

A05-2066

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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 MINNESOTA ATTORNEY GENERAL

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INTRODUCTION

Like amicus curiae State Public Defenders Office (“the State Public Defender”), amicus curiae Minnesota Attorney General’s Office (“the Attorney General”) takes no position on the facts or merits of this case.¹ State Public Defender’s brief (“SPD. Br.”) 1.

The Attorney General will focus here on the important underlying issue in this case and argue that the standard district courts apply when considering whether to dismiss a criminal action in the interests of justice should be the same as the standard for a stay of adjudication: clear abuse of the prosecutorial charging function. The Attorney General agrees with the State Public Defender that dismissals in the interests of justice should be appealable, and that how such appeals should be taken is an issue that should be referred to this Court’s Advisory Committee on Rules of Criminal Procedure (“the Rules Committee”) for study and recommendation. *Id.* at 5, 10.¹

I. CURRENT LAW ON THE POWER TO DISMISS IN THE INTERESTS OF JUSTICE

Minnesota Statute Section 631.21 (2004) provides as follows:

ALLOWING DISMISSAL OF CAUSE UPON COURT’S OR PROSECUTOR’S MOTION.

The court may order a criminal action, whether prosecuted upon indictment or complaint, to be dismissed. 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. If the court dismisses an action, the reasons for the dismissal must be set forth in the order and entered upon the minutes. The recommendations of the prosecuting officer in reference to dismissal, with

¹ Counsel for the Attorney General authored this brief in whole. The cost of preparation for this brief has been borne by the Attorney General’s Office.

reasons for dismissal, must be stated in writing and filed as a public record with the official files of the case.

This statute is cited in several published appellate decisions, usually in the context of explaining that a dismissal “in the interests of justice”² under section 631.21 is not appealable, under Minnesota Rule of Criminal Procedure 28.04, subdivision 1, because “[t]he state’s remedy is not an appeal but to either reissue the amended complaint or try to get the court to reconsider its decision.” *State v. Gault*, 551 N.W.2d 719, 725 (Minn. Ct. App. 1996) (quoting *State v. Fleck*, 269 N.W.2d 736, 737 (Minn. 1978)), *rev. granted* (Minn. Sept. 20, 1996), *rev. vacated, appeal dismissed* (Minn. Feb. 27, 1997); *accord, City of West St. Paul v. Banning*, 409 N.W.2d 530, 531 (Minn. 1987); *State v. Hendrickson*, 395 N.W.2d 458, 461 (Minn. Ct. App. 1986); *State v. Voigt*, 388 N.W.2d 790, 791 (Minn. Ct. App. 1986). No case provides any guidance as to when a dismissal in the interests of justice is permissible.

In addition to the authority to dismiss in the interests of justice set out in section 631.21, in *City of St. Paul v. Landreville*, 301 Minn. 43, 221 N.W.2d 532 (1974), this Court stated that a district court “has the inherent power to dismiss a case in the interests or furtherance of justice, whether that power is expressly conferred by statute or arises by implication.” *Id.* at 47, 221 N.W.2d at 534 (footnote omitted). Like the decisions cited above, *Landreville* does not provide any guidance as to how the power to dismiss in the

² Like the State Public Defender, the Attorney General believes that the phrases “in the interests of justice” and “in furtherance of justice” mean the same thing; for consistency, this brief will use the former.

interests of justice should be exercised, and holds that a dismissal in the interests of justice is not an appealable order because even where a dismissal uses the words “with prejudice” or “permanently,” the prosecution “is not prevented from further pursuing the matter.” *Id.* at 46, 221 N.W.2d at 534.

The closest any Minnesota appellate court has come to analyzing the limits on a district court’s ability to dismiss in the interests of justice is this Court’s decision in *State v. Streiff*, 673 N.W.2d 831 (Minn. 2004). Streiff was charged with two felonies, but over the prosecutor’s objection the district court granted her motion to plead guilty to two lesser-included gross misdemeanor offenses, finding that it would be a manifest injustice to have her prosecuted for a felony. The state appealed, the court of appeals affirmed, but this Court reversed, holding that the collateral consequences of prosecuting her on felony charges do not constitute a manifest injustice.

In considering the scope of a district court’s authority to accept a guilty plea over the prosecutor’s objection, this Court discussed the division of power between the prosecutor and the court at other stages in the prosecution of a crime.

The prosecution of a criminal defendant may move through several potential stages, from a complaint issued by the prosecutor or an indictment returned by a grand jury; to plea negotiations; to the entry of a plea; to the ordering of a stay of adjudication or a stay of imposition or of execution of a sentence; to the execution of a sentence. At one end of this spectrum, bringing charges and plea bargaining, the discretion rests almost entirely with the prosecutor. At the other end of the spectrum, the imposition of the sentence or staying the imposition or execution of a sentence, the discretion rests almost entirely with the court. But the separation of powers is perhaps not as clear for the stages that lay in between.

Id. at 836.

Discussing stays of adjudication, this Court noted that

because the act of the court in accepting a plea over the objection of the prosecutor is more intrusive of the prosecutor's charging function than ordering a stay of adjudication, the restriction on the court's authority to accept a plea to a lesser charge would logically be greater than that on the court's authority to order a stay of adjudication.

Id. This Court observed that a trial court's "authority to interfere with the charging function of a prosecutor is much less than its authority in sentencing":

Under established separation of powers rules, absent evidence of selective or discriminatory prosecutorial intent, or an abuse of prosecutorial discretion, the judiciary is powerless to interfere with the prosecutor's charging authority.

Id. at 837 (quoting *State v. Krotzer*, 548 N.W.2d 252, 254 (Minn. 1996)).

Streiff argued that because the trial court had the power to dismiss the charges on its own motion under section 631.21, it had the implied authority to take the less severe measure of accepting a plea to a lesser charge. This Court responded that

this argument merely begs the question of what the scope of the authority of the court really is under section 631.21. First, such a dismissal ordinarily would not have the effect of precluding the prosecutor from recharging the accused. . . . Thus, dismissal of a charge under the statute would actually be less intrusive of the prosecutor's charging function because it would be without prejudice to the reinstatement of charges.

Second, to the extent that it was argued that such a dismissal might preclude further charges, the statute would raise the same separation of powers issues that were present in *Carriere* and led the court to imply restrictions on the authority of the court to interfere with the prosecutor's charging function.

Id. at 837-838;³ see also *Fleck*, 269 N.W.2d at 737 (stating that “[w]e believe that the interests of justice were not furthered by the dismissal” under section 631.21 of incest charges where the trial court “felt that the additional expense to the county of prosecuting the incest charges was not justified,” but dismissing the appeal because the state’s remedy is “to either reissue the amended complaint or try to get the court to reconsider its decision”).

II. A DISMISSAL IN THE INTERESTS OF JUSTICE SHOULD PRECLUDE FURTHER PROSECUTION AND BE APPEALABLE; THE STANDARD FOR SUCH A DISMISSAL SHOULD BE A CLEAR ABUSE OF THE PROSECUTORIAL CHARGING FUNCTION

As noted above, the Attorney General agrees with the State Public Defender that a trial court’s decision to dismiss in the interests of justice should preclude further prosecution, because “[p]ermitting 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 . . . about so weighty a principle as justice,” and because

³ The *Carriere* decision is discussed in *Streiff*, 673 N.W.2d at 834. In brief, “[t]o satisfy separation of powers concerns, *Carriere* conditioned the district court’s acceptance of the defendant’s motion [to accept a plea to an offense of lesser degree over the opposition of the prosecutor] on whether the prosecutor can ‘demonstrate to the trial court that there is a reasonable likelihood the state can withstand a motion to dismiss the charge at the close of the state’s case in chief.’ We concluded that if the prosecutor can satisfy this condition, the district court ‘should refuse to accept the tendered guilty plea.’” *Id.* (citations omitted).

permitting the state to simply refile “encourages judge shopping.” SPD. Br. 5, n.5. Further, although current Minnesota law allows a prosecutor to refile a complaint dismissed in the interests of justice, as a practical matter such a dismissal may preclude further prosecution because other judges may be unwilling to sign a complaint dismissed by one of their colleagues. Thus, under the current Minnesota law that dismissals in the interests of justice are not appealable orders, a prosecutor may be left with no clear remedy if other judges refuse to sign a complaint dismissed in the interests of justice; indeed, the instant case illustrates the confusing situation that may face a prosecutor when a complaint is dismissed in the interests of justice.

To give due respect to a trial court’s order dismissing a case in the interests of justice, and to provide a straightforward means of appealing such an order, this Court should hold that such an order preclude further prosecution and should refer to the Rules Committee the question of how an appeal from such an order should be taken, just as this Court recently referred to the Rules Committee for study and recommendation the issue of the proper procedure for appealing from a stay of adjudication. *State v. Lee*, 706 N.W.2d 491, 494 n.1. (Minn. 2005).

To provide guidance to district courts, this Court should also hold that the standard for a dismissal in the interests of justice is the same as that for a stay of adjudication: clear abuse of the prosecutorial charging function. *Id.* at 496.⁴ Because

⁴ It should be noted that the instant case does not involve a dismissal based on lack of probable cause or violation of a speedy-trial demand; case law on these types of
(Footnote Continued On Next Page.)

neither section 631.21 nor Minnesota case law provides any limit on when a district court can dismiss a case in the interests of justice, the standard for such a dismissal should be the same as the standard for a stay of adjudication, or a court could avoid the strict standard for stays of adjudication by dismissing the case in the interests of justice at sentencing.

Further, a dismissal in the interests of justice obviously raises separation-of-powers concerns, by interfering with the prosecutor's charging discretion, as recently explained by this Court in *Streiff*, *supra* pp. 3-4. *See also Lee*, 706 N.W.2d at 494 ("We have said that, unless the prosecutor abuses his or her discretion or demonstrates improper intent, 'the judiciary is powerless to interfere with the prosecutor's charging authority.' *State v. Krotzer*, 548 N.W.2d 252, 254 (Minn. 1996). Sound policy reasons grounded in separation-of-powers concerns support appellate review when a district court judge directly interferes with the charging function of the prosecutor.") As with guilty pleas to lesser offenses or stays of adjudication, the separation of powers is best preserved by precluding dismissals in the interests of justice except where there has been an abuse of prosecutorial discretion in charging.

dismissals, and the prosecution's ability to appeal therefrom, is well developed and would not be affected by adoption of the clear-abuse-of-the-prosecutorial-charging-function standard for interests-of-justice dismissals. Similarly, adoption of such a standard would not affect a court's authority to impose sanctions for prosecutorial misconduct or violations of court rules or orders.

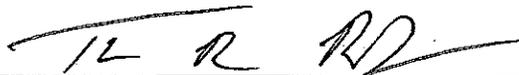
CONCLUSION

The Attorney General respectfully requests that this Court hold that district courts can only dismiss criminal cases in the interests of justice when there has been a clear abuse of the prosecutorial charging function, that such a dismissal precludes further prosecution, and that such a dismissal is appealable, and that this Court refer to the Rules Committee the question of how such appeals should be taken.

Dated: April 14, 2006

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