2016 IL App (4th) 160244-U

NO. 4-16-0244

FILED
October 5, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
EDDI RAMIREZ,	)	No. 15CF971
Defendant-Appellant.	)	
	)	Honorable
	)	William Hugh Finson,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly denied defendant's motion to dismiss the charge in his case based on the federal court's prior dismissal with prejudice of a similar charge based on a speedy trial violation.

¶ 2 In August 2015, the State charged defendant, Eddi Ramirez, by information with one count of unlawful drug conspiracy (720 ILCS 570/405.1(a) (West 2012)). In September 2015, defendant filed a motion to dismiss the case pursuant to section 114-1(a)(2) of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-1(a)(2) (West 2014)), alleging the prosecution of this case was barred under (1) section 3-4(c)(1) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/3-4(c)(1) (West 2014)) because the United States Court of Appeals for the Seventh Circuit dismissed with prejudice a criminal complaint based on identical facts and (2) section 3-5 of the Criminal Code (720 ILCS 5/3-5 (West 2014)) because of the expiration of the statute of limitations. In January 2016, the Macon County circuit court entered a written order denying

defendant's motion to dismiss. Defendant filed a motion to reconsider, which the court denied after an April 2016 hearing.

¶ 3 Defendant appeals, asserting the circuit court erred by denying his motion to dismiss. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The State's charge alleged that, between January 1, 2012, and August 31, 2012, defendant, with the intent to commit the offense of unlawful possession of a controlled substance with the intent to deliver, agreed with another to commit the aforementioned offense by obtaining 900 grams or more of a substance containing cocaine, and defendant then obtained 900 grams or more of a substance containing cocaine so that possession with the intent to deliver could be made. The charge also noted defendant had previously been convicted of unlawful possession of a controlled substance in Champaign County case No. 2008-CF-199.

¶ 6 In September 2015, defendant filed a motion for a bill of particulars and a motion to dismiss. The motion for a bill of particulars requested the State specify the last overt act committed in Macon County in furtherance of the alleged conspiracy. The motion to dismiss asserted the State was barred from prosecuting this case based on (1) the expiration of the statute of limitations and (2) section 3-4(c)(1) of the Criminal Code and our supreme court's finding in *People v. Creek*, 94 Ill. 2d 526, 533, 447 N.E.2d 330, 333 (1983), that a dismissal with prejudice is equivalent to an acquittal. With his motion to dismiss, defendant submitted a memorandum of law, which attached copies of (1) the August 2012 federal criminal complaint; (2) the Seventh Circuit's decision in *United States v. Ramirez*, 788 F.3d 732 (7th Cir. 2015); (3) the June 2015 federal criminal complaint; (4) the Seventh Circuit's July 2, 2015, unpublished order (*In re Ramirez*, No. 15-2388 (7th Cir. July 2, 2015) (unpublished order)); (5) the information in this

case; (6) the *Creek* decision; and (7) relevant federal statutes. In December 2015, the circuit court held a hearing on defendant's motions. At the hearing, no additional evidence was presented beyond defendant's attachments to his motion to dismiss. After hearing the parties' arguments, the court took the matter under advisement.

¶ 7 On January 4, 2016, the circuit court entered its written order. The court found the supreme court's reasoning in *People v. Quigley*, 183 Ill. 2d 1, 697 N.E.2d 735 (1998), to be reasonable and persuasive. It concluded the dismissal with prejudice for the speedy trial violation in the federal case did not constitute an acquittal, and thus this action was not barred by section 3-4(c)(1). As to defendant's statute of limitations argument, the court found it was premature and granted defendant the right to refile his motion. The court granted defendant's motion for a bill of particulars.

¶ 8 On January 11, 2016, the State filed its response to defendant's bill of particulars, indicating August 31, 2012, was the last date of defendant's actions in Macon County in furtherance of the conspiracy. On January 22, 2016, defendant filed a motion for the court to reconsider its ruling denying the motion to dismiss, noting his federal case was dismissed after a trial and verdict. Defendant later filed a new motion to dismiss based on the statute of limitations, and the State filed an amended response to defendant's request for a bill of particulars.

¶ 9 After an April 1, 2016, hearing, the circuit court denied defendant's motion to reconsider. That same day, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Dec. 11, 2014). This court has jurisdiction of this interlocutory appeal under Illinois Supreme Court Rule 604(f) (eff. Mar. 8, 2016), which allows defendants to appeal "the denial of a motion to dismiss a criminal proceeding on grounds of

former jeopardy."

¶ 10 II. ANALYSIS

¶ 11 Here, defendant appeals the circuit court's denial of his motion to dismiss the charges based on section 3-4(c)(1) of the Criminal Code. Generally, reviewing courts review a circuit court's ruling on a motion to dismiss charges on double jeopardy grounds under the abuse of discretion standard. *People v. Griffith*, 404 Ill. App. 3d 1072, 1079, 936 N.E.2d 1174, 1180 (2010). However, when " 'neither the facts nor the credibility of witnesses is at issue, we address a purely legal question, and our standard of review is *de novo*.' " *Griffith*, 404 Ill. App. 3d at 1079, 936 N.E.2d at 1181 (quoting *In re Gilberto G.-P.*, 375 Ill. App. 3d 728, 730, 873 N.E.2d 534, 537 (2007)). Here, the facts are not in dispute, and thus our review is *de novo*. Additionally, this court may affirm the circuit court's ruling on any basis in the record. *People v. Gonzalez-Carrera*, 2014 IL App (2d) 130968, ¶ 15, 18 N.E.3d 129.

¶ 12 Both the United States Constitution (U.S. Const., amend. V) and the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 10) prohibit a person from twice being put in jeopardy for the same offense. However, under the separate sovereigns doctrine, the federal government and the state government may prosecute the same person for the same acts without offending the double jeopardy clause of either the state or the federal constitution. *People v. Porter*, 156 Ill. 2d 218, 221-22, 620 N.E.2d 381, 383 (1993). Thus, the State's prosecution in this case does not violate the constitutional prohibitions against double jeopardy because defendant's other prosecution was in a federal court. Additionally, because of the separate sovereigns doctrine, our supreme court's finding in *Creek*, 94 Ill. 2d at 533, 447 N.E.2d at 333, that a dismissal of a charge with prejudice renders a subsequent conviction for the same charge constitutionally infirm, is inapplicable to this case because *Creek* involved a prior Illinois case,

not a federal one.

¶ 13 Illinois has also imposed a statutory restriction on retrying defendants. *Porter*, 156 Ill. 2d at 222, 620 N.E.2d at 383. Section 3-4 of the Criminal Code (720 ILCS 5/3-4 (West 2014)) addresses the effect of a former prosecution. In this case, defendant sought dismissal of the charge under section 3-4(c)(1) of the Criminal Code (720 ILCS 5/3-4(c)(1) (West 2014)), which provides the following:

> "(c) A prosecution is barred if the defendant was formerly prosecuted in a District Court of the United States *** if that former prosecution:
>
> (1) resulted in either a conviction or an acquittal, and the subsequent prosecution is for the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the offense was not consummated when the former trial began[.]"

Further, section 3-4(d)(2) of the Criminal Code (720 ILCS 5/3-4(d)(2) (West 2014)) provides a prosecution is not barred under section 3-4 "if subsequent proceedings resulted in the invalidation, setting aside, reversal, or vacating of the conviction, unless the defendant was thereby adjudged not guilty."

¶ 14 Defendant contends the federal proceedings resulted in an acquittal. The State disagrees and asserts section 3-4(d) applies because defendant never received an adjudication of not guilty. We agree with the State.

¶ 15 The facts presented to the circuit court show that, in 2012, a federal grand jury indicted defendant with conspiracy to distribute cocaine (21 U.S.C. § 846 (2012)). *Ramirez*, 788 F.3d at 733. In December 2013, defendant filed a motion to dismiss that case for lack of a

speedy trial, which the district court later denied. *Ramirez*, 788 F.3d at 734. In 2014, a jury found defendant guilty of the charge. *Ramirez*, 788 F.3d at 735. Defendant appealed, and the United States Court of Appeals for the Seventh Circuit found the Speedy Trial Act (18 U.S.C. § 3161 *et. seq* (2012)) was violated. In June 2015, the Seventh Circuit "reverse[d] the district court's denial of [defendant]'s motion to dismiss and remand[ed] with instructions to vacate [defendant]'s conviction and order the release of the prisoner instanter." *Ramirez*, 788 F.3d at 737. That same month, defendant was charged in federal court with conspiracy to distribute five or more kilograms of cocaine for his actions in 2012. In an unpublished order, the Seventh Circuit addressed a petition for writ of *mandamus* and prohibition. *Ramirez*, No. 15-2388. The court found its June 2015 opinion was "a dismissal *with prejudice*, so as to prevent the government from refiling the charges against [defendant]." (Emphasis in original.) *Ramirez*, No. 15-2388, slip order at 1. The court granted the *mandamus* petition and ordered "the criminal complaint the government attempts to bring against [defendant] is dismissed *with prejudice*." (Emphasis in original.) *Ramirez*, No. 15-2388, slip order at 1.

¶ 16 Section 2-1 of the Criminal Code (720 ILCS 5/2-1 (West 2014)) defines the term "acquittal" as "a verdict or finding of not guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury." Our supreme court has explained, " '[a]n acquittal generally requires some resolution of a defendant's factual guilt or innocence' (*Quigley*, 183 Ill. 2d at 12[, 697 N.E.2d at 740]), or the State's acquiescence to orders dismissing charges against the defendant with prejudice (*People v. Rudi*, 103 Ill. 2d 216, 224[, 469 N.E.2d 580, 584] (1984))." *People v. Daniels*, 187 Ill. 2d 301, 311, 718 N.E.2d 149, 157 (1999). The supreme court's *Rudi* decision cites the *Creek* decision for the aforementioned statement. *Rudi*, 103 Ill. 2d at 224, 469 N.E.2d at 584 (citing *Creek*, 94 Ill. 2d

526, 447 N.E.2d 330)). Thus, the supreme court has clarified any conflict that may have existed between its decisions in *Creek* and *Quigley* as to what constitutes an "acquittal." In this case, the State did not acquiesce to the dismissal with prejudice. Thus, defendant's situation is distinguishable from *Creek* and not an "acquittal" under *Daniels*. Accordingly, section 3-4(c)(1) does not bar the prosecution of this case.

¶ 17 Moreover, defendant's conviction was vacated based on a speedy trial violation. When a defendant has not been brought to trial within the statutory time limit, the federal Speedy Trial Act gives the court the responsibility of determining whether the dismissal of the case should be with or without prejudice and requires it to "consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice." 18 U.S.C. § 3162(a)(2) (2012). The aforementioned statute does not indicate the sufficiency of the evidence against defendant is a factor in the determination, and the Seventh Circuit made no comments indicating the evidence was insufficient to prove defendant guilty. Thus, the vacation of defendant's federal drug conspiracy conviction did not constitute an adjudication of not guilty, and section 3-4(d) permits the State to reprosecute defendant.

¶ 18 Accordingly, we find the circuit court properly denied defendant's motion to dismiss the charge in this case based on section 3-4(c)(1) of the Criminal Code.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the Macon County circuit court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 21 Affirmed.