

[Cite as *State v. Ratoya Steel*, 2005-Ohio-2623.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 85076

STATE OF OHIO

Plaintiff-Appellant

VS.

RATOYA STEEL

Defendant-Appellee

DATE OF ANNOUNCEMENT
OF DECISION

CHARACTER OF PROCEEDINGS

JUDGMENT

DATE OF JOURNALIZATION

APPEARANCES :

For plaintiff-appellant

JOURNAL ENTRY

AND

OPINION

May 26, 2005

Criminal appeal from
Common Pleas Court
Case No. CR-449294

REVERSED AND REMANDED.

WILLIAM D. MASON, ESQ.
Cuyahoga County Prosecutor
By: STEVEN E. GALL, ESQ.
Assistant County Prosecutor
Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

DAVID P. KRAUS, ESQ.
P.O. Box 22154
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SEAN C. GALLAGHER, J.:

{¶ 1} The state appeals the trial court's dismissal with prejudice of the felony charges against defendant-appellee, Ratoya Steel ("Steel"). Finding error in the proceedings below, we reverse.

{¶ 2} The following facts give rise to this appeal. On trial day, Steel declined the plea offer and elected to go to trial. The state requested a continuance to secure the presence of the victim.

This was the state's second request for continuance. The trial court denied the continuance and dismissed the case with prejudice.

The trial court reasoned that the victim failed to appear twice and that the victim's current whereabouts were unknown, and further that "this court gave the state 62 days from the May trial date in which to prepare and the state is not prepared to proceed."

{¶ 3} The state appeals, advancing one assignment of error which reads as follows:

{¶ 4} "The trial court erred in dismissing the indictment with prejudice."

{¶ 5} A trial court's dismissal of an indictment is reviewed for an abuse of discretion. We give substantial deference to the trial court unless we determine that the court's ruling was an abuse of discretion. *State v. Tankersley* (1998), Cuyahoga County App. Nos. 72398 and 72399. "The term abuse of discretion connotes more than error of law or judgment. It implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Nielson*

v. Meeker (1996), 112 Ohio App.3d 448, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. "An abuse of discretion * * * implies a decision which is without a reasonable basis or one which is clearly wrong." *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159.

{¶ 6} Crim.R. 48 provides the procedure for the dismissal of a criminal case by either the state or the court. Subsection (B) provides that "[i]f the court over the 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."

"Crim.R. 48(B) does not provide for a dismissal with prejudice; the court has the inherent power to dismiss with prejudice only where it is apparent that the defendant has been denied a constitutional or statutory right, the violation of which would, in itself, bar prosecution." *Fairview Park v. Fleming* (Dec. 7, 2000), Cuyahoga App. Nos. 77323, 77324, citing *State v. Dixon* (1984), 14 Ohio App.3d 396; *State v. Sutton* (1979), 64 Ohio App.2d 105.

{¶ 7} Here, the trial court did not make a finding that Steel was denied a constitutional or statutory right when it dismissed with prejudice the charges against her. Therefore, it was error for the trial court to dismiss the case with prejudice. The state may re-indict.

The state's sole assignment of error is sustained.

The court is ordered to correct its journal entry to read "dismissed without prejudice." Judgment reversed and remanded.

This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee costs herein.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas 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.

PATRICIA ANN BLACKMON, A.J., AND

JAMES J. SWEENEY, J., CONCUR.

SEAN C. GALLAGHER
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).