

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE STATE OF RIDGEWAY**

## Syllabus

STATE *v.* GAVIN

## APPEAL FROM THE SUPERIOR COURT OF RIDGEWAY

No. 22–15. Decided December 11, 2022

Appellee, then a law enforcement officer, was indicted by a grand jury for voluntary manslaughter, involuntary manslaughter, and aggravated assault on November 13, 2022 after being accused of a shooting against another individual ten days before. Several days passed before the State entered evidence according to a discovery order issued by the Superior Court, after which appellee raised an objection against the filing due to its untimeliness. Appellee then filed a verbal motion to dismiss the case, and the Superior Court granted the motion with prejudice.

*Held:* The state trial court holds the power to dismiss with prejudice as a sanction intended to prevent undue and unnecessary delays within the judicial process. The power of the state trial courts to invoke this action as a sanction is deeply rooted in English common law, specifically in the judgements of *non prosequitur*. 3 Blackstone, Commentaries 295-296 (1768). This power is reaffirmed by the Supreme Court of the United States in civil matters before the federal district court, in a proceeding which involves a similar set of circumstances. *Link v. Wabash R. Co.*, 370 U. S. 626. The delay of proceedings itself presents an actual prejudice in a defendant as it creates an opportunity for the defendant's reputation to suffer injury as well as their employment, hence one of the many reasons why a constitutional protection exists in favor of grand jury indictments for public officials. Thus, it was within the court's discretion to disregard the excuse provided by the State's co-counsel regarding their failure to comply with the court's order, and it was unreasonable to claim the State could not foresee the very avenues that appellee could take because of its failure to comply with the order for discovery. Pp. 2-5.

Affirmed.

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BURGER, C. J., delivered the opinion for a unanimous Court.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the Ridgeway Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of Ridgeway, Palmer, R. W., of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## **SUPREME COURT OF THE STATE OF RIDGEWAY**

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No. 22-15

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STATE OF RIDGEWAY, APPELLANT *v.* BATTAL-  
IONGAVIN

ON APPEAL FROM THE SUPERIOR COURT OF RIDGEWAY

[December 11, 2022]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The State of Ridgeway challenges the Superior Court's involuntary dismissal with prejudice of this criminal action under the circumstances that follow.

The action resulted from a shooting which took place on November 3rd, 2022, between appellee, who was actively serving in his capacity as a law enforcement officer, and an individual. Ten days later, on November 13th, 2022, a grand jury returned an indictment against appellee, which charged them with voluntary manslaughter, involuntary manslaughter, and aggravated assault. On the same date, appellee was arraigned before the Superior Court of the State of Ridgeway during which he pleaded not guilty, with the proceedings then being assigned to a trial judge. Subsequently, appellee was released on his own recognizance. The Superior Court, on November 13th, 2022, duly notified counsels for each side of the scheduling of pre-trial motions, discovery, appearances, and all other pre-trial matters. On November 14th, 2022, appellee filed a motion to dismiss for selective prosecution. In response, appellant's co-counsel provided notice to the court that it would provide a response

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to the motion while also noting that it would request to have certain evidence filed in the response sealed. The State filed a response to the motion to dismiss on November 15th, 2022, after which the Superior Court held a discussion between the two parties which ultimately resulted in the decision to decline to the motion to dismiss with the court instead opting to issue an additional discovery order for evidence relevant to appellee's argument of selective prosecution. No additional proceedings took place on the date, including the submission of discovery which had been set for that date. Additional discussions took place on November 16th, 2022, regarding appellee's claims regarding selective and vindictive prosecution, during which time it was also raised that the State had not submitted discovery. Appellee objected to the State submitting discovery beyond the discovery deadline. The State then submitted discovery before the court on November 17th, 2022, at which appellee objected to the State's submission. The court then granted appellant's co-counsel with the opportunity to provide the court with an excuse sufficient to justify the tardiness, which co-counsel argued was because of the order being entered before he had become co-counsel. After additional discussion between the parties and the court, the court declined the admission of evidence, which was then followed by a verbal motion to dismiss the indictment entirely on the basis that the State failed to produce evidence, which the court then granted. On November 21st, 2022, the State filed for an appeal before the Supreme Court of the State of Ridgeway, under 1 R. Stat. § 2203(i). We then noted probable jurisdiction. 1 Rid. \_\_\_\_ (2022).

## I

The State argues that a failure of a state attorney to comply with the orders of the court is insufficient to fulfill the requirement of weighing merit behind the court's authority

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to dismiss a proceeding with prejudice. We disagree. It cannot be left to doubt as to whether a state trial court has the authority or the discretion to dismiss a plaintiff's action with prejudice based on a failure to prosecute the offense brought before it. The state trial court holds the power to dismiss with prejudice as a sanction intended to prevent undue and unnecessary delays within the judicial process. The power of the state trial courts to invoke this action as a sanction is deeply rooted in English common law, specifically in the judgements of *non prosequitur*. 3 Blackstone, *Commentaries* 295-296 (1768). This power is reaffirmed by the Supreme Court of the United States in civil matters before the federal district court, in a proceeding which involves a similar set of circumstances. *Link v. Wabash R. Co.*, 370 U. S. 626 (1962).

The State additionally attempts to argue that *Costello v. United States*, 365 U. S. 265 (1961), establishes that if a proceeding is dismissed on the basis that the plaintiff party fails to file pretrial documentation, the proceeding is not able to be dismissed as an adjudication of merits. We disagree. Under the same precedent provided by the State, it is affirmed that a failure to prosecute, or to otherwise comply with the orders of the court, would “primarily involve situations in which the defendant must incur the inconvenience of preparing to meet the merits because there is no initial bar to the Court's reaching them.” *Ibid*, at 286. When analyzing how this precedent can be applied in the State of Ridgeway, we must analyze the rule which the court applied when making this decision. In this matter, Rid.R. Civ. P. 28(b) is relevant, yet it also originates from Rule 41(b) of the Federal Rules of Civil Procedure, which is the rule applied in the original precedent. The opinion of the court reinforces that authority of the lower court to employ an adjudication on the merits as a potential resolution to a failure of a plaintiff to prosecute, or to comply with the rules and orders of the court.

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A third concern can be raised regarding the potential prejudice that may be brought before a defendant in a criminal proceeding because of the state's failure to prosecute or comply with the orders and rules of the court. A plaintiff is required to conduct their due diligence in pursuing an action before the court, and because of this pursuit, there may be a prejudice against the defendant. An unnecessary delay of the proceedings can elongate the period during which the defendant is prejudiced. The delay of proceedings itself presents an actual prejudice in a defendant as it creates an opportunity for the defendant's reputation to suffer injury as well as their employment, hence one of the many reasons why a constitutional protection exists in favor of grand jury indictments for public officials. *Lyell Theatre Corp. v. Loews Corp.*, 682 F. 2d 37, 43 (2d Cir. 1982). We have carefully reviewed this case. The superior court's decision to dismiss the proceedings with prejudice is supported by the injury presented because of the failure of the state to prosecute the action in a timely manner. As it is a right of the defense to a speedy trial, the court did not err in granting the dismissal motion with this consideration in mind.

## II

With all these considerations in mind, we cannot reach the conclusion that the Superior Court's dismissal of the State's action due to their failure to prosecute, namely because of the State's failure to submit the relevant evidence and information within a timeline manner, would be consistent with an abuse of discretion. We hold that it was within the court's discretion to disregard the excuse provided by the State's co-counsel regarding their failure to comply with the court's order. The State voluntarily selected to prosecute this action within this timeline, it additionally voluntarily selected counsel and co-counsel which could not provide sufficient attention to the proceedings as

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to enter compliance with the discovery order within the permitted time. The State is responsible for the action and inaction of their counsel and co-counsel, and as such, they have “notice of all facts, notice of which can be charged upon the attorney.” *Smith v. Ayer*, 101 U. S. 320, 326 (1879).

Finally, the failure to comply on the part of the State does not come because of its uncontrolled conduct nor does it come because of circumstances beyond their control. The State’s counsel and co-counsel were granted due notice of the scheduling of the proceedings up until the point of replies to motions, with the court specifically providing a timeline for the submission of discovery. It would be unreasonable to then say that the State could not foresee the very avenues that appellee could take because of its failure to comply with the order for discovery.

We decline to answer the issue on the applicability of double jeopardy regarding pre-trial matters.

*Affirmed.*