



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

vs.

S. Ct. No. S-1-SC-39897

DEMESIA PADILLA,

Defendant-Respondent.

STATE OF NEW MEXICO'S REPLY BRIEF

ORAL ARGUMENT IS REQUESTED

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I. The Limitations Period Cannot Continue to Run with Charges Pending.

Defendant does not dispute that the State timely filed an information in Santa Fe County. In accordance with the purpose of the statute of limitations, this information put Defendant on notice of the need to prepare a defense. Moreover, Defendant elected to have a preliminary hearing, which further notified her of the charges and protected against charges based on stale evidence or faded memories. Defendant raised the issue of venue at the preliminary hearing, but the magistrate judge rejected Defendant's claim by binding the charges over for trial.¹

The charges against Defendant were pending in Santa Fe County for more than eleven months. During that time, the State could not file the same charges against Defendant in Sandoval County without having those charges pending in two courts simultaneously. Also during that time, the statute of limitations could not have expired because the prosecution was ongoing. Put simply, the filing of the information stopped the statute of limitations from running.

Defendant, however, contends that the statute of limitations was running during this entire time. It was supposedly running when the district court found

¹ Defendant apparently suggests that the State should have taken its success at the preliminary hearing as a defeat and filed two of the nine charges against Defendant in Sandoval County despite them having been bound over for trial. *See AB at 1 (suggesting the State should have refiled the charges before dismissal)*. Defendant argued improper venue for all nine counts and was only successful on two of them. Clairvoyance is not a reasonable expectation for the State.

exceptional circumstances to extend the time for preliminary hearing due to defense counsel's unavailability. It was running when Defendant was arraigned on November 29, 2018, when Defendant filed a motion to continue her re-arraignment on January 9, 2019, and when she was re-arraigned on February 14, 2019. It was running from the time Defendant finally filed a venue motion on April 15, 2019, five months after the preliminary examination, until the court ruled on the motion on June 11, 2019.

As a matter of logic, this argument makes no sense. A case cannot be both pending and unfiled at the same time. Beyond an absence of logic, this argument ignores established New Mexico law. The plain language of NMSA 1978, § 30-1-8 (2022) provides for the commencement of a criminal case by the filing of a complaint, an information, or an indictment. The filing of an information thus “stops the statute of limitations clock from running.” *State v. Collier*, 2013-NMSC-015, ¶ 37, 301 P.3d 370. Defendant does not even cite *Collier*, much less address this language. Further, the purpose of Section 30-1-8 is to put a defendant on timely notice of a prosecution and the need to account for the charged allegations and prepare a defense. The Santa Fe County information satisfied this purpose. Based on the plain language and purpose of Section 30-1-8, the time the action was pending in Santa Fe County does not count toward the statute of limitations because the limitations period was stopped during that time.

Defendant's historical analysis of the statute of limitations [**AB at 19-22**] only reinforces a legislative intent to stop the running of the limitations period upon the filing of a charging document. Defendant refers to the Model Penal Code and a Wisconsin statute and seeks to compare these provisions to NMSA 1978, § 30-1-9 (1963). But Section 30-1-9 is not the analog to these provisions; the Model Penal Code and the Wisconsin statute did not address the dismissal of charges on specific grounds or how to treat the period between dismissal and refile as the Legislature did in Section 30-1-9. These provisions instead expressly defined the limitations period as excluding the time while a case is pending. *See* Model Penal Code § 1.06(6)(b); Wis. Stat. Ann. § 939.74(4). Their analog is thus the definition of the limitations period in Section 30-1-8. The Legislature had no need to adopt this extra language in Section 30-1-8 because the statute implicitly incorporated the same principle by recognizing the commencement of an action with the filing of a complaint or information in addition to the finding of an indictment.

In referring to authority from other states, Defendant entirely misses this point. Defendant – citing Iowa, Oregon, and various annotations – refers to a “general rule” existing in other jurisdictions at the time the Legislature enacted the statute of limitations in 1963. [**AB at 12-13**] As explained in detail in the Brief in Chief [**BIC at 12-15**], this “general rule” was in fact a rule only in jurisdictions that require the finding of an indictment to stop the statute of limitations.

Jurisdictions with statutes like Section 30-1-8 follow a different rule and recognize that a pending case stops the running of the limitations period. *See, e.g., State v. Stewart*, 438 A.2d 671, 674-75 (Vt. 1981). Moreover, Defendant’s “general rule” requires a charging document upon which no conviction could be obtained. *See State v. Martinez*, 1978-NMCA-095, ¶ 21, 92 N.M. 291 (stating, and rejecting, the rule followed in Arizona). Here, because venue is not jurisdictional in New Mexico, the Santa Fe County information was a valid charging document that subjected Defendant to prosecution and possible conviction up until the day of dismissal; that period of time is thus excluded from the statute of limitations.

II. Section 30-1-9(B) Does Not Apply.

Section 30-1-9(B) creates a tolling period for “the time elapsing between the preferring of the first indictment, information or complaint and the subsequent indictment, information or complaint.” This provision thus addresses an issue broader than the time during which a case is pending. The statute extends tolling to the time between dismissal and refile, a subject not otherwise resolved by Section 30-1-8 and not at issue here because the Sandoval County case was timely filed even counting the time between dismissal and refile.

Defendant’s brief seeks to highlight refinements in the State’s argument and asserts that the State, despite being the appellee, has abandoned previous arguments. But the State has always maintained that Section 30-1-9(B) does not

apply to this case and that the statute of limitations does not apply to the time a case is pending. Defendant may take issue with the use of different terms, such as common law or nonstatutory tolling, but nomenclature aside, the question in this case is the Legislature's intent. It is this question that Judge Duffy addressed in dissent, and it is this question that the State has addressed in its briefing before this Court.

Defendant also makes many assertions about the State being to blame for the dismissal, including a suggestion with no support in the record that the State filed its charges in Santa Fe as a form of venue shopping. Ignoring the fact that Defendant was bound over for trial in Santa Fe County and the fact that a Sandoval County jury ultimately found Defendant guilty beyond a reasonable doubt, Defendant entirely overlooks the rule of joinder. The State is required to join charges that "are of the same or similar character, even if not part of a single scheme or plan." Rule 5-204(A) NMRA. A failure to join related charges can result in a bar to further prosecution. *State v. Gutierrez*, 2013-NMSC-016, ¶ 31, 301 P.3d 380. The State alleged in its charging document that all of the offenses occurred in Santa Fe County and explained its reasons for doing so in its response to Defendant's motion to dismiss. The district court agreed with respect to Count 1 and kept venue for that charge in Santa Fe County. When venue is ambiguous, as it was here, the State has little choice in its charging.

In any event, neither Section 30-1-8 nor Section 30-1-9(B) is based on fault. Section 30-1-8 excludes the time a case is pending from the limitations period. Because charges were validly pending against Defendant in Santa Fe County for eleven months, that period of time is excluded from the limitations period. The grand jury in Sandoval County indicted Defendant within the statute of limitations.

CONCLUSION

For the foregoing reasons and the reasons stated in its Brief in Chief, the State respectfully asks this Court to reverse the majority opinion of the Court of Appeals and affirm the jury's verdict.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with automatic service provided to all parties through Odyssey E-File & Serve.

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