

[Cite as *S. Euclid v. Datillo*, 2018-Ohio-4711.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106687

CITY OF SOUTH EUCLID

PLAINTIFF-APPELLANT

vs.

ANTHONY DATILLO

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED

Criminal Appeal from the
South Euclid Municipal Court
Case No. CRB 1700037

BEFORE: Kilbane, P.J., Boyle, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: November 21, 2018

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MARY EILEEN KILBANE, P.J.:

{¶1} Plaintiff-appellant, the city of South Euclid (“the City”), appeals from the municipal court’s judgment granting defendant-appellee, Anthony Datillo’s (“Datillo”), motion to dismiss criminal charges. For the reasons set forth below, we reverse.

{¶2} On January 11, 2017, the City brought several criminal charges against Datillo under South Euclid Codified Ordinances 1409.01(c), 1409.02, and 1409.05. Datillo is a property owner and landlord in South Euclid. Specifically, the City charged him with failing to possess a certificate of occupancy for a rental unit, failing to apply for a certificate of occupancy, and failing to pay the appropriate application fee. The charges were first-degree misdemeanors, punishable by a maximum fine of \$1,000 and a 180-day jail sentence.

{¶3} Under South Euclid Codified Ordinance 1409.01(c), parcels with a certified delinquent property tax balance shall not be issued a certificate of occupancy, unless the property owner or agent-in-charge provides documentation of being in good standing or on a county

payment plan. At the time, Datillo was delinquent in his property taxes to the county, therefore a permit was not issued.

{¶4} On August 14, 2017, Datillo filed a motion to dismiss the charges. On September 18, 2017, the City filed a brief in opposition to Datillo's motion to dismiss. On October 10, 2017, the trial court granted Datillo's motion to dismiss.

{¶5} It is from this order the City appeals, assigning the following errors for review.

Assignment of Error One

The [municipal] court erred by dismissing the criminal complaints against [Datillo] over the City's written objection, as the trial court failed to record its findings of fact and reasons for the dismissal.

Assignment of Error Two

The [municipal] court erred by dismissing the criminal complaint against [Datillo] over the City's written objection, as South Euclid Codified Ordinances § 1409.01 (c), 1409.02 and 1409.05 are valid exercises of the Home Rule Power pursuant to Ohio Constitution, Article XVIII, Section 3.

{¶6} In the first assigned error, the City contends the trial court failed to state on the record its finding of facts and reasons for dismissing the charges against Datillo as required under Crim.R. 48(B).

{¶7} We review a trial court's decision on a motion to dismiss an indictment pursuant to a de novo standard of review. *State v. Kehoe*, 8th Dist. Cuyahoga No. 106385, 2018-Ohio-3589, citing *State v. Knox*, 8th Dist. Cuyahoga Nos. 103662 and 103664, 2016-Ohio-5519, ¶ 12, citing *State v. Gaines*, 193 Ohio App.3d 260, 2011-Ohio-1475, 951 N.E.2d 814 (12th Dist.). "De novo review requires an independent review of the trial court's decision without any deference to the trial court's determination." *State v. McCullough*, 8th Dist. Cuyahoga No. 105959, 2018-Ohio-1967.

{¶8} In the instant case, in his motion to dismiss, Datillo claims he attempted to comply with the City’s ordinances by completing the necessary application and paying the required fees. Datillo also claims the City refused to allow him to apply for the certificate or to pay the fee because he was delinquent in his county property tax obligation. Datillo further claims the City’s refusal, based on South Euclid Codified Ordinance 1409.01(c), was unconstitutional.

{¶9} In its brief in opposition, the City, without addressing or refuting Datillo’s claims that he attempted to apply for the certificate and to pay the appropriate fee, argued the South Euclid Codified Ordinance 1409.01(c) was constitutional.

{¶10} The municipal court’s journal entry dismissing the charges stated that “[t]he Defendant’s motion is well taken and granted.”

{¶11} A trial court has the inherent right to dismiss an indictment, pursuant to Crim.R. 48(B). *State v. Strong*, 8th Dist. Cuyahoga No. 100766, 2014-Ohio-4209. Crim.R. 48(B) provides:

If the court over objection of the state dismisses an indictment, information, or complaint, it shall state on the record its findings of fact and reasons for the dismissal.

{¶12} Here, the municipal court’s journal entry, consisting of a single sentence, provided no indication of its reasoning for the dismissal of the charges. As such, it was insufficient to comply with the requirements of Crim.R. 48(B). Under Crim.R. 48(B), the municipal court must state on the record its finding of fact and reasons for the dismissal.

{¶13} Accordingly, the first assignment of error is sustained.

{¶14} Our resolution of the first assignment of error renders the second assignment of error moot. App.R. 12(A)(1)(c).

{¶15} Judgment reversed.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the South Euclid Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

MARY J. BOYLE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR