Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-084

AUGUST TERM, 2006

In re K.R.	}	APPEALED FROM:
	}	
	}	
	}	Washington Family Court
	}	
	}	
	}	DOCKET NO. 15-2-06 WnJv
		Trial Judge: Christina Reiss

In the above-entitled cause, the Clerk will enter:

The State of Vermont appeals from a family court order dismissing a juvenile delinquency charge against the juvenile K.R. The State contends the dismissal was invalid because the court failed to: (1) hold a preliminary hearing; and (2) enter findings of fact to support the order. We agree with the State=s second contention, and therefore remand for findings.

On September 15, 2005, K.R., then age sixteen, was arraigned in district court on a charge of operating a vehicle without the owner=s consent. K.R. entered a plea of not guilty and was released on conditions. Shortly thereafter, K.R.=s attorney moved to transfer the case to juvenile court, where several other charges against K.R. were pending. The case was duly transferred, and in November 2005, the court sent a notice that a A Juvenile Merits Hearing@ was scheduled for January 5, 2006.

Although the court below made no findings of fact, the deputy state=s attorney handling K.R.=s case represented that she was prepared to proceed with a hearing on the merits of the operating-without-consent charge on the scheduled hearing date. Based on her prior experience, the number of charges pending, and the time allotted for the hearing, however, the deputy state=s attorney concluded that the hearing would be limited to a status conference, noting that the notice had included the phrase, A Status/Merits.@ Accordingly, the deputy state=s attorney advised her witnesses not to appear at the scheduled hearing. On the date in question, the court inquired whether the State was prepared to proceed on the merits. The deputy state=s attorney responded that she was not, explaining the basis for her belief that the hearing would be limited to a status conference.

Defense counsel then moved to dismiss based upon the State=s inability to proceed. The court observed that the State was not entitled to draw the Assumption that something that=s

scheduled for a merits isn=t going to go forward.@ Addressing the juvenile, the court then explained that it was granting the motion to dismiss A to teach you to play by the rules and . . . we play by the rules, too.@ The State subsequently moved for reconsideration, asserting that the court=s scheduling of a merits hearing prior to a preliminary hearing was A procedurally defective,@ that the practice in juvenile court was to hold a status conference before a merits hearing and the notice labeled the hearing A status/merits,@ and that the time allotted was too short for a merits hearing. The court denied the motion in a brief entry order, explaining that it A cannot function properly if the parties unilaterally make scheduling decisions,@ and that the juvenile=s earlier arraignment in district court A satisfied the need for a preliminary hearing.@

The State then re-filed the operating-without-consent charge, noting that the court had not dismissed the charge with prejudice. At a hearing in February 2006, the juvenile again moved to dismiss, and the court granted the motion, explaining that its earlier failure to dismiss with prejudice had been an oversight. The court also reiterated its reason for the dismissal, stating that it did not want to As end the wrong message@ to the juvenile A in terms of how the Court handles things itself.@ This appeal by the State followed.

The State renews its claim that the dismissal was improper because the court lacked authority to proceed on the merits without a preliminary hearing. It argues that, once a case is transferred to juvenile court, any earlier arraignment in district court is a nullity, and the family court was thus required to hold a preliminary hearing to entertain a new plea. We do not agree that the State can raise the absence of a preliminary hearing as a ground to overturn the court=s dismissal. A preliminary hearing is a right of the juvenile. In the comparable criminal context, failure to arraign a defendant is not grounds to reverse a conviction unless it prejudices defendant. See State v. Ingerson, 2004 VT 36, & 4, 176 Vt. 428, 852 A.2d 567. The consequences of failure to hold a preliminary hearing is entry of denial of the petition. V.R.F.P. 1(c).

Moreover, there is no bar to the court holding a preliminary and merits hearing seriatim on the same day, especially where, as here, the juvenile had already pled not guilty at a district court arraignment. Even if the court had to hold a preliminary hearing first, it could look ahead, see that the State could not go forward on the merits, and dismiss the case. This practice would have led to the same result because the State was not able to go forward on the merits component.

Finally, we believe that the State waived this justification by not raising it at the hearing. If the issue had been raised, the court could have corrected the technical deficiency and proceeded to the merits hearing.

We do conclude, however, that the court violated V.R.Cr. P. 48(b)(2), made applicable to juvenile delinquency proceedings by V.R.F.P. (1)(a)(3). The rule provides that the court may dismiss an indictment or information if it Aconcludes that such dismissal will serve the ends of justice and the effective administration of the court=s business.@ V.R.Cr.P. 48(b)(2). The rule further provides: AIf the court over objection of the prosecution dismisses an indictment or information under paragraph (b)(2) of this rule, it shall state, on the record, its findings of fact and reasons for the dismissal.@ V.R.Cr.P. 48(c). The court here stated its reason for the dismissal, but made no findings of fact on the record to support its decision. Its decision on the

motion for reconsideration adds more of the rationale but does not include findings in response to the State=s claims.

As we pointed out in State v. Laroque, where we reversed a dismissal based on a record similarly Adevoid of any findings of fact [as] mandated by the Rule,@ a record of the court=s findings in this context is required A[i]n order to insure against arbitrary dismissal.@ 149 Vt. 662, 662 (1988) (mem.). Consistent with Laroque, we conclude we must remand for the requisite findings. Because of the circumstances of this case, the court should make the missing findings, and the State can appeal again if it wants to contest their content.

Remanded for proceedings consistent with this order.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice