

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
MISHAYLA WHITEDOVE KIZER,
Respondent.

No. 87252-COA

THE STATE OF NEVADA,
Appellant,
vs.
MISHAYLA WHITEDOVE KIZER,
Respondent.

No. 87253-COA

FILED

APR 29 2024

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 Mishayla Whitedove Kizer's motion to dismiss the criminal complaint. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

The State argues that the district court abused its discretion in granting Kizer's motion to dismiss the criminal complaint based on a due process violation involving a 93-day delay in the competency evaluations and transporting Kizer to a facility for competency restoration treatment. We review the district court's decision for an abuse of discretion. *See*

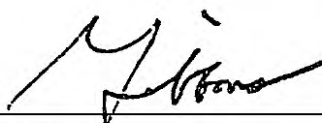
Morgan v. State, 134 Nev. 200, 205, 416 P.3d 212, 220 (2018). The Nevada Supreme Court recently considered a similar challenge by the State to an almost identical district court order in *State v. Gonzalez*, 139 Nev., Adv. Op. 33, 535 P.3d 248 (2023).

In *Gonzalez*, the supreme court 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.” *Id.* at 252-53. Notably, the *Gonzales* court held that “[f]or dismissal to be an appropriate remedy, these cases required some misconduct on the part of the *prosecution*.” *Id.* at 252 (emphasis added). 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 abused its discretion in the same two respects here. The district court treated the due process violation as aggravated circumstances warranting dismissal without apportioning any blame to the prosecution or identifying any prejudice to Kizer’s ability to receive a fair adjudication and then engaged in the wrong inquiry by balancing the State’s interest in prosecuting Kizer for the charged offenses against the

constitutional rights of Kizer and her unborn child. Based on this abuse of discretion, we

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


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

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