STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MELANIE ANN CINPAK,

Defendant-Appellee.

UNPUBLISHED
April 16, 2020

No. 348187
Jackson Circuit Court
LC No. 17-005452-FH

Before: CAVANAGH, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

A jury convicted Melanie Cinpak of resisting and obstructing a police officer in violation of MCL 750.81d. The court opted for leniency and one month after delaying sentencing pursuant to MCL 771.1, dismissed Cinpak's case over the prosecutor's objection. Although we sympathize with Cinpak's plight and the court's desire to assist her, the dismissal was not permitted under statute or existing caselaw. Accordingly, we reverse, vacate the trial court's dismissal order, and remand for further proceedings. On remand, we instruct the trial court to reinstate defendant's conviction.

I. BACKGROUND

On the night in question, Cinpak, a registered nurse, was driving home after a 13-hour shift. Michigan State Police Trooper Michael Church pulled her over. Unbeknownst to Cinpak, a bench warrant had been issued for her arrest for contempt of court because she failed to appear for a hearing related to a ticket for driving with an expired license plate.

Trooper Church placed Cinpak under arrest and transported her to the station in his police cruiser. He described that Cinpak resisted every step in the process, but that he used minimal force to effectuate the arrest. Cinpak, on the other hand, claimed that Trooper Church gave her no chance to respond and restricted her movements so that she could not comply with his orders.

Ultimately, the Jackson County Prosecutor charged Cinpak with one count of resisting or obstructing a police officer, MCL 750.81d, a felony offense. After hearing Cinpak's and Trooper

Church's versions of events and watching dash cam footage of the arrest, a jury convicted Cinpak as charged.

II. SENTENCING

At the August 9, 2018 sentencing hearing, the court acknowledged that Cinpak "did fight a bit," but observed that Trooper Church "can be fairly aggressive" and "a little anxious," although "he gets stuff done." The court initially sentenced Cinpak to two days' jailtime with credit for two days served. To protect her nursing license, Cinpak requested an alternate sentence. Specifically, Cinpak suggested "to take this as a delayed sentence" and if she did not reoffend, the court could later "reduce this or dismiss this." The prosecutor objected to "a 771 handling of this case," stating:

> [T]he [L]egislature has provided a good means for a defendant to prove herself, in this case after five years she can have the felony expunged from her record. She's been found guilty by a jury of her peers. I understand what the Court is saying that this is not the most egregious R&O we've ever seen, however, she was given a show of authority by an officer and she resisted, she committed the crime.

Defense counsel noted that Cinpak was not eligible for expungement because she had earlier misdemeanors on her record[1] and the court agreed. But the court concluded that it would put Cinpak "on 771 for one month" and that if she stayed "out of trouble," it would dismiss the case.

The proceedings reconvened on October 4, 2018. The matter began with an in-chambers discussion. When the court went on the record, it stated, "As much as you try and help somebody out apparently prosecution from our conversation in chambers wants Ms. Cinpak to not work for the next two years at her profession." Defense counsel corrected the court, noting that Cinpak would lose her nursing license for a 15-year period if the felony conviction remained on her record. The court declined to impose a jail term or probation and stated, "[A]s far as I'm concerned the case is dismissed."

The court allowed the prosecutor to make a record of his objection for appellate purposes: "We understand the no probation; we understand maybe a delay down to a misdemeanor, but the straight up dismissal that is what we would be objecting to."

For a reason that is not clear on the record, the order of dismissal was deemed defective. Defense counsel filed a new motion to dismiss the case against Cinpak for the reasons stated at the sentencing hearings. In his motion, counsel noted that this blemish on her record had prevented

[1] According to her presentence information report, in 1994 at the age of 19, Cinpak committed the misdemeanor of disturbing the peace and paid a fine after entering a plea. In 2008, Cinpak committed two misdemeanors within two weeks—both were disorderly person. The first led to a delayed sentence that was ultimately dismissed, the second to fines. And in 2017, Cinpak committed the misdemeanor of driving with improper plates and was assessed fines. It was her misunderstanding of the proceedings related to that minor charge that led to the warrant for Cinpak's arrest.

Cinpak from securing employment in her field. The prosecutor continued to object to dismissing the case, noting that Cinpak chose not to plead to a lesser charge and was convicted by a jury. The prosecutor stated, "[W]e would like to honor the jury's conviction of guilty." The court interpreted MCL 771.1 as giving the court "all the discretion," a point with which the prosecutor took issue. The court overruled the prosecutor's objection and again dismissed the case against Cinpak.

The prosecution now appeals.

III. ANALYSIS

We review de novo a trial court's statutory interpretation of its power to dismiss under MCL 771.1. See *People v Smith*, 496 Mich 133, 140-141; 852 NW2d 127 (2014) (interpreting MCL 771.1(2) and its effect on the trial court's jurisdiction to sentence). MCL 771.1, the statute at the heart of this case, governs delayed sentencing in criminal matters as follows:

> (1) In all prosecutions for felonies, misdemeanors, or ordinance violations other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, or major controlled substance offenses, if the defendant has been found guilty upon verdict or plea and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer.
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> (2) In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity *to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation*, such as participation in a drug treatment court under . . . MCL 600.1060 to 600.1082. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay. [MCL 771.1 (emphasis added).]

The dispositive question in this case is whether the Legislature's reference to "other leniency compatible with the ends of justice and the defendant's rehabilitation," MCL 771.1(2), grants the trial court discretion to dismiss a defendant's conviction after a period of delayed sentencing, especially over the prosecutor's objection.

Under the common law, "dismissal [was] in the prosecutor's sole discretion . . . . Dismissal over his objection, absent a permissive statute, [was] precluded." *People v Stewart*, 52 Mich App 477, 482; 217 NW2d 894 (1974). "Only where the evidence is insufficient has the court the power to dismiss over prosecutorial objection." *Id*. Stated differently, "a trial judge may dismiss charges,

sans prosecutorial consent, only if there is (1) insufficient evidence, or (2) a permissive statute."[2] *People v Monday*, 70 Mich App 518, 521; 245 NW2d 811 (1976).

In 1961, the Legislature added the language at issue in this case into the deferred sentencing statute. *Id*. at 522. In *Monday*, 70 Mich App at 521-522, this Court held that MCL 771.1's reference to "such other leniency as may be compatible with the ends of justice and the rehabilitation of the defendant" was not "broad enough to allow dismissal." This Court continued, "We cannot equate the word 'leniency' as meaning total forgiveness. To us, 'leniency' presupposes some penalty, however slight, but allows the trial court to make the penalty token only. If the Legislature had intended anything more we believe that the Legislature would have specifically said so." The ultimate takeaway is that MCL 771.1 is a not a "permissive statute" under which a trial court may dismiss a conviction. See also *People v Leonard*, 144 Mich App 492; 375 NW2d 745 (1985) (applying *Monday* with approval).

The trial court in this case did that which was prohibited in *Monday* and *Leonard*—it dismissed Cinpak's conviction over the prosecution's objection based on MCL 771.1. This was error.

As further support of the trial court's error, the prosecution cites *Smith*, 496 Mich 133, and contends that the trial court in that case "did exactly what the sentencing court in the present case did—dismissed the conviction over the prosecutor's objection." *Smith* is not *exactly* on point; it dealt with the trial court's dismissal of a defendant's conviction because it believed that MCL 771.1(2) divested it of jurisdiction to impose a sentence more than one year after conviction. See *Smith*, 496 Mich at 134. Notwithstanding that distinction, the strong language of our Supreme Court in *Smith* supports reversal of the trial court's error in this case. In *Smith*, our Supreme Court reasoned:

> There is simply no basis in our law for the trial court to do as it did in this case. Without citing a scintilla of legal authority, the trial court *dismissed* the case over the objection of the prosecutor. Aside from flagrantly ignoring contrary Court of Appeals precedent[, *People v Boynton*, 185 Mich App 669, 671; 463 NW2d 174 (1990),] in entirely dismissing the case, the trial court usurped the prosecutor's role in violation of the separation of powers principles contained in our constitution. It is axiomatic that the power to determine whether to charge a defendant and what charge should be brought is an executive power, which vests *exclusively* in the prosecutor. The trial court had no legal basis to trump the prosecutor's charging decision, much less dismiss the case *after* the defendant had pleaded to the charge and had never sought to withdraw his plea. [*Smith*, 496 Mich at 140-141.]

[2] One such statute permitting the dismissal of a case is the Holmes Youthful Trainee Act. See MCL 762.14(1) ("If consideration of an individual as a youthful trainee is not terminated and the status of youthful trainee is not revoked as provided in section 12 of this chapter, upon final release of the individual from the status as youthful trainee, the court shall discharge the individual and dismiss the proceedings.").

In *Boynton*, 185 Mich App at 671, the precedent cited by the Court, this Court emphasized that "an unexcused violation of the one-year limit contained in the delayed sentencing statute affects only the court's authority to sentence the defendant, nothing more." This Court went on to hold that the trial court's power to dismiss or expunge a properly obtained criminal conviction was governed by MCL 780.621, which "sets forth a very detailed set of prerequisites and specific procedural steps, none of which were adhered to in this case." *Id.*[3] The trial court in this case already determined that Cinpak was not eligible for expungement under MCL 780.621 because she had a prior record of misdemeanor convictions.

Although the law did not permit the trial court to dismiss Cinpak's case, there is guidance for a remedy in this situation. In *Monday*, 70 Mich App at 523, this Court declined "to vacate the order of dismissal, reinstate the conviction, and remand for imposition of sentence" because "[t]he order of the trial court, though technically wrong, [was] equitably right." This Court noted the defendant's "impeccable" record and "the relatively minor offense charged herein" and saw "no useful purpose and, in fact, perceive[d] some harm in insisting that a felony charge appear on defendant's civil service record." *Id.* This Court suggested that the prosecution, "[h]aving won the 'war' and prevailed on principle," should "reconsider" its position "and move for nolle prosequi or otherwise consent to dismissal as first ordered by the trial judge." *Id.* In doing so, this Court commented, "Compassion is still an element of the law. The quality of mercy should not be strained on the facts before us." *Id.*

As noted, Cinpak's criminal record includes a list of minor offenses. The agent preparing the PSIR recommended the imposition of fines and costs rather than jail or probation given Cinpak's "very minimal criminal history" and the stellar scores Cinpak received on a risk assessment. Indeed, even Trooper Church opined in his victim impact statement that jailtime was not warranted. And Cinpak presented as a sympathetic figure—a widow with two children, who put herself through school and was then working 60 hours each week to support her family alone. The trial court's vociferous support of Cinpak and inclination toward leniency appear justified. To ensure that the punishment truly fit the crime, we urge the prosecution in this case to consider Cinpak's case anew and to freshly assess whether compassion and mercy warrant a different approach. The destruction of Cinpak's nursing career seems to us a disproportionate penalty, even though Cinpak did not submit immediately to the trooper's commands.

We reverse, vacate the trial court's dismissal order, and remand for further proceedings. On remand, we instruct the trial court to reinstate defendant's conviction. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher

[3] *Smith* ultimately overruled *Boynton*, but only "to the extent" that it held "that a court loses jurisdiction to sentence a defendant as a remedy for a violation of MCL 771.1(2)." *Smith*, 496 Mich at 142.