

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

STATE OF FLORIDA,

APPELLATE CASE NO: 2015-AP-11-A-O

Lower Case No.: 2014-MM-12459-A-O

Appellant,

vs.

TIMOTHY EDWARD LINGER,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
Adam K. McGinnis, County Court Judge

Jeffrey L. Ashton, State Attorney, and
Carol Levin Reiss, Assistant State Attorney
for Appellant

Gerod J. Hooper, Esquire
for Appellee

Before O’KANE, UNDERWOOD, MURPHY, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

The State appeals the trial court’s Amended Order granting a motion to dismiss an Information filed subsequent to the State’s filing of a *nolle prosequi*. We have jurisdiction pursuant to rule 9.030(c)(1) of the Florida Rules of Appellate Procedure and reverse.

A trial court’s decision to grant a motion to dismiss will not be reversed absent an abuse of discretion. *See Rodriguez v. State*, 622 So. 2d 1084, 1084 (Fla. 4th DCA 1993); *State v. Balezos*, 765 So. 2d 819, 822 (Fla. 4th DCA 2000). Generally, it is permissible for the State to refile charges it has dismissed so long as it complies with the applicable statute of limitations and

the speedy trial rule. *State v. Hurd*, 739 So. 2d 1226 (Fla. 2d DCA 1999); *See also Boston v. State*, 645 So. 2d 553 (Fla. 2d DCA 1994); *State v. M.J.B., a child*, 576 So. 2d 966 (Fla. 5th DCA 1991 (“The decision to file a nolle prosequi is within the sole discretion of the State . . . permission of the trial court is not necessary.”). The validity of a due process violation depends on whether the State’s action was motivated by an improper purpose and whether prejudice resulted. *Hurd*, 739 So. 2d at 1228. An appellate court need not address the issue of prejudice if there is not a showing that the State’s action was motivated by an improper purpose. *Id.* *See also State v. Goodman*, 696 So. 2d 940 (Fla. 4th DCA 1997) (finding that the State’s decision to nolle pros case prior to jury selection for purpose of avoiding jury selected in prior trial at which State’s attempt to exercise peremptory challenge against African-American juror was disallowed violated due process).

Here, the record supports that Appellant filed a *nolle prosequi* after the trial court denied the State’s request that the case be rolled to the next day due to the inability to locate witnesses. There is no record evidence to suggest Appellant acted with an improper purpose that would give rise to a due process violation and the trial court abused its discretion in granting the Motion. Accordingly, it is hereby **ORDERED AND ADJUDGED** that the trial court’s Amended Order Granting Defendant’s Motion to Dismiss is **REVERSED** and the case is **REMANDED** for further proceedings.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4th day of February 2016.

/S/

JULIE H. O’KANE
Presiding Circuit Judge

UNDERWOOD and MURPHY, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Honorable Adam K. McGinnis**, 425 N. Orange Avenue, Orlando, Florida 32801; **Carol Levin Reiss, Assistant State Attorney**, 415 N. Orange Avenue, Orlando, Florida 32801; and to **Gerod J. Hooper, Esquire**, 27221 S.R. 56, Suite 182, Orlando, Florida 32801, on this 4th day of February, 2016.

/S/ _____
Judicial Assistant