

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
KATHLEEN ORTIZ,
Respondent.

No. 40078

FILED

NOV 06 2002

ORDER OF AFFIRMANCE

JANET M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court granting respondent Kathleen Ortiz' motion to dismiss an indictment.

On May 18, 2001, Ortiz was charged by way of a criminal complaint with one count of theft. At the preliminary hearing, the justice's court concluded that the State did not present the requisite slight or marginal evidence sufficient to bind the case over to the district court, and dismissed the case.

On September 25, 2001, the State convened a grand jury. After presenting the case to the grand jury, a true bill was returned against Ortiz. Ortiz was subsequently charged with theft by way of a criminal indictment. On November 21, 2001, Ortiz was arraigned in the district court.


On May 17, 2002, Ortiz filed a motion to dismiss the grand jury indictment in the district court. At a calendar call on May 22, 2002, the district court noted that the State had not yet responded to Ortiz' motion, and therefore set a briefing schedule whereby the State was ordered to file their response by June 5, 2002. The State, however, did not file their opposition to the motion until June 6, 2002. At the hearing on the motion on July 15, 2002, the district court struck the State's opposition because it was not timely filed, and granted Ortiz' motion to dismiss the

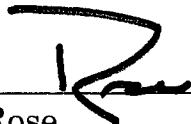
indictment. On July 18, 2002, the State filed a motion for reconsideration. At the hearing on the motion, the district court noted that it had previously allowed the State an extension of time to file its opposition, and therefore, the State was given ample opportunity to file a timely response to Ortiz' motion to dismiss. On August 5, 2002, the district court denied the State's motion for reconsideration. This timely appeal from the order granting the motion to dismiss followed.

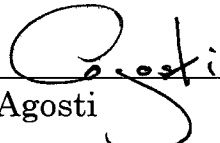
The State contends the district court erred in granting Ortiz' motion to dismiss the indictment. More specifically, the State argues that the district court abused its discretion by striking its opposition to the motion as untimely filed. We disagree. EDCR 3.20(c) states in relevant part that the "[f]ailure of the opposing party to serve and file written opposition may be construed as an admission that the motion is meritorious and a consent to granting of the same." Therefore, we conclude that pursuant to EDCR 3.20(c), the district court acted within its discretion when it struck the State's untimely filed opposition and granted Ortiz' motion to dismiss the indictment.

Having considered the State's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Maupin


_____, J.
Rose


_____, J.
Agosti

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Mace J. Yampolsky
Clark County Clerk