


IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
ROBERT CHERRY,
Respondent.

No. 86844

FILED

JUN 18 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent's motion to dismiss criminal charges. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge. Reviewing for an abuse of discretion, *Morgan v. State*, 134 Nev. 200, 205, 416 P.3d 212, 220 (2018), we affirm.

The State argues that the district court abused its discretion in granting respondent Robert Cherry's motion to dismiss the criminal complaint based on a due process violation caused by an approximately 83-day delay in transporting Cherry to a facility for competency restoration treatment. *See State v. Gonzalez*, 139 Nev., Adv. Op. 33, 535 P.3d 248, 253 (2023) (recognizing that a prolonged delay in receiving competency restoration treatment constituted a due process violation). We recently considered the State's challenge to a similar district court order in *State v. Desavio*, 141 Nev., Adv. Op. 25 (May 22, 2025).

In *Desavio*, we affirmed the district court's order dismissing a criminal complaint without prejudice. *See id.* at 6 (applying the presumption "that the district court intended to dismiss the charge without prejudice"). There, we concluded that the district court did not abuse its

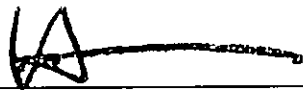
25-26928

discretion for two reasons. First, we explained that “Desavio’s continued incarceration without recourse constitutes a legal basis (unalleviated prejudice) that allows for dismissal without prejudice.” *Id.* at 9. Second, the district court initially declined to grant the dismissal and instead imposed lesser sanctions aiming to remedy the significant delay in transporting the defendant for competency restoration treatment. *Id.* at 10. These sanctions included holding the Nevada Division of Public and Behavioral Health (the Division) in contempt, imposing a fine, and ordering Desavio transported for competency restoration treatment within seven days. *Id.* (citing NRS 178.425(1), which provides “the judge shall order the sheriff to convey the defendant forthwith . . . into the custody of the Administrator or the Administrator’s designee for detention and treatment at a division facility that is secure”); *Dep’t of Health & Human Servs., Div. of Pub. & Behavioral Health v. Eighth Jud. Dist. Ct. (Aliano)*, 139 Nev., Adv. Op. 28, 534 P.3d 534 P.3d 706, 712 (2023) (approving of the district court interpreting “the term ‘forthwith’ as requiring transport within seven days”). Given that “[t]hese lesser steps proved ineffective,” we determined that “[d]ismissal without prejudice was thus an appropriate next step.” *Id.*

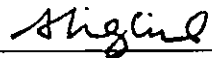
Here, the State charged Cherry with attempted resisting a public officer with the use of a dangerous weapon and robbery, but the district court determined that Cherry was incompetent to stand trial and ordered Cherry transferred to a facility for competency restoration treatment. When Cherry was not transferred, Cherry moved to dismiss the criminal charges. As in *Desavio*, the district court attempted to resolve the situation with lesser remedies before resorting to dismissal: holding the Division in contempt, imposing a monetary fine, and ordering Cherry transferred within seven days. In line with *Desavio*, we infer that the

district court here intended to dismiss the criminal complaint *without prejudice*, and Cherry's continued incarceration without recourse provided a legal basis for such a dismissal. Under these circumstances, we conclude that dismissal without prejudice was not an abuse of discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Christy L. Craig, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk