

STATE V. JUDD

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
KEITH RUSSELL JUDD,
Defendant-Appellant.

NO. 29,460

COURT OF APPEALS OF NEW MEXICO

November 2, 2009

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Neil C.
Candelaria, District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Hugh W. Dangler, Chief Public Defender, Nancy M. Hewitt, Assistant Appellate
Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge, JONATHAN
B. SUTIN, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

Defendant appeals the district court denial of his motion to vacate a dismissal of charges. Defendant urged the district court to make the dismissal with prejudice rather than without prejudice. We proposed to dismiss the appeal on the grounds that

Defendant was not aggrieved by the order. Defendant has timely responded. We have considered his arguments and not being persuaded, we dismiss the appeal.

Defendant argues that this Court is incorrect in proposing to conclude that he is not an aggrieved party. He argues that a dismissal with prejudice is very different from a dismissal without prejudice. We agree. However, as we pointed out in our notice, charging decisions are the sole province of the prosecutor. See *State v. Gonzales*, 2002-NMCA-071, ¶ 18, 132 N.M. 420, 49 P.3d 681 (discussing the duty of the district attorney regarding charging decisions and the broad discretion given to the district attorney in those matters).

Further, as recognized by Defendant, any further prosecution on these charges is time-barred. See NMSA 1978, § 30-1-8(C) (2009) (stating time limit for commencing prosecution of misdemeanor). In all practicality because the charges were not reinstated within the statute of limitations, Defendant is not aggrieved by the district court order denying his motion.

For the reasons stated herein and in the notice of proposed disposition, we dismiss the appeal.

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge

JONATHAN B. SUTIN, Judge