



IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff-Below,) No. 594, 2016
 Appellant,)
)
 v.)
)
 DAVID M. HAZELTON,)
)
 Defendant-Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLEE'S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

On May 13, 2016, David M. Hazelton (“Hazelton”) was arrested and charged with vehicular assault third degree, leaving the scene of a collision resulting in injury, driving a vehicle under the influence of alcohol, failure to have insurance identification in possession, failure to report a collision involving alcohol or drugs, and failure to stop at a red light. B1. On May 14, 2016, the warrant charging Hazelton with the offenses was received and approved in Justice of the Peace Court #3, and Hazelton was held on a secured bail. *Id.* The presiding Magistrate assigned the matter case number 1605009428 and the case was transferred to the Court of Common Pleas in and for Sussex County, Delaware. *Id.*

The Court of Common Pleas (“CCP”) accepted the case on May 17, 2016, and scheduled an arraignment. *Id.* On May 18, 2016, Hazelton appeared in CCP and was arraigned by the judge. *Id.* Hazelton entered a plea of not guilty, demanded a jury trial, and was given a date to return for trial on September 14, 2016. *Id.*

Following his arraignment, Hazelton promptly retained counsel to represent him in CCP. On May 27, 2016, Hazelton’s counsel filed an entry of appearance, a request for discovery, two motions to suppress evidence, and a supplemental discovery request with an accompanying certificate of service for each of the five filings. B1-2. Additionally, Hazelton’s counsel filed a waiver of jury trial form

requesting a non-jury trial. B2. On May 31, 2016, Hazelton's counsel filed a letter with a copy of Hazelton's insurance card attached, showing valid insurance was held at the time of the allegations. *Id.* The Court informed Hazelton's counsel and the State by written notice that the case would remain on CCP's trial calendar for September 14, 2016, and would proceed as a non-jury trial. *Id.*

On June 20, 2016, the State filed an indictment, based on the same set of facts, in the Superior Court in and for Sussex County, Delaware. B3. The indictment changed the initial charge of vehicular assault in the third degree, to vehicular assault in the second degree. *Id.* All other offenses in the indictment are identical to the offenses originally charged in the CCP case. The State did not provide notice of the indictment to Hazelton's defense counsel or CCP. B1-2.

On September 2, 2016, the State filed a *nolle prosequi* as to all charges on the case in CCP. B2. Twelve (12) days later, on September 14, 2016, Hazelton and counsel appeared on the scheduled date for trial in CCP. Upon checking in with courthouse staff, Hazelton was informed that the CCP case was showing that a *nolle prosequi* was filed and Hazelton was taken into custody in the courthouse for purposes of returning the Rule 9 warrant in the Superior Court for the indictment. B3. Consequently, Hazelton was arraigned in the Superior Court and entered a plea of not guilty on the same day, September 14, 2016. *Id.* Counsel for Hazelton entered his appearance on the case in Superior Court on September 27,

2016 and filed pleadings, including a discovery request and supplemental discovery request. B4.

On November 15, 2016, Hazelton filed a motion to dismiss the indictment in the Superior Court. A15-79; B4. The Superior Court held a hearing and granted the motion to dismiss on November 18, 2016. B6-16. Thereafter, the State filed a motion to reargue the matter on November 23, 2016. A89-105. The Superior Court held a hearing on the State's motion to reargue and affirmed its decision to dismiss the matter on December 1, 2016. B15-21.

The State appealed the Superior Court's decision. This is Hazelton's Answering Brief on appeal.

SUMMARY OF THE ARGUMENT

I. Appellant's claim is DENIED. The Superior Court did not abuse its discretion in granting Hazelton's motion to dismiss pursuant to Superior Court Criminal Rule 48(b).

STATEMENT OF FACTS

On May 18, 2016, Hazelton appeared before the Court of Common Pleas (“CCP”) for arraignment, entered a plea of not guilty, and requested a jury trial.

B1. As for all arraignments in CCP, a Deputy Attorney General was present in the courtroom during the arraignment. The Court scheduled the matter for trial on September 14, 2016, and Hazelton was given notice to appear for trial. *Id.*

Thereafter, counsel for Hazelton entered his appearance in CCP on May 27, 2016, and filed a request for production of discovery, two motions to suppress evidence, a supplemental discovery request, and waiver of jury trial, with certificates of service to the State. B1-2. With the knowledge that Hazelton was represented by defense counsel due to an entry of appearance, and five separate filings, the State filed an indictment in the Superior Court on June 20, 2016. B1-3. The offenses filed in the indictment mirrored the offenses in the CCP case, with the exception that a misdemeanor charge of vehicular assault third alleging criminally negligent driving causing physical injury¹, was charged under the indictment as a misdemeanor offense of vehicular assault second alleging driving under the influence causing physical injury². B1-3. The level of “physical injury” is identical under both statutes, and all offenses charged in the indictment remained

¹ 11 *Del. C.* § 628

² 11 *Del. C.* § 628A(2)

misdemeanor or traffic offenses. B3. The State failed to provide notice that an indictment was filed to Hazelton, Hazelton's counsel of record, or the Court of Common Pleas. B1-2. On September 2, 2016, exactly seventy-four (74) days after filing the indictment, the State filed a *nolle prosequi* of Hazelton's case in CCP. B2. Once again, the State did not provide notice to Hazelton's counsel of record that a *nolle prosequi* was filed.

Unaware of the State's actions in the two courts, Hazelton and his defense counsel prepared for trial and appeared in CCP for trial on September 14, 2016. Upon entering the courthouse on this date, Hazelton was handcuffed, taken into custody and processed for the Rule 9 warrant resulting from the indictment. B3-9. Hazelton was arraigned on the new case and received a date to appear for case review. B3. Hazelton retained counsel for the case now in Superior Court and counsel entered his appearance in Superior Court on September 27, 2016. B3-B4.

On November 5, 2016, Hazelton filed a motion to dismiss the indictment filed in the Superior Court pursuant to Superior Court Criminal Rule 48(b). A15-79; B4. The Superior Court granted Hazelton's motion to dismiss, finding that the State failed to present 'any compelling reason' why the indictment was filed in the Superior Court, after the charges were instituted in CCP. B7. Further, the Superior Court held that the Court of Common Pleas was a court of competent jurisdiction to handle the offenses charged in this case. *Id.* The State filed a

motion to reargue and the Superior Court afforded the State a second opportunity to present argument during a hearing that was held on December 1, 2016. B15-21. At that hearing, the Superior Court again held that Hazelton was being prosecuted in two courts at the same time without a sufficient reason, and granted the dismissal under Rule 48(b). B20. Accordingly, Superior Court found that Hazelton was prejudiced from a dual prosecution by the State's actions in failing to provide notice to CCP or defense counsel of the indictment, and did not terminate prosecution of the case in CCP for a period of seventy-four (74) days following the indictment. B6-21.

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN GRANTING HAZELTON'S MOTION TO DISMISS.

A. Question Presented

Whether the Superior Court abused its discretion in granting Hazelton's motion to dismiss pursuant to Superior Court Criminal Rule 48(b).³

B. Scope of Review

This Court reviews a decision of the Superior Court to grant a motion to dismiss under Superior Court Criminal Rule 48(b) for an abuse of judicial discretion.⁴

C. Merits of Argument

The Superior Court did not abuse its discretion in granting Hazelton's motion to dismiss the indictment pursuant to Superior Court Criminal Rule 48(b).

³ The State's Opening Brief incorrectly states the facts of this case in their Question Presented. Op. Br. at 7. The State claims that a *nolle prosequi* was entered on the charges against Hazelton in the Court of Common Pleas, then the State filed an indictment in the Superior Court. *Id.* This is not correct. As accurately reflected in the dockets of the Court of Common Pleas and the Superior Court, Hazelton was arraigned in the Court of Common Pleas on May 18, 2016, and subsequently the State filed an indictment in the Superior Court on June 20, 2016. B1-3. Thereafter, the State filed a *nolle prosequi* on the charges in the Court of Common Pleas case on September 2, 2016. B2. In fact, the *nolle prosequi* was filed in the Court of Common Pleas seventy-four (74) days after the indictment in Superior Court. B1-3.

⁴ *State v. Fisher*, 285 A.2d 417, 419 (Del. 1971).

“An abuse of discretion occurs when “a court has ... exceeded the bounds of reason in view of the circumstances, [or] ... so ignored recognized rules of law or practice so as to produce injustice.”⁵ In applying an abuse of discretion standard, “this Court will disturb a discretionary ruling of the trial court only when the ruling is based upon unreasonable or capricious grounds.”⁶ “Under this highly deferential standard, a reviewing court should resist a tendency to substitute its views for those of the judge exercising the initial power. The test is not whether the reviewing court would have ruled otherwise but whether the trial court acted within a zone of reasonableness or stayed within ‘a range of choice.’”⁷

The Superior Court may dismiss an indictment under Rule 48(b), if there was some ‘unnecessary delay in bringing a defendant to trial.’⁸ “While Rule 48(b) does not condition a dismissal of an indictment on any finding other than “unnecessary delay” and makes no reference to a need of a defendant to show prejudice to have resulted from the delay, some showing of prejudice has been consistently required for relief to be granted.”⁹ Accordingly, this Court has consistently upheld a trial court’s discretionary authority under Rule 48(b), where

⁵ *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994) (quoting *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988)).

⁶ *Zimmerman v. State*, 628 A.2d 62, 65 (Del. 1993) (citation omitted).

⁷ *State v. Lewis*, 797 A.2d 1198, 1202 (Del. 2002) (citation omitted).

⁸ Super. Ct. Crim. R. 48(b).

⁹ *State v. McElroy*, 561 A.2d 154, 156 (Del. 1989) (citing *State v. Fischer*, 285 A.2d at 419).

“the unnecessary delay is attributable to the prosecution and where the delay has been found to work some definable or measurable prejudice to the defendant.”¹⁰

In reviewing a Superior Court’s decision to grant a motion to dismiss under Rule 48(b), this Court addresses the presence of unnecessary delay in a defendant’s prosecution.¹¹ Absent a delay that impedes a defendant’s constitutional rights, a dismissal under Rule 48(b) requires that the delay in prosecution be attributable to the State.¹² “When delays are caused by the State due to a situation within its control, there is no abuse of judicial discretion in dismissing the charges.”¹³

In the matter a bar, Hazelton’s case incurred unnecessary delay based on conduct solely attributable to the State for two reasons. First, Hazelton had two prosecutions pending in two different courts simultaneously, based on the same set of facts and allegations, without a purpose or justification. During the hearing on Hazelton’s motion to dismiss, the Superior Court held that the State failed to present ‘any compelling reason’ why the indictment was filed in the Superior Court, after the charges were instituted in CCP. B12. Further, the Superior Court held that the Court of Common Pleas was a court of competent jurisdiction to handle the offenses charged in this case. B12.

¹⁰ *McElroy*, 561 A.2d at 157. (citation omitted).

¹¹ *Fischer*, 285 A.2d at 419.

¹² *State v. Pruitt*, 805 A.2d 177, 182 (Del. 2002) (citing *McElroy*, 561 A.2d at 156).

¹³ *State v. Johnson*, 564 A.2d 364, 371 (Del. Super. Ct. April 13, 1989) (citation omitted).

On appeal, the State concedes that the two cases in CCP and Superior Court, which were pending simultaneously, were based on the same facts. Op. Br. at 11. There was no new or additional information presented in the case following Hazelton's arrest. Further, all offenses charged in the indictment were misdemeanor or traffic offenses. Consequently, all charges presented in the indictment were within the jurisdiction of the Court of Common Pleas.

Second, despite knowledge that Hazelton was represented by counsel and CCP had scheduled a trial date, the State failed to notify Hazelton's counsel or CCP that an indictment was filed on September 20, 2016. B1-2. Moreover, the State failed to file a *nolle prosequi* on the CCP case for seventy-four (74) days after filing the indictment. *Id.* Indeed, the *nolle prosequi* was filed in CCP on September 2, 2016, which was twelve days before the CCP trial date. B1-2. However, when the filing did occur, the State again failed to notify defense counsel that a *nolle prosequi* was filed in CCP. *Id.* During the hearing in Superior Court on Hazelton's motion to dismiss, the State indicated that it is their "office's policy to immediately *nolle pros* the Court of Common Pleas case" when an indictment is filed in the Superior Court. B10. At the hearing, the State addressed the events that occurred in this case, and the State admitted that their own policy was not followed. "That [filing the *nolle prosequi*] did not happen here. Two-and-a-half months later it was *nolle prosed*." B10.

In *State v. Warrington*, the Court of Common Pleas granted a motion to dismiss under Rule 48(b), and held that the State failed to give defense counsel notice of its intention to indict, after it entered a *nolle prosequi* in the court below when the State's necessary witnesses failed to appear.¹⁴ "Any time a defendant is represented, and the State knows or has reason to know of his representation, the State is required to communicate with defense counsel, and not to the defendant directly. The State's failure to communicate with defense counsel at all violated this rule."¹⁵ Similarly, the State knew or had reason to know that Hazelton was represented due to the five separate filings that were served on the State by defense counsel. Despite knowledge of representation, the State failed to communicate with Hazelton's counsel regarding the filing of an indictment or *nolle prosequi*. Without the required notice, Hazelton's counsel was unaware of the Superior Court case or *nolle prosequi*, and appeared for trial in CCP prepared to represent his client. In addition, the unnecessary delay caused by the lack of notice was further extended to the Superior Court, because the Rule 9 warrant was left languishing for months in Superior Court without Hazelton's knowledge that there was an outstanding warrant for his arrest.

¹⁴ *State v. Warrington*, 2016 WL 3485355, at *5 (Del. Comm. Pl. June 27, 2016).

¹⁵ *Id.* at *5. (citing Del. Lawyers' R. Prof'l. Conduct 4.2).

Accordingly, the Superior Court acted within well its discretion to dismiss. The Superior Court properly held that no compelling reason was presented to explain why an indictment was filed, stemming from the same facts as the case in CCP, when the charges in the indictment were already in a court of competent jurisdiction. Further, the unnecessary delay was attributable to the State, because the events causing delay were within their control and of their own doing. The State's failure to notify CCP or defense counsel of the indictment, and the State's failure to file a *nolle prosequi* in CCP for seventy-four (74) days following the filing of the indictment, compounded the delay.

The Superior Court did not abuse its discretion in granting Hazelton's motion to dismiss, because the delay resulted in prejudice. During the hearing on the State's motion to reargue, the Superior Court held that Hazelton suffered prejudice resulting from a dual prosecution. "I'm satisfied that this defendant was being prosecuted in two courts at the same time, which *Pruitt* is not fond of unless you have some good reason. I haven't heard good reason yet." B20. Accordingly, the Superior Court did not abuse its discretion by holding that Hazelton was prejudiced resulting from two prosecutions in CCP and Superior Court simultaneously.

Although the occurrence of simultaneous dual prosecutions is a rarity, the Court of Common Pleas in *State v. Gootee*, reviewed this procedural scenario in

evaluating prejudice under a Rule 48(b) analysis.¹⁶ In *Gootee*, the Court found that the State did not properly terminate prosecution in the Court below, and the charges appeared as pending in two courts simultaneously.¹⁷ In granting the dismissal under Rule 48(b), the Court specifically identified the prejudicial effect that a dual prosecution has on a defendant: “This Court can think of few instances where a Defendant would suffer any greater prejudice than to have simultaneous prosecutions pending in two separate courts for the same charge.”¹⁸ Applying the Court’s analysis in *Gootee*, the Superior Court did not abuse its discretion in finding Hazelton was prejudiced by a dual prosecution in this case.

While the State concedes that there was an overlap of time between filing the indictment in Superior Court and filing a *nolle prosequi* in CCP, the State claims on appeal that this span was brief. Op. Br. at 11. Conversely, Hazelton submits that a time period of seventy-four (74) days between the two filings was not brief and was also unreasonable. Further, the State claims on appeal that Hazelton was not prejudiced, because “Hazelton, at no point was under a mistaken impression that the charges were dismissed and later reinstated.” Op. Br. at 13. Seemingly, the State attempts to argue that because Hazelton and his counsel were unaware of the dual prosecution, there was no prejudice suffered. To the contrary,

¹⁶ *State v. Gootee*, 2005 WL 1840253 (Del. Comm. Pl. Aug. 4, 2005).

¹⁷ *Gootee*, 2005 WL 1840253 at *5.

¹⁸ *Id.*

the defense was only unaware of the dual prosecution due to the State's failure to terminate prosecution below, and failure to provide notice of the indictment to Hazelton or CCP. Hazelton's lack of knowledge of the proceedings does not change the fact that a simultaneous dual prosecution existed for over two months, nor diminish the level of prejudice suffered. Therefore, the improper conduct by the State, which is admittedly not in compliance with their own office policies, serves as further prejudicing Hazelton.

Additionally, in *State v. Fischer*, the Supreme Court held that a Court may dismiss a case under Rule 48(b) where a defendant has suffered anxiety, uncertainty in duplicative prosecutions against him, increased legal and other expenses, or notoriety suffered by a defendant as the result of repeated commencement of prosecutions for the same offenses.¹⁹ These and other "like considerations may constitute sufficient 'prejudices' to justify the exercise of the Court's discretion under Rule 48(b)."²⁰ This Court reaffirmed these potential prejudicial effects suffered by a defendant in *State v. Pruitt*.²¹

Here, Hazelton suffered the same prejudicial effects as a result of the State's conduct. Hazelton had been arraigned in the Court of Common Pleas, prepared for trial, and appeared with his defense counsel anticipating the resolution of criminal

¹⁹ *Fischer*, 285 A.2d 417 at 419.

²⁰ *Id.*

²¹ 805 A.2d 177, 182 (Del. 2002).

charges. Instead, on the date of trial, Hazelton and counsel were informed that the case in the Court of Common Pleas was *nolle prosequi*, Hazelton was placed in handcuffs and detained, taken into custody by officers and arraigned in the Superior Court beginning the entire prosecution over again. Hazelton then retained counsel to represent him in the new case pending in Superior Court. Consequently, Hazelton suffered anxiety in being detained in the courthouse at the time of his trial in CCP, incurred additional legal expenses, and faced uncertainty in a duplicative prosecution now pending in the Superior Court for the same case.

The State now argues that the Superior Court abused its discretion because there was never a dual prosecution, and therefore, the concerns in *State v. Pruitt* are not present in this case. Op. Br. at 11. In support of their position, the State claims that the matter at bar is distinguishable from *Pruitt*. Op. Br. at 8. The State's reliance on this argument is misplaced, because in *Pruitt*, a Justice of the Peace Court dismissed charges against the defendant for the State's failure to file the charges, then after finding the charges had been misplaced in the court's files, the J.P. Court reinstated those charges.²² The State later entered a *nolle prosequi* on the case in J.P. Court and filed an indictment of the charges in Superior Court, and the Superior Court granted a dismissal pursuant to Rule 48(b).²³ On appeal, in

²² *Pruitt*, 805 A.2d at 178.

²³ *Id.*

Pruitt, the State argued that the filing of a *nolle prosequi* did not result in any attributable delay or prejudicial effect to *Pruitt*, and any delay was the product of the J.P. Court's reinstatement of the charges.²⁴

In affirming the Superior Court, this Court held that when the State entered the *nolle prosequi* on the charges, the State manipulated the judicial process and caused substantial prejudice to the defendant.²⁵ “We have often noted our distaste for the State’s practice of voluntarily dismissing charges in a lower court and commencing a new prosecution on those same charges in a higher court with concurrent jurisdiction.”²⁶ More specifically, the Court explained that “once the State engages in a prosecution in a court of competent jurisdiction, it should be prohibited from pursuing that prosecution to its ultimate conclusion in any forum other than one it initially chose.”²⁷ Additionally, this Court noted that its holding would serve to deter the State from “engaging in a practice that is so readily subject to abuse that it undermines the public’s confidence in the fundamental fairness of the judicial process.”²⁸ The same concerns are implicated in the instant

²⁴ *Id.* at 182. (“It is unnecessary for the Superior Court judge to have made a specific finding or that the prejudices have even been raised by *Pruitt* in his motion.”)

²⁵ *Id.* at 183.

²⁶ *Id.* at 183. (citing *Fischer*, 285 A.2d at 419-20).

²⁷ *Id.*

²⁸ *Id.*

case. The State should likewise be held to pursuing prosecution in the Court of Common Pleas, as it was its initial forum of choice.

Any attempt by the State to claim that a prosecution was not commenced in CCP is disingenuous. In fact, a prosecution existed in CCP for 108 days following Hazelton's arraignment in the Court, with multiple pleadings filed by defense counsel. B1-2. It is also important to note that the timing of the *nolle prosequi* in CCP occurred twelve days prior to the CCP trial date. Analogous to *Pruitt*, here the State unfairly manipulated the judicial process, delayed swift resolution of the charges and created undue prejudice that could only be remedied by the prompt dismissal of the charges by the court.²⁹

When the Superior Court asked the State during the motion hearing why the State did not pursue the case against Hazelton in CCP, the State was unaware why the charging decision was made, but guessed that the reason would be because it "would be easier to prove." B11. Hazelton submits that the act of altering the vehicular assault second charge, and comprising elements of the offense, so that the case "would be easier to prove" is by definition a unilateral action by the State intended to manipulate the judicial process in the State's favor and prejudice Hazelton.

²⁹ *Id.* at 178-79.

In the matter at bar, the Superior Court did note that there are certain distinguishing facts in the prejudice suffered by Hazelton, compared to the facts stated in *Pruitt*; however, the judge explained that the difference in those facts demonstrated a greater prejudice suffered by Hazelton. In granting Hazelton's motion to dismiss, the Superior Court stated the following: "I'm not sure it's better to indict while the case is in CCP than to drop the case and then indict. It strikes me as worse, not better." B12.

Accordingly, the Superior Court held that the State's action of filing the indictment after proceedings were commenced in a lower court of competent jurisdiction caused unnecessary delay. This delay was compounded by the State's further action in failing to file a *nolle prosequi* in CCP and terminating the prosecution below for a period of seventy-four (74) days following indictment. As a result, Hazelton suffered prejudice facing two prosecutions, in two different, courts based on the same facts. Therefore, the Superior Court did not abuse its discretion in granting Hazelton's motion to dismiss pursuant to Rule 48(b).

CONCLUSION

For the reasons set forth herein, the judgment of the Superior Court should be affirmed.

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