

No. 49121-4-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

S. W.,

Respondent.

Appeal from the Juvenile Division of Superior Court of Washington
for Lewis County
Case No. 15-8-00161-2

Appellant's Opening Brief

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it failed to give the State notice and a hearing prior to the dismissal of the case pursuant to CrR 8.3(b).
2. The trial court erred when it denied the State's request to set over the hearing to allow the State to present further arguments and evidence in regards to the trial court's *sua sponte* motion to dismiss.
3. The trial court erred when it dismissed the State's case.
4. The trial court erred when it denied the State's motion for reconsideration without holding a hearing.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

- A. CrR 8.3(b) requires the court give the parties notice prior to dismissal of a criminal case. Did the trial court err when it failed to give the parties notice of its intent to dismiss S.W.'s case?
- B. CrR 8.3(b) allows a trial court to dismiss a criminal case after a hearing. Did the trial court err when it failed to give the State an adequate opportunity to be heard on the trial court's *sua sponte* motion to dismiss?
- C. CrR 8.3 only allows for dismissal of a criminal action by motion of the trial court for very limited circumstances, arbitrary action or governmental misconduct, and there must be prejudice to the accused that materially affect his or her right to a fair trial. Did the trial court err when it dismissed the State's case for insufficient evidence to support a conviction beyond a reasonable doubt rather than the limited circumstances set forth in CrR 8.3(b)?
- D. The trial court can reconsider a ruling which may be erroneously decided and allow a party another opportunity to be heard on the matter. Did the trial court err when it denied the State's motion for reconsideration without holding a hearing on the matter?

III. STATEMENT OF THE CASE

On November 16, 2015, the State filed an Information charging S.W.¹ with one count of Harassment – Threat to Kill. CP 3-4. The allegation stemmed from an incident on November 9, 2015 when writing on a desk at Centralia High School, in Lewis County Washington was discovered. CP 2. The writing stated, “Ima [sic] shoot up the school – 11/10.” CP 2.

On November 10, 2015 police and metal detectors were used at the school to check all students due to the threat. *Id.* Centralia Police Officer Compton investigated the matter. *Id.* Officer Compton was able to compare school work of S.W. and it led him to believe she was the one who had written the note on the desk. *Id.* Officer Compton also found out that S.W. had sat in the desk prior to the writing being found. *Id.* S.W. was also using a black pen in the class and the writing on the desk was in black pen. *Id.*

Officer Compton confronted S.W. *Id.* S.W. denied any involvement in the threat on the desk. *Id.* Officer Compton called S.W.’s mother and informed her of the investigation. *Id.* Later, Officer Compton received a phone call from S.W.’s mother, informing him

¹ As the respondent in this case is a juvenile and has not been convicted of a crime the State will use her initials in its briefing to protect her identity.

that she and S.W. were coming down to the police station to speak with Officer Compton. *Id.* Once at the police station S.W. confessed to Officer Compton that she had written the note on the desk. *Id.* S.W. told Officer Compton that she had meant to erase the statement but had forgot. *Id.*

On December 22, 2015 S.W. filed a Motion and Declaration for Deferred Disposition. CP 6-7. The State was not opposed to the deferred disposition. RP 2. The trial court told the parties he had looked at the probable cause statement and wanted to know who the victim was. RP 2. The State responded that the language in the charging document stated “any other person” and there were students who found the writing that felt it was significant enough to report it. RP 3. The deputy prosecutor informed the trial court the second part that was written on the desk stated, “Sir Kills-a-Lot.” RP 4.

The judge told the parties he could not find S.W. guilty beyond a reasonable doubt and that precludes any need to be on a deferred disposition. RP 6. The judge stated S.W. may be guilty of another crime, but she was not guilty of Harassment – Threats to Kill. RP 6. The judge found S.W. not guilty and stated he was dismissing the case. RP 7. The State requested the judge reset the issue for two

weeks so it could look into the issues brought up by the court. *Id.* Trial court denied the request. RP 7-8. An Order of Dismissal was signed.² RP 7-8; CP 11.

The State filed a Motion to Reconsider Order to Dismiss on December 31, 2015. CP 12-13. The State requested the trial court vacate the Order to Dismiss and set the matter for a new hearing. CP 13. The trial court denied the State's Motion to Reconsider without a hearing on April 15, 2016.³ CP 14; See RP. The State filed a timely notice of appeal. CP 15.

IV. ARGUMENT

A. **THE TRIAL COURT ERRED *SUA SPONTE* DISMISSED THE STATE'S CASE AT A TRIAL CONFIRMATION HEARING TO ENTER DEFERRED DISPOSITION HEARING.**

The trial court erred when it *sua sponte* dismissed the State's case at a trial confirmation hearing where S.W. was requesting the trial court enter deferred disposition. The trial court failed to give the

² The State acknowledges that the Order of Dismissal states "the motion of the Petitioner for dismissal of the charge..." It is clear from the verbatim report of the proceedings that it was not the Petitioner's motion, it was the Court's motion. See RP. Second, it is also clear from the record that this was just the form that was available to the parties. A similar error can be seen in the Order Denying Reconsideration, as it states it is in regards to an order imposing sanctions. See CP 14. This is clearly not the case. This Court should look at the substance of the rulings over the form of the orders.

³ The order was signed on April 15, 2016 but not filed with the Superior Court until April 18, 2016.

State notice of its intent to dismiss the case, would not allow a continuation of the hearing for the State to further brief or present evidence, and dismissed the case for improper reasons. This Court should reverse the trial court's dismissal and remand the case back to the trial court to allow the State to prosecute S.W. for Harassment – Threat to Kill.

1. Standard Of Review.

This Court reviews a trial court's power to dismiss charges for a manifest abuse of discretion. *State v. Michielli*, 132 Wn.2d 229, 240, 937 P.2d 587 (1997). "A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds." *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003), *citing State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

2. The Trial Court Erred When It *Sua Sponte* Dismissed The State's Case At A Trial Confirmation Hearing To Enter A Deferred Disposition.

The Superior Court Criminal Rules (CrR) apply to juvenile court proceedings when the rules are not inconsistent with the juvenile court rules and statutes. JuCR 1.4(b). The Superior Court Rule for Dismissal, CrR 8.3 is not inconsistent with juvenile court

rules or statutes, and is thereby applicable to juvenile court proceedings.

The trial court, on its own accord, in the furtherance of justice, has the power to dismiss a criminal prosecution under certain narrow circumstances. CrR 8.3(b). The rule states,

On Motion of Court. The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

CrR 8.3(b). A dismissal of charges pursuant to CrR 8.3(b) is an extraordinary remedy of last resort. *State v. Koerber*, 85 Wn. App. 1, 4-5, 931 P.2d 904 (1996). The trial court must determine if there is (1) arbitrary action or governmental misconduct, and if there is, (2) whether there is “prejudice affecting the defendant’s right to a fair trial.” *Michielli*, 132 Wn.2d at 239-40.

Dismissal is not warranted absent a finding of prejudice to the defendant. *Koerber*, 85 Wn. App. at 5. “Dismissal of a criminal case is a last resort, and a trial judge abuses discretion by ignoring intermediate remedial steps.” *Id.* at 4. The authority of a trial court to dismiss a criminal case pursuant to CrR 8.3(b) is reserved for those

instances where there is truly egregious misconduct or mismanagement by the prosecutor. *Id.* at 4-5.

The parties were at a trial confirmation hearing and it was anticipated that S.W. would be requesting a deferred disposition, as she had filed a Motion and Declaration for Deferred Disposition. RP 2; CP 6-7. Pursuant to the Motion for Deferred Disposition, S.W. stipulated to the admissibility of the facts contained in the written police report, and acknowledged that the report would be entered and used to support a finding of guilt if she failed to comply with the terms of the deferred disposition. CP 6. The trial court, only having viewed the probable cause statement, told the parties there was no threat to a person, therefore he was finding S.W. not guilty and that finding precludes any need for a deferred disposition. RP 2-7. While the trial court's ruling on its dismissal did not cite CrR 8.3(b), no other court initiated pretrial dismissal of a criminal action is allowed under the rules.

CrR 8.3(b) requires the trial court to give notice and a hearing prior to dismissal of a criminal prosecution. Neither party was given notice or the opportunity for a full hearing on the matter. This is contrary to the plain language of CrR 8.3(b).

The deputy prosecutor, having been blindsided by the trial court as a result of the lack of notice, requested the trial court set the matter over to allow the State more time to address the trial court's concerns. RP 7. The trial court denied this reasonable request, dismissing the case, stating, "Well, I'm telling you that it's now dismissed. That's what it's on for today." RP 7.

The trial court's reasoning for dismissing S.W.'s case was as follows,

She may be guilty of some other crime, but it is not harassment/threats to kill. There is not a single reference to killing anyone. There's no reference to doing injury to anyone. And this may be disorderly conduct, it may be all kinds of things, but it is not harassment.

So, you know, this is where we are. I've kind of given you a heads-up as to where I'm heading. I'm giving you an opportunity to correct me if I'm wrong. But I don't see anything in there that says "I'm gonna shoot the school up" that is harassment. It may be that there may be some other crimes that I can't even think of now, but it's not harassment, certainly not harassment/threats to kill.

So I'm finding that there's, I guess, a *Knapstad*⁴ motion that hasn't been brought, but I have to make my decision based on what I've been provided, which is the affidavit of probable cause, and there is not sufficient evidence there to show that any person, any specific person, was threatened here or other person was threatened. There's no mention of a finding of a -
- of an intent to threaten to kill.

⁴ *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

So for those two reasons, she's not guilty of this, and I'm going to dismiss the case.

RP 6-7. Pursuant to CrR 8.3(b) the only reasons a trial court, on its own motion, may dismiss a case pretrial is in the furtherance of justice. This requires a finding of an arbitrary action by the prosecutor or governmental misconduct which prejudiced the right of the defendant. CrR 8.3(b); *Koerber*, 85 Wn. App. at 4-5. Nothing in the trial court's reasoning for dismissing this case falls into the reasoning allowed under CrR 8.3(b).

The trial court stated it was, in essence, *sua sponte*, conducting a pretrial motion for dismissal of a criminal charge due to the State failing to establish sufficient evidence of the crime charged. RP 6-7. Commonly referred to as a *Knapstad* motion, this type of motion is brought, pretrial, by a defendant, pursuant to CrR 8.3(c). There are specific procedures that must be followed regarding the motion, undisputed facts, the attachment of reports, and the type of written order that must be entered if the trial court grants the defendant's motion. CrR 8.3(c). Even if it was proper for the trial court to conduct this type of hearing on its own accord, which it was not, the procedures were not even followed to allow the State a fair and thorough hearing pursuant to CrR 8.3(c).

The trial court manifestly abused its discretion when it decided that the State's prosecution should end at trial confirmation. RP 6-7. The trial court, without authority of law, decided it should be the one to decide whether a case should have been filed with the court and go to disposition. "The rule [CrR 8.3,] does not permit the courts the authority to substitute their judgment for that of the prosecutor." *State v. Getty*, 55 Wn. App. 152, 156, 777 P.2d 1 (1989). That is exactly what the trial court did in this case. The trial court did not agree with the State's decision to charge the case as Harassment – Threat to Kill. The trial court had the authority to refuse to accept the proposed resolution of the case, reject the deferred disposition, and require the State to proceed to fact finding. Yet, the trial court decided to play finder of fact without being presented all of the evidence and then came to the conclusion, based upon a scant probable cause statement, that the State could not prove its case beyond a reasonable doubt. The trial court's decision to act in such a way was manifestly unreasonable.

There was nothing in the State's conduct that even hinted at governmental misconduct or an arbitrary action. The trial court did not make a finding that S.W. was prejudiced. Therefore, this Court

should reverse the trial court's dismissal and allow the State to proceed with its prosecution of S.W. for Harassment – Threat to Kill.

B. THE TRIAL ERRONOUSLY DENIED THE STATE'S MOTION FOR RECONSIDERATION.

The trial court erred when it denied the State's motion to reconsider its order to dismiss the case against S.W.⁵ The trial court violated CrR. 8.3(b) when it did not give the State notice of hearing to dismiss and it was an abuse of discretion to not grant the motion for reconsideration, in which the State requested the Order to Dismiss be vacated and the State be granted a hearing on the matter. This Court should reverse and allow the State a hearing.

1. Standard Of Review.

This Court reviews a trial court's denial of a motion of reconsideration under an abuse of discretion standard. *Martini v. Post*, 178 Wn. App. 153, 161, 313 P.3d 473 (2013).

2. The Trial Court Abused Its Discretion When It Denied The State's Motion For Reconsideration.

The State filed a motion for reconsideration on December 31, 2015 requesting the trial court set the matter for a hearing, as required under CrR 8.3(b). CP 12-13. The trial court did not set the

⁵ This argument is being made in the alternative. The State is maintaining that dismissal was not appropriate. In the alternative, at a minimum, the State should be granted a hearing as required pursuant to CrR 8.3(b).

matter for a hearing, nor did it respond to the State's motion for reconsideration until April. CP 14. On April 15, 2016 the trial court signed an order denying the motion for reconsideration. CP 14. The order stated, "[t]his matter having come before the Court on a Motion to Reconsider an order imposing sanctions filed by the State and the court having considered the file and being in all matters fully advised, now, therefore, the motion is denied." CP 14.

It was manifestly unreasonable for the trial court to deny the State's Motion for Reconsideration. The Motion for Reconsideration was only asking for a vacation of the order of dismissal and a hearing on the motion to dismiss. CP 12-13. The State was simply requesting that the trial court follow the court rule, CrR 8.3(b), and allow the State the opportunity to defend itself against a motion to dismiss. This Court should find the trial court abused its discretion when it denied the State's Motion for Reconsideration, reverse the trial court, and remand the case for further proceedings.

V. CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's ruling dismissing S.W.'s case and remand the case back to the trial court for continued prosecution of the charges Harassment – Threat to Kill. In the alternative, this Court should reverse the trial court's denial of the State's motion for reconsideration and require the trial court, at a minimum, to hold a hearing regarding the trial court's motion to dismiss.

RESPECTFULLY submitted this 5th day of October, 2016.

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**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON, Appellant, vs. S.W., Respondent.	No. 49121-4-II DECLARATION OF SERVICE
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Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On October 5, 2016, the respondent was served with a copy of the **Appellant's Opening Brief** by email via the COA electronic filing portal to Catherine E. Glinski, attorney for Respondent, at the following email addresses: Glinskilaw@wavecable.com.

DATED this 5th day of October, 2016, at Chehalis, Washington.



Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

LEWIS COUNTY PROSECUTOR

October 05, 2016 - 1:50 PM

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