COURT OF APPEALS
DECISION
DATED AND FILED

May 6, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1539-CR **Cir. Ct. No. 01CM8538**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JOHNNIE A. TROTTER,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: JOHN F. FOLEY, Reserve Judge. *Reversed and cause remanded with directions.*

¶1 CURLEY, J.[1] The State appeals from an order dismissing its criminal action charging Johnnie A. Trotter with disorderly conduct by use of a dangerous weapon, contrary to WIS. STAT. §§ 947.01 and 939.63 (1999-2000).[2]

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

[2] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

After a guilty plea had been accepted and over the State's objection, the trial court dismissed the case at sentencing. The State contends that absent statutory authorization, prosecutorial request, constitutional violation, or inherent power, the trial court does not have the authority to dismiss the case. This court agrees and reverses the trial court's dismissal of the case against Trotter.

I. BACKGROUND.

¶2 In September 2000, Trotter was placed in the Underwood Group Home. He did not like the group home and continually demonstrated noncompliance with the rules and displayed agitated behavior. According to Dr. Robert Rawski, Trotter became agitated when the group home staff at Underwood restricted his smoking for rule violations. In an attempt to leave the group home and regain admission into the long-term care unit at the Milwaukee Mental Health Complex, Trotter called the police. After they arrived, the police determined that Trotter did not meet the criteria for emergency detention. In an attempt to meet the criteria for emergency detention, Trotter said, "I'm going to murder someone." He then opened a kitchen drawer, grabbed a butter knife, and twice stabbed at Joey Clinkscales, a group home worker, before being subdued. The next day, Trotter was charged with disorderly conduct by use of a dangerous weapon.

¶3 At the initial appearance, the court commissioner suspended the proceedings and ordered a mental evaluation of Trotter. Two doctors, Dr. Walter Chitwood and Dr. Rawski, both individually evaluated Trotter's competency to stand trial. The doctors indicated that at the time of the commission of the act, Trotter was capable of understanding the wrongfulness of his actions and could have conformed his behavior to the requirements of the law. Trotter's counsel did not challenge the reports, and, based upon those reports, requested a withdrawal of

the not guilty by reason of mental disease or defect (NGI) plea. Judge John Foley adjourned the case and scheduled a projected guilty plea date for December 21, 2001.

¶4 On December 21, 2001, Trotter entered a guilty plea to the charge of disorderly conduct by use of a dangerous weapon. After examining Trotter's plea, advising him of his constitutional rights, and informing him of the maximum penalties he faced if found guilty, Judge John P. Buckley accepted his guilty plea. The plea questionnaire and waiver of rights form was filed with the court, and Judge Buckley ordered the case adjourned for sentencing.

¶5 At the sentencing hearing on January 10, 2002, Judge Foley, on his own motion, without a request from either Trotter's counsel or the State, and over the State's objection, dismissed the case against Trotter, stating Trotter lacked competence.

II. ANALYSIS.

A. The trial court lacked the inherent power to dismiss the case.

¶6 Courts receive their powers from statutes and their own inherent judicial authority. ***W.W.W. v. M.C.S.***, 185 Wis. 2d 468, 483, 518 N.W.2d 285 (Ct. App. 1994). The issue of whether a trial court acted within these powers is a question of law which this court reviews *de novo*. *See* ***id.***

¶7 Generally, there are three areas in which courts exercise inherent authority. First, the court has inherent authority to control the internal operations of the court, including the authority of a court to retain essential employees such as its judicial assistant and its janitor, and authority over the adequacy of its facilities to carry on its business. *See* ***Sun Prairie v. Davis***, 226 Wis. 2d 738, 749,

595 N.W.2d 635 (1999). Second, "[c]ourts also have inherent authority to regulate members of the bench and bar." ***Id.*** For instance, the supreme court can require disclosure of a judge's assets; a court may also determine whether attorney's fees are reasonable and may refuse enforcement of those fees that are not. ***Id.*** "The final area in which the court exercises inherent authority is ensuring that the court functions efficiently and effectively to provide the fair administration of justice." ***Id.*** at 749-50. This power grants the court the ability to control its docket, such as: disposing of constitutional issues raised before it, appointing counsel for indigent parties, determining compensation for court-appointed attorneys, vacating void judgments because the court had no authority to enter a void judgment in the first place, ordering a dismissal of a complaint if an attorney fails to appear for a pretrial conference when the attorney was warned of the possible sanctions of dismissal, and ordering parties to exchange names of lay witnesses. *See* ***id.*** at 750.

¶8 This court has held: "The fashioning of a criminal disposition is not an exercise of broad, inherent court powers." ***State v. Amato***, 126 Wis. 2d 212, 216, 376 N.W.2d 75 (Ct. App. 1985). Thus, this court concludes that the dismissal of the criminal case was not within the trial court's inherent powers. The case against Trotter was not dismissed pursuant to any of the three traditional areas of inherent power. Furthermore, in discussing the case, the court did not express concern over the efficient and effective functioning of the court. *Cf.* ***State v. Braunsdorf***, 98 Wis. 2d 569, 585-86, 297 N.W.2d 808 (1980). Indeed, in ***Braunsdorf***, "the Wisconsin Supreme Court considered whether courts have 'the inherent authority to dismiss with prejudice a criminal case prior to the attachment of jeopardy.' [It] concluded that 'except for those situations in which a defendant's constitutional right to a speedy trial is implicated, the trial court possesses no such inherent authority.'" ***State v. Clark***, 162 Wis. 2d 406, 409, 469

N.W.2d 871 (Ct. App. 1991) (citing ***State v. Braunsdorf***, 98 Wis. 2d 569, 570, 297 N.W.2d 808 (1980)). As a result, the court lacked inherent authority to dismiss the case. Accordingly, if the trial court's authority to dismiss the case existed, it must be derived from the statutes. *See* ***State v. Clark***, 162 Wis. 2d 406, 409-10, 469 N.W.2d 871 (Ct. App. 1991).

B. The trial court lacked the statutory power to dismiss the case.

¶9 "The authority to seek dismissal, with or without prejudice, except in cases of statutory or constitutional authorization, rests in the discretion of the prosecutor." ***Id.*** at 410. "The trial court *then* has the discretion to grant or deny the state's motion." ***Id.*** (emphasis added).

¶10 In ***Clark***, a case where the trial court dismissed the charge on its own motion, the defendant was charged with second degree recklessly endangering safety. The victim, Clark's girlfriend, drove to his house at 3:00 a.m. 'to confront' him. As she was leaving, Clark allegedly fired a gun at her. The court set several trial dates, and although subpoenaed, the girlfriend never appeared. She later stated she wanted to drop the charges. The trial court dismissed the case before attachment of jeopardy and without prejudice. This court, in reinstating the charges, stated that, "[o]nly four statutes pertain to a court's dismissal without prejudice, none of which apply to this situation. *See* secs. 968.03, 970.03(9) and (10), and 971.01(2), Stats." ***Id.*** Those statutes are: WIS. STAT. § 968.03, allowing dismissal of the complaint if the judge finds no probable cause to believe that an offense has been committed or that the accused has committed it; WIS. STAT. § 970.03, allowing for dismissal at the preliminary examination if there is no probable cause to believe that a felony has been committed by the defendant, *see* § 970.03(9), or in the case of multiple counts, if a count is not supported by

probable cause, *see* § 970.03(10); WIS. STAT. § 970.04, implicitly allowing for a dismissal at a second preliminary examination for the same reasons as a preliminary examination, *see* § 970.03(10); and finally, WIS. STAT. § 971.01(2), mandating dismissal for failure to file the information within the prescribed time limit. As in ***Clark***, none of these statutory sections apply to the case at hand.

¶11 Thus, this court agrees with the State's contention that the authority to seek a dismissal, with or without prejudice, except in cases of statutory or constitutional authorization, rests not with the trial court, but in the discretion of the *prosecutor*. *See* ***id.***

¶12 Here, there is no statutory authority granting the trial court power to dismiss the criminal case after a plea of guilty.[3] WISCONSIN STAT. § 972.13 states in relevant part:

> **(1)** A judgment of conviction *shall* be entered upon a verdict of guilty by the jury, a finding of guilty by the court in cases where the jury is waived, *or a plea of guilty* or no contest.
>
> **(2)** Except in cases where ch. 975 is applicable, upon a judgment of conviction the court *shall proceed under ch. 973*. The court may adjourn the case from time to time for the purpose of pronouncing sentence.

(Emphasis added.) Generally, the word "shall" is deemed mandatory unless legislative intent suggests otherwise. ***Wagner v. State Med. Examining Bd.***, 181 Wis. 2d 633, 643, 511 N.W.2d 874 (1994). Thus, the trial court clearly lacked the statutory authority to unilaterally dismiss the case because it believed Trotter

[3] Chapter 975 is the Sex Crime Law Chapter and is not applicable to this case, and Chapter 973 is the Sentencing Chapter.

lacked competency, despite objection from the State and the existence of the two doctors' reports that indicated Trotter was in fact competent to proceed.

¶13 Rather, the trial court, doubting the competency of a defendant after a finding of guilt or guilty plea, should have followed the procedures found in WIS. STAT. § 971.14, which states in relevant part:

> **(1)** PROCEEDINGS (a) The court shall proceed under this section whenever there is reason to doubt a defendant's competency to proceed.
>
> (b) If reason to doubt competency arises … after a finding of guilty has been … made by the court, a probable cause determination shall not be required and the court shall proceed under sub. (2).
>
> ….
>
> **(2)** EXAMINATION (a) The court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the defendant.

¶14 Here, examination by two doctors had occurred after a finding of probable cause and prior to a guilty plea. Had the trial court doubted the competency of Trotter at the sentencing hearing, the correct procedure was for the court to have him examined by experts pursuant to WIS. STAT. § 971.14(2), not simply dismiss the charges.[4] Accordingly, this court concludes that the sentencing court did not have the inherent power to dismiss the case, and did not follow the

[4] In a case where the defense to the charge is mental disease or defect, WIS. STAT. § 971.15 applies. Section 971.15(3) states: "Mental disease or defect excluding responsibility is an affirmative defense which the *defendant must establish* to a reasonable certainty by the greater weight of the credible evidence." (Emphasis added.) In those circumstances, the statute requires the *defendant* to prove to a reasonable certainty and by the greater weight of the credible evidence that competency is lacking. Here, however, the NGI plea had been withdrawn and a plea of guilty entered.

proper statutory procedures under § 971.14 after the guilty plea had been entered in order to inquire into the competency of the defendant.

¶15 Based on the foregoing, the order dismissing the charges is reversed, the charges are reinstated, and the matter is remanded for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.