

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Appellant,  
vs.  
HUMBERTO MURILLO MIRELES, JR.,  
Respondent.

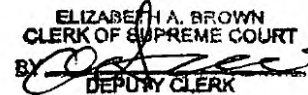
No. 85996

THE STATE OF NEVADA,  
Appellant,  
vs.  
HUMBERTO MURILLO MIRELES, JR.,  
Respondent.

No. 85997

**FILED**

NOV 17 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

These are consolidated appeals from a district court order granting respondent's motion to dismiss a criminal complaint. Second Judicial District Court, Washoe County; Egan K. Walker, Judge. Reviewing for an abuse of discretion, *Morgan v. State*, 134 Nev. 200, 205, 416 P.3d 212, 220 (2018), we reverse and remand.<sup>1</sup>

The State argues that the district court abused its discretion in granting respondent Humberto Murillo Mireles' motion to dismiss the criminal complaint based on a due process violation involving an approximately five-month delay in transporting Mireles to a facility for competency restoration treatment. We recently considered the State's challenge to a similar district court order in *State v. Gonzalez*, 139 Nev., Adv. Op. 33, 535 P.3d 248 (2023).

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

In *Gonzalez*, we concluded that the district court abused its discretion in two respects. First, “without apportioning blame to the State or pointing to any prejudice [the defendant] suffered as to [the] ability to receive a fair adjudication, the district court summarily ruled that the due process violation in and of itself constituted aggravated circumstances warranting dismissal” and “thus neglected to apply the standards demanded by our precedent.” *Gonzalez*, 139 Nev., Adv. Op. 33, 535 P.3d at 252-53. Second, even if aggravated circumstances favored dismissal, the district court then neglected to balance the deterrent objectives of dismissal against society’s interest in prosecuting criminal acts, instead balancing the defendant’s due process rights against society’s interest in prosecuting the charged offense. *Id.* at 253.

The district court similarly abused its discretion here. First, the district court neglected to apply the standards demanded by our precedent with respect to the dismissal of a criminal complaint. In particular, the district court failed to address whether there were aggravated circumstances warranting dismissal. *See id.* at 252-53 (discussing aggravated circumstances requirement). Second, the district court engaged in the wrong inquiry by balancing the State’s interest in prosecuting Mireles for the charged offense against Mireles’ due process rights.<sup>2</sup> Based on this abuse of discretion, we

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<sup>2</sup>Mireles suggests that the district court was within its discretion to dismiss the criminal complaint pursuant to NRS 178.425(5). The district court, however, did not dismiss the complaint based on that statute or make the findings required to do so. We therefore decline to affirm the district court’s order based on NRS 178.425(5).

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Stiglich, C.J.  
Stiglich

Pfe, J.  
Lee

Parraguirre, J.  
Parraguirre

cc: Hon. Egan K. Walker, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe District Court Clerk