

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
DAMON FLORES,
Respondent.

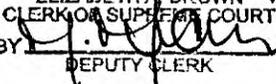
No. 85516

THE STATE OF NEVADA,
Appellant,
vs.
DAMON FLORES,
Respondent.

No. 85517

FILED

NOV 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from a district court order granting respondent's motion to dismiss a criminal complaint. Second Judicial District Court, Washoe County; Lynne K. Jones, Judge. Reviewing for an abuse of discretion, *Morgan v. State*, 134 Nev. 200, 205, 416 P.3d 212, 220 (2018), we reverse and remand.¹

The State argues that the district court abused its discretion in granting respondent Damon Flores' motion to dismiss the criminal case against him based on a due process violation involving an approximately four-month delay in transporting Flores to a facility for competency restoration treatment. We recently considered a challenge by the State to a similar district court order in *State v. Gonzalez*, 139 Nev., Adv. Op. 33, 535 P.3d 248 (2023).

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

In *Gonzalez*, we concluded that the district court abused its discretion in two respects. First, “without apportioning blame to the State or pointing to any prejudice [the defendant] suffered as to [the] ability to receive a fair adjudication, the district court summarily ruled that the due process violation in and of itself constituted aggravated circumstances warranting dismissal” and “thus neglected to apply the standards demanded by our precedent.” *Gonzalez*, 139 Nev., Adv. Op. 33, 535 P.3d at 252-53. Second, even if aggravated circumstances favored dismissal, the district court then neglected to balance the deterrent objectives of dismissal against society’s interest in prosecuting criminal acts, instead balancing the defendant’s due process rights against society’s interest in prosecuting the charged offense. *Id.* at 253.

The district court abused its discretion in the same two respects here. The district court treated the due process violation as aggravated circumstances warranting dismissal without apportioning any blame to the State or identifying any prejudice to Flores’ ability to receive a fair adjudication and then engaged in the wrong inquiry by balancing the State’s interest in prosecuting Flores for the charged offense against Flores’ due process rights.² Based on this abuse of discretion, we

²Flores suggests that the district court was within its discretion to dismiss the criminal complaint pursuant to NRS 178.425(5). The district court, however, did not dismiss the complaint based on that statute or make the findings required to do so. We therefore decline to affirm the district court’s order based on NRS 178.425(5).

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Stiglich, C.J.
Stiglich

Pfe, J.
Lee

Parraguirre, J.
Parraguirre

cc: Hon. Lynne K. Jones, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe District Court Clerk