

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, WASHOE COUNTY,  
Appellant,  
vs.  
WILLIAM RUSSELL BLUEBAUGH,  
Respondent.

No. 41957

**FILED**

DEC 02 2003

ORDER OF AFFIRMANCE

JANETTE 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 William Russell Bluebaugh's pretrial petition for a writ of habeas corpus.

Bluebaugh was arrested on November 21, 2002, and charged by way of a criminal complaint with one count each of robbery with the use of a firearm and conspiracy to commit robbery. After several delays, Bluebaugh's preliminary hearing took place on February 27, 2003. At the beginning of the proceedings, the State orally moved for a continuance, stating, "[T]here is nothing either on our calendar or in our data entry system . . . showing that the matter was set for today. As a result, no witnesses were subpoenaed. No one was here. I'm here without a file." Bluebaugh objected to the request for a continuance. During the hearing, the justice court received information indicating that the State did in fact receive notice of the preliminary hearing 21 days in advance, and stated

that the State's unpreparedness "goes to the due diligence effort of the DA's Office overall." Bluebaugh moved to have the charges dismissed. In light of the fact that the State could not demonstrate the required good cause for a continuance, the justice court informed the State that pursuant to NRS 174.085(5), the State could move to have the charges voluntarily dismissed without prejudice to refile a criminal complaint at a later time.

NRS 174.085(5) provides in relevant part:

The prosecuting attorney in a case that he has initiated, may voluntarily dismiss a complaint:

(a) Before a preliminary hearing if the crime with which the defendant is charged is a felony or gross misdemeanor;

...

without prejudice to the right to file another complaint, unless the State of Nevada has previously filed a complaint against the defendant which was dismissed at the request of the prosecuting attorney. After the dismissal, the court shall order the defendant released from custody or, if he is released on bail, exonerate the obligors and release any bail

The State adamantly refused to voluntarily dismiss the charges pursuant to statute. Accordingly, the justice court dismissed the complaint.

On April 9, 2003, the State convened a grand jury and a true bill issued indicting Bluebaugh and his four codefendants on the same charges alleged in the criminal complaint. On June 24, 2003, Bluebaugh

filed a pretrial petition for a writ of habeas corpus in the district court. The State opposed the petition, arguing that: (1) good cause for the continuance in the justice court was provided by the prosecutor; and (2) pursuant to NRS 178.562(2),<sup>1</sup> it was proper to proceed to the grand jury and seek an indictment. After conducting a hearing on August 5, 2003, the district court granted Bluebaugh's petition and dismissed the indictment. The State now appeals from the district court's order granting Bluebaugh's habeas petition.

This court will defer to the district court's determination of factual sufficiency when reviewing pretrial orders on appeal.<sup>2</sup> In Bluebaugh's case, however, the district court's findings involved a matter of law and statutory interpretation which requires no deference and allows for de novo review on appeal.<sup>3</sup> Our de novo review of the record on appeal

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<sup>1</sup>NRS 178.562(2) provides that "[t]he discharge of a person accused upon preliminary examination is a bar to another complaint against him for the same offense, but does not bar the finding of an indictment." See also State of Nevada v. District Court, 114 Nev. 739, 743, 964 P.2d 48, 50 (1998).

<sup>2</sup>See Sheriff v. Provenza, 97 Nev. 346, 630 P.2d 265 (1981).

<sup>3</sup>See Sheriff v. Marcus, 116 Nev. 188, 192, 995 P.2d 1016, 1018 (2000).

reveals that the district court did not err in granting Bluebaugh's pretrial habeas petition, thereby dismissing the indictment.

The State's failure to demonstrate good cause for the granting of a continuance amounted to a disregard for important procedural rules and a "conscious indifference to rules of procedure affecting a defendant's rights."<sup>4</sup> Moreover, the State failed to take advantage of NRS 174.085(5) and voluntarily dismiss the charges without prejudice to refile despite being so advised by the justice court. Finally, the State was not authorized pursuant to NRS 178.562(2) to seek an indictment after the justice court dismissed the charges. In Maes v. Sheriff, this court stated:

This statute [NRS 178.562(2)] contemplates a dismissal following a preliminary examination where evidence is received and the magistrate has concluded that such evidence is insufficient to hold the accused for trial. In such instance, the statute allows the matter to be presented to a grand jury in an attempt to secure an indictment.<sup>5</sup>

(Emphasis added.) In the instant case, no such preliminary hearing took place. No evidence was presented or received, and the justice court made no finding regarding the sufficiency of any evidence. The criminal complaint was dismissed by the justice court prior to the preliminary

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<sup>4</sup>State v. Austin, 87 Nev. 81, 83, 482 P.2d 284, 285 (1971); McNair v. Sheriff, 89 Nev. 434, 440-41, 514 P.2d 1175, 1178-79 (1973).


<sup>5</sup>86 Nev. 317, 319, 468 P.2d 332, 333 (1970).


hearing. Therefore, based on the above, we conclude that the district court did not err in granting Bluebaugh's petition, thereby dismissing the indictment.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Agosti

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. Steven P. Elliott, District Judge  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
John P. Calvert  
Washoe District Court Clerk