

SUPREME COURT OF NEW MEXICO

Duran v. Eichwald, 146 N.M. 341

210 P.3d 238 (2009) · No. No. 31,372 · Decided June 17, 2009

SUMMARY

The Supreme Court of New Mexico held that the State's untimely petition for an extension under the criminal six-month rule did not establish exceptional circumstances and required dismissal of the charges with prejudice. The Court remanded for dismissal and discussed subsequent amendments allowing courts discretion to impose sanctions other than dismissal for future violations.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Mexico                                                                                                                                                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Per Curiam                                                                                                                                                                                                                                                                                                                                                                                                     |
| JURISDICTION          | New Mexico                                                                                                                                                                                                                                                                                                                                                                                                     |
| DECIDED               | June 17, 2009                                                                                                                                                                                                                                                                                                                                                                                                  |
| DOCKET                | No. 31,372                                                                                                                                                                                                                                                                                                                                                                                                     |
| DISPOSITION           | remanded                                                                                                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Richard D. Duran sought an extraordinary writ of prohibition or superintending control challenging the Supreme Court's prior partial extension of the six-month trial deadline and requesting dismissal of the criminal charges. The Supreme Court concluded that the State's untimely request for an extension did not satisfy Rule 5-604 and remanded with directions to dismiss the charges with prejudice. |
| STANDARD OF REVIEW    | The opinion applies Rule 5-604 to determine whether the State timely sought an extension and established exceptional circumstances; it does not state a separate standard-of-review formulation.                                                                                                                                                                                                               |
| PRECEDENTIAL VALUE    | Published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                 |
| PARTIES               | Richard D. Duran v. Hon. George P. Eichwald, District Court Judge, Boglarka Foghi, Assistant District Attorney, Lemuel Martinez, Thirteenth Judicial District Attorney                                                                                                                                                                                                                                         |

TOPICS

- speedy trial
- criminal procedure
- appellate procedure
- remedies

## PRACTICE AREAS

Criminal procedure

Appellate procedure

Speedy trial

Extraordinary writs

Remedies

## QUESTIONS PRESENTED

1. Whether the State's petition for an additional extension of the six-month trial deadline was timely under Rule 5-604(E).
2. Whether the State established exceptional circumstances beyond the control of the parties or trial court that could excuse the untimely petition.
3. Whether dismissal with prejudice was mandatory under Rule 5-604(F) when the trial did not commence within the rule's time limits.

## HOLDINGS

1. A petition for an extension of the six-month trial deadline filed twenty-eight days after expiration of the applicable deadline was outside Rule 5-604(E)'s ten-day grace period, and the State therefore forfeited its right to seek an extension from the Supreme Court.
2. Ongoing plea negotiations, possible defense agreement to an extension, prosecutorial inadvertence, neglect, or a heavy caseload do not establish exceptional circumstances beyond the prosecution's control sufficient to excuse an untimely extension petition.
3. When trial is not commenced within the time limits prescribed by Rule 5-604, and the State has not obtained a valid extension, dismissal of the indictment or information with prejudice is mandatory under the version of Rule 5-604(F) applicable to this case.
4. The amended six-month rule permits courts to consider sanctions other than dismissal for a violation, but if trial is not commenced by the deadline allowed by the Supreme Court, dismissal with prejudice remains required.

## KEY QUOTATIONS

*"By definition, neglect or inadvertence simply are not matters beyond the control of the prosecution."* (210 P.3d at 241)

*"dismissal of the charges with prejudice is mandatory."* (210 P.3d at 241)

*"Not having the discretion to consider lesser sanctions for the State's failure to bring this case to trial in a timely manner, we are left with no choice but to order the charges against Mr. Duran dismissed with prejudice."* (210 P.3d at 242)

## FACTUAL BACKGROUND

Duran was arraigned on August 27, 2007, starting the six-month period for commencement of trial under Rule 5-604. After the district court granted a six-month extension through August 27, 2008, the State waited until September 24, 2008—twenty-eight days after the deadline—to seek another extension from the Supreme Court. The State did not establish exceptional circumstances, and its petition contained incomplete or inaccurate information regarding Duran's opposition, his motion to dismiss, and the applicable trial setting.

## PROCEDURAL HISTORY

Duran was indicted in the Thirteenth Judicial District Court on two counts of negligent child abuse resulting in great bodily harm and was arraigned on August 27, 2007. The district court granted the State a six-month extension of the trial deadline, but the State waited twenty-eight days after that extension expired before seeking an additional extension from the Supreme Court. The Supreme Court partially granted the request, after which Duran sought reconsideration and a writ; following a hearing, the Court ordered dismissal and later issued this opinion explaining its ruling.

## DISPOSITION

remanded

## REMAND INSTRUCTIONS

The case was remanded to the district court to dismiss the pending charges against Duran with prejudice in cause number D-1329-CR-2007-439.

## CASES CITED

- State v. Sandoval, 2003-NMSC-027, ¶ 3, 134 N.M. 453, 78 P.3d 907
- State v. Dominguez, 2007-NMCA-132, ¶ 11, 142 N.M. 631, 168 P.3d 761
- State v. Carreon, 2006-NMCA-145, ¶ 6, 140 N.M. 779, 149 P.3d 95
- Salandre v. State, 111 N.M. 422, 425, 806 P.2d 562, 565 (1991)
- State v. Cardenas, 2003-NMCA-051, ¶ 12, 133 N.M. 516, 64 P.3d 543
- State v. Padilla, 2000-NMCA-090, ¶¶ 19-20, 129 N.M. 625, 11 P.3d 589
- United States v. Lane, 474 U.S. 438, 474, 106 S. Ct. 725, 88 L. Ed. 2d 814 (1986) (Stevens, J., concurring in part and dissenting in part)