution. Minn. R. Crim. Proc. 28.04, subd. 2(6); *Barrett*, 694 N.W.2d at 787. None of these protections are provided by the extraordinary writ process set forth in Title V of the Rules of Civil Appellate Procedure. Indeed, unlike virtually every other process directed to an appellate court, the civil rules do not impose a specific time limit for filing an extraordinary writ from the date of the order or act challenged.

⁵ It also encourages judge shopping, which undermines fairness in administration and simplicity in procedure. *See State v. Brickey*, 714 P.2d 644, 646-47 (Utah 1986) (noting that vesting prosecutors with unbridled discretion to refile criminal charges allows forum shopping and would violate fundamental notions of fairness).

The State Public Defender believes that when a prosecutor seeks review of an extraordinary writ to challenge a pretrial order or decision by a trial court in a criminal case, the same time limits and procedural protections governing pretrial prosecution appeals should apply.

Whether pretrial appellate review is available in a dismissal case should not turn on the inclusion of a particular phrase or statutory citation in the dismissal order.

The district court dismissed the complaint in the interests of justice. But the court's order does not reflect that this dismissal was based upon Minn. Stat. § 631.21. This is meaningful because, as discussed above, dismissal in the interests of justice can be founded upon the inherent powers of the court. Thus, it is possible in this case that the dismissal was based upon the court's inherent powers, or the statutory authority provided by § 631.21, or both. It is also possible that the court invoked the "interests of justice" as a rhetorical device, while basing its dismissal upon some other concern.

The problem with this is evident. Rule 28.04 bars pretrial appeals based on § 631.21 dismissals in furtherance of justice. It is unclear, however, whether it also bars pretrial appeals of inherent powers based dismissals in the interests of justice. Moreover, a trial court's decision to sprinkle in a reference to the "interests of justice" merely to enliven or ennoble an otherwise dull order could affect the State's ability to seek pretrial review.

As perhaps reflected in this case, this uncertainty places the prosecution in the difficult position of having to decide whether an interests of justice dismissal

should be addressed by pretrial appeal, by refiling the complaint, or by seeking a writ. It clearly places a defendant in the difficult position of having the court's order dismissing the charges against her subject to procedural uncertainty and unpredictable time lines. The State Public Defender believes this uncertainty should be resolved by the Court.

Use of the extraordinary writ process to challenge justice-based dismissals invites appellate review of what is ostensibly an unappealable order and reflects confusion about obtaining review in cases of this nature.

It is evident from a review of the Court of Appeals order in this case that the focus of its attention was the district court's order dismissing the complaint, not the post-dismissal procedural problems complained of by the prosecutor.⁶ This was clearly a questionable result for at least two reasons.

First, an appellate court cannot review on appeal a pretrial interests of justice dismissal order founded upon § 631.21. Minn. R. Crim. P. 28.04, subd. 1(1) (b); *State v. Fleck*, 269 N.W.2d 736, 737 (Minn.1978). In light of this, it is questionable whether it has the authority to review such an order in the context of a writ petition. Moreover, it is at least arguable that this bar extends to dismissal orders founded upon inherent powers as well, assuming the order in this case is construed as such. Second, it can be argued that because the trial court did not mention § 631.21 in its dismissal order, direct pretrial appeal was not barred and, for that reason, a writ was not an available remedy in this case. *State v. Hartman*

⁶ The Court of Appeals Order is appended at App-3 of this brief.

112 N.W.2d 340, 343 (Minn. 1961) (writ only available in absence of other adequate remedy).

Regardless of how these questions are resolved, it is not surprising the appellate court focused on the dismissal order in considering the writ petition. It is, at best, difficult to tease out for review purposes the dismissal order from the events that follow directly from it. In other words, even if a writ petition seeks relief from an event subsequent to the dismissal order, review of the order that precipitated that event may be hard to avoid. Indeed, turning a blind eye to the initial order may defeat proper analysis of what occurred later. Moreover, it is evident that confusion exists about the appropriate process to follow in cases where § 631.21 is not expressly invoked. The State Public Defender believes that the Court should clarify whether dismissal based upon inherent powers is subject to the pretrial appeal bar of Minn. R. Crim. P. 28.04, subd. 1(1)(b).

II

Some of the problems illustrated by this case can be addressed by applying the pretrial prosecution appeal rules to all reviews of pretrial orders sought by the state in a criminal case. Other systemic problems are not susceptible to easy repair and should be referred to the Criminal Rules Committee.

The State Public Defender does not suggest that the judicial system is suffering from a plague of cases of this nature. Nonetheless, this case illustrates a facet of the criminal justice process where there are problems. In fact, two classes of problem are reflected by this case. The first of these is procedural in nature and arises when the state seeks an extraordinary writ to challenge a pretrial ruling or

practice of the district court in a criminal case. The second concerns the institutional tension between the prosecution function and the powers of the court to order interests of justice dismissals.

Procedural problems.

The procedural problems can be fixed with relative ease through use of the Court's supervisory powers. The State Public Defender suggests that when an extraordinary writ is used to seek review of a pretrial order, the existing pretrial prosecution appeal procedures set forth in Minn. R. Crim. P. 28.04 apply. Among other things, this would accomplish the following:

1. A time limit for filing the writ petition would be imposed. The limitation period would run from the filing date of the order at issue, or the date of the act complained of in the petition.
2. The State Public Defender and the Attorney General would be served with the petition. Obviously, these two entities have fundamentally different roles in the process, but neither can fulfill its role without notice that a writ has been filed in the Court of Appeals.
3. The state would have the same disincentive it has when it files a pretrial appeal - having to pay defense costs.

The State Public Defender also asks that the Court clarify whether there is a substantive distinction between furtherance of justice dismissals based upon Minn. Stat. § 631.21, and interests of justice dismissals based upon the court's inherent powers. If there is such a distinction, it is suggested that the Court address

whether, for procedural purposes, the latter falls within the direct appeal prohibition reflected in Rule 28.04, subd. 1(1)(b). If there is a substantive and/or procedural distinction, it is also suggested that the Court emphasize to the trial bench the importance of carefully identifying the source upon which the dismissal is based.

The tension between the prosecution and judicial roles.

For the reasons discussed in Part 1 of this brief, the State Public Defender believes that our current system does not adequately protect a district court's decision to dismiss a complaint in the interests of justice. As noted, permitting a justice based dismissal to be countered by simply refiling the same complaint dishonors the principles and values justice represents.

The State Public Defender submits that the best means of avoiding this anomalous result is to permit interests of justice dismissals to be appealed by the prosecutor, while at the same time requiring that reversal on appeal be a prerequisite to the continuation of any prosecution dismissed on that basis. That being said, the State Public Defender recognizes that separation of powers concerns arise when the state's charging power is implicated. *See State v. Strief*, 673 N.W.2d 831, 837-8 (Minn. 2004) (discussing the distinction between dismissal under § 631.21, which permits recharging, and other judicial actions which affect prosecutorial discretion). The State Public Defender suggests that this concern be presented to the Court's Criminal Rules Advisory Committee for consideration. Thoughtful consideration is required to find an appropriate balance

between the exercise of a trial court's powers to dismiss when justice is at issue,
and the charging power of the state.

CONCLUSION

This case illustrates problems with how the judicial process addresses pretrial dismissals of complaints in the interests of justice. Amicus State Public Defender submits that some of these problems can be addressed by the Court using its supervisory powers to require that the rules of Criminal Procedure that apply to state pretrial appeals also apply to state pretrial petitions for extraordinary relief. The State Public Defender also submits that permitting the state to simply refile complaints dismissed in the interests of justice does not properly reflect the principles and values justice represents. This important concern should be referred to the Court's Criminal Rules Advisory Committee.

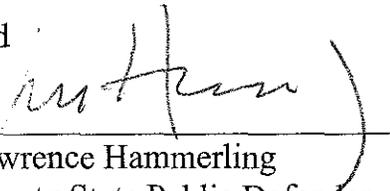
Respectfully submitted,

Date: March 13, 2006

Office of the State Public Defender

By: Bradford Colbert
Assistant Public Defender
License No. 166790

and


Lawrence Hammerling
Deputy State Public Defender
License No. 40277

2221 University Avenue SE, No. 425
Minneapolis, MN 55414
(612) 627-6980

Attorneys for Amicus Curiae
State Public Defender