

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

APPELLATE CASE NO: 2013-AP-12-A-O
Lower Case No.: 2012-CT-10131-A-O

STATE OF FLORIDA,

Appellant,

v.

TRAVIS THORN,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
Deborah B. Ansbro, County Court Judge

Jeffrey Ashton, State Attorney,
and Dugald McMillan, Assistant State Attorney
for Appellant

Mark S. Germain, Esq.
for Appellee

Before LEBLANC, MYERS, S. KEST, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant, the State of Florida, appeals the trial court's order dismissing the charge for Driving While License Suspended rendered on April 1, 2013. We reverse and remand.

On October 27, 2012 Appellee, Travis Thorn, was arrested for Driving While License Suspended. On April 1, 2013 the State, Appellee, and Appellee's defense counsel attended a plea hearing and through counsel, Appellee requested the trial court accept the negotiated plea of no contest to Driving Without a Valid Driver License. After some discussion, the trial court

stated that the State would not be able to prove its case and dismissed the charge sua sponte. The State objected to the trial court's sua sponte dismissal. The trial court noted that the objection was on the record and concluded the hearing.

The State argues that in the absence of a statute or motion to dismiss, the decision to dismiss or prosecute charges is to be made solely by the State. The State contends that there is no evidence that Appellee requested a dismissal of the charge at the plea hearing, but instead intended to enter a plea. The State claims that even if the trial court's statement that the State would be unable to prove its case was correct, the trial court's sua sponte dismissal of the charge was an abuse of discretion and the order of dismissal must be reversed.

Appellee argues that the trial court made the correct ruling dismissing the charge based on the facts. However, Appellee concedes that the trial court's sua sponte dismissal was improper and the defense should have filed a motion to dismiss.

Sua sponte orders dismissing charges are reviewed by an abuse of discretion standard. *State v. Brosky*, 79 So. 3d 134 (Fla. 3d DCA 2012); *State v. Leon*, 967 So. 2d 437 (Fla. 4th DCA 2007). As the State argues, the decision to prosecute or dismiss charges is a decision to be determined solely by the State in the absence of a statute or motion to dismiss. *Brosky*, 79 So. 3d at 135; *Leon*, 967 So. 2d at 437. Even if the court believes dismissal would be in the best interest of the public and parties, the decision to prosecute is exclusively within the discretion of the State. *Cleveland v. State*, 417 So. 2d 653, 654 (Fla. 1982); *State v. Wheeler*, 745 So. 2d 1094, 1096 (Fla. 4th DCA 1999). In this case, Appellee concedes that a motion to dismiss the charge was not filed, and the record demonstrates that Appellee intended to enter a negotiated plea to Driving Without a Valid Driver License. Therefore, the trial court's sua sponte dismissal of the charge was an abuse of discretion and the order of dismissal must be reversed.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's order dismissing the charge of Driving While License Suspended is **REVERSED** and this matter is **REMANDED** for reinstatement of the charge.

REVERSED and **REMANDED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 2nd day of January, 2014.

/S/ _____
BOB LEBLANC
Presiding Circuit Judge

MYERS and S. KEST, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished by U.S. mail/email to: **Dugald McMillan, Assistant State Attorney**, dmcmillan@sa09.org, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32801; **Mark S. Germain, Esq.**, markgermainlaw@gmail.com, Law Officers of Germain and Coulter, LLC, 2715 N. Harbor City Blvd., Ste. 4, Melbourne, Florida 32935, on this 3rd day of January, 2014.

/S/ _____
Judicial Assistant