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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 06—CF—2740
)	
DUANE WOGAN,)	Honorable
)	Allen M. Anderson,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

Held: The trial court erred when it dismissed a refiled charge as untimely after dismissing the original charge; the original charge was dismissed for failing to state an offense, and by statute the State could refile the charge at any time, subject only to speedy-trial and limitations statutes, on which defendant did not rely.

On December 4, 2008, the trial court granted defendant Duane Wogan's motion to dismiss one count of an indictment based on speedy-trial grounds, specifically, the indictment for committing the offense of aggravated driving under the influence (DUI) (625 ILCS 5/11—501(a)(2) (West 2006)). On December 31, 2008, the State filed a notice of appeal and a certificate of impairment, asserting that the dismissal impairs it from further prosecution of the case. On appeal, the State

contends that the trial court erred when it dismissed the charge of aggravated driving under the influence of alcohol (DUI) against defendant on speedy-trial grounds. We reverse and remand.

On January 17, 2007, defendant was indicted for aggravated DUI, in that he had at least two prior convictions of DUI, and driving while his driver's license was revoked (DWLR) (625 ILCS 5/6—303(a) (West 2006)). The indictment classified the aggravated DUI charge as a Class 2 felony. On March 23, 2007, and again on April 13, 2007, defendant filed speedy-trial demands.

Following various continuances, defendant moved to dismiss or amend the charge, contending that aggravated DUI based on two prior convictions was a Class 4 felony. On May 23, 2008, the trial court granted the motion and dismissed the indictment. An order further explaining the court's decision followed on June 25, 2008. The State did not appeal these orders, and proceedings continued on the DWLR charge.

On August 27, 2008, defendant was reindicted for aggravated DUI as a Class 4 felony. Defendant moved to dismiss the new indictment. Defendant alleged that the speedy-trial period had expired and, alternatively, that the trial court lost jurisdiction when the State failed either to appeal or to procure a new indictment within 30 days of the initial dismissal. The trial court granted the motion, ruling that "the failure to prosecute is in violation of the [defendant's] speedy trial rights." The State timely appealed.

In its initial brief, the State argued that the trial court erred when it dismissed the new indictment on speedy-trial grounds, because it represented a new charge to which defendant's earlier speedy-trial demands did not apply. Defendant responded that the new charge was merely a continuation of the former charge. Alternatively, he renewed his argument that the trial court lost jurisdiction 30 days after the first dismissal.

After the parties filed their briefs, this court decided *People v. Weddell*, No. 2—09—0543 (Ill. App. Oct. 26, 2010), in which we held that the State’s voluntary dismissal and refile of charges tolled the speedy-trial period. We then set this matter for oral argument, *inter alia*, to allow the parties to address *Weddell*’s impact. At oral argument, defendant expressly withdrew any argument based on the expiration of the speedy-trial term. Defendant argued only that the trial court lost jurisdiction when the State failed to appeal the earlier dismissal or to reindict him within 30 days.

Section 114—1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114—1 (West 2006)) provides that a defendant may move to dismiss a charge on various grounds before trial. The ground most nearly applicable regarding the first dismissal of the charges is that “[t]he charge does not state an offense.” 725 ILCS 5/114—1(a)(8) (West 2006). Section 114—1(e) provides, “Dismissal of the charge upon the grounds set forth in subsections (a)(4) through (a)(11) of this Section shall not prevent the return of a new indictment or the filing of a new charge.” 725 ILCS 5/114—1(e) (West 2006). The statute does not provide a time limit in which the new charge must be filed.

If possible, we must construe statutes using their plain language, and a court must not read into a statute an exception, limitation, or condition that the legislature did not express. *People v. Amigon*, 239 Ill. 2d 71, 84-85 (2010). Here, the plain meaning of section 114—1(e) is that, if a charge is dismissed on one of the enumerated grounds, the State may refile the charge at any time. The only time limits on this right would appear to be the speedy-trial provisions (725 ILCS 5/103—5 (West 2006)) and the statute of limitations (720 ILCS 5/3—5(b) (West 2006)). Here, defendant has expressly disavowed any argument that the speedy-trial term has run and has never argued that the statute of limitations expired.

Defendant cites no case holding that the State must refile charges within 30 days following a section 114—1 dismissal. Defendant cites *People v. Fosdick*, 36 Ill. 2d 524 (1967), for the proposition that the State may not avoid a speedy-trial demand by dismissing a charge and refiling an identical charge later. However, the State did not file an identical charge, but refiled the charge as a Class 4 felony in accordance with the trial court's earlier ruling. In any event, as defendant concedes that the speedy-trial term is no longer an issue, we cannot conclude that the State was trying to avoid a speedy-trial dismissal.

Accordingly, we reverse the judgment of the circuit court of Kane County and remand the case for further proceedings.

Reversed and remanded.