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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0933
A17-0934**

State of Minnesota,
Appellant,

vs.

Michael Brian Bailey,
Respondent (A17-0933),

Angela Nicole Yarbrough,
Respondent (A17-0934).

**Filed January 2, 2018
Reversed and remanded
Ross, Judge**

Dakota County District Court
File No. 19HA-CR-16-2409

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Elizabeth M. Swank, Assistant County Attorney, Hastings, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota (for respondents Bailey and Yarbrough)

Michael McDonough, Wagner & Ho, LLP, Apple Valley, Minnesota (for respondent Bailey)

Mark A. McDonough, McDonough, Wagner & Ho, LLP, Apple Valley, Minnesota (for respondent Yarbrough)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

ROSS, Judge

Michael Bailey and Angela Yarbrough routinely left their five- and seven-year-old children in the care of their ten-year-old autistic child unattended for 13 hours at home while they worked the nightshift. Social services and police got involved after a driver reported nearly running over the five-year-old, who wandered into the street. The state eventually charged the two with child neglect and child endangerment. They tried to plead guilty, but the district court would not allow it, intimating that charging the couple with those crimes constituted an abuse of prosecutorial discretion and that convictions would offend the legislature's objective to strengthen families. The district court therefore rejected Bailey's and Yarbrough's guilty pleas, ordered stays of adjudication, and imposed two years of probation. Because the district court's interference in the prosecution crossed the separation-of-powers restriction on judicial activity, we reverse and remand to allow the criminal proceedings to continue.

FACTS

Over the course of months in 2015 (Yarbrough said a couple of months, one of the children said six months) Bailey and Yarbrough routinely left their Burnsville home to begin their 12-hour-nightshift jobs at a data storage company, leaving their three children

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

at home all night without adult care. The couple would leave for work each night before 6:00 and return home about 13 hours later, at 7:00 the next morning. The children they left behind were five, seven, and ten years old. The oldest is autistic and was functioning at about a second-grade level. The couple left the children with no supervision, no working telephone, and no explanation about how to use the fire extinguisher. One of the children said that he would go to school hungry and tired, and that his five-year-old sister would leave the house alone. Burnsville police and Dakota County social-services workers learned about the arrangement after a driver called police to report nearly hitting the five-year-old girl, who had wandered into the street one night.

Social services directed Bailey and Yarbrough to correct their neglectful practice. The couple switched their work hours so that their shifts no longer overlapped, and they followed other recommendations.

About a year after police got the initial call, the state charged Bailey and Yarbrough with child neglect and child endangerment, gross misdemeanors under Minnesota Statutes section 609.378, subdivisions 1(a)(1) and (b)(1). The two agreed to a plea deal in which they would plead guilty to child neglect in exchange for the state dismissing the child-endangerment charges. The district court directed the probation office to conduct pre-plea investigations.

The probation office investigated and submitted reports that recommended that the district court stay adjudication and impose short probationary periods for both Bailey and Yarbrough. Yarbrough's report reasoned that she has supportive relationships with family and friends, stable employment, no adult criminal history and minimal juvenile history,

and no apparent drug or alcohol problems. Bailey's report mirrored Yarbrough's, except that Bailey's record included only minor traffic violations.

The recommendations impressed the district court judge, who commented that it is "rare . . . that I even get a recommendation for a stay of adjudication from Community Corrections. And it's more rare—I can't remember the last time when I got a recommendation for a stay of adjudication accompanied by no programming." The prosecutor insisted that a stay of adjudication would be improper, urged the court to accept the guilty pleas, and suggested that the court could stay the sentences and order community service.

The district court acknowledged the accuracy of the prosecutor's legal position, saying, "[C]ounsel is correct. I don't have the independent authority to sentence this under a stay of adjudication. I suppose I would be flat-out wrong to do so." But the district court suggested it might apply a "slender read" of the caselaw, suggesting that precedent included circumstances that "allow the court to impose a stay [of] adjudication. One of those . . . circumstances [being] where there's . . . an abus[e of] prosecutorial discretion." Although the district court stopped short of actually finding any abuse of prosecutorial discretion, the court "question[ed] whether or not there was a need for the prosecution in this case in the first instance." The district court reasoned further:

But importantly I'm looking at Minnesota Statute 609.38, and, again, [it states,] "In determining an appropriate sentence when there is a family relationship between the complainant and the defendant, the Court shall be guided by the policy of preserving and strengthening the family unit whenever possible.

I think a sentence that results in a conviction . . . in any form, whether it be a gross misdemeanor reduced by operation of law to a misdemeanor, or even a misdemeanor conviction is not something that would preserve and strengthen th[is] family unit.

The district court then refused to accept Bailey’s and Yarbrough’s guilty pleas, ordered stays of adjudication, and imposed two years of probation for both defendants.

The state appeals.

DECISION

The state argues that the district court erred as a matter of law by staying the adjudication. We clarify that, despite the district court’s description, by rejecting the couple’s pleas it did not actually stay the adjudications but essentially ordered a continuance for dismissal. *See State v. Strok*, 786 N.W.2d 297, 301–02 (Minn. App. 2010) (explaining that the applicable caselaw governing stays of adjudication and continuances for dismissal is the same); *see also State v. Martin*, 849 N.W.2d 99, 103 (Minn. App. 2014), *review denied* (Minn. Sept. 24, 2014) (“A continuance for dismissal differs from a stay of adjudication in that it occurs before a determination of guilt.”). We review de novo a district court’s order precluding adjudication of a defendant’s guilt. *Martin*, 849 N.W.2d. at 105.

The state argues that precluding adjudication violated the separation-of-powers restriction on judicial authority. That restriction arises from the constitutional provision that “[t]he powers of government shall be divided into three distinct departments: legislative, executive and judicial” and that “[n]o person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others” Minn. Const. Art. III, § 1. Under the separation-of-powers

restriction, after a prosecutor has exercised executive power to file criminal charges, a district court generally may refuse to adjudicate guilt only if a statute authorizes it to do so or if refusal is necessary to avoid injustice arising from the prosecutor's clear abuse of prosecutorial charging discretion. *State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005) (citing *State v. Krotzer*, 548 N.W.2d 252, 256 (Minn. 1996)). We therefore must decide whether a statute authorized the district court's refusal to adjudicate or refusal was necessary to avoid a clear abuse of prosecutorial discretion.

No statute authorized the district court's refusal to accept the couple's guilty pleas. Only under specific statutory exceptions that do not apply here, "or upon agreement of the parties," may a district court "refuse to adjudicate the guilt of a defendant who tenders a guilty plea in accordance with Minnesota Rules of Criminal Procedure, rule 15, or who has been found guilty by a court or jury following a trial." Minn. Stat. § 609.095(b) (2016). Despite this statutory restraint, the district court refused to accept the couple's guilty pleas by relying on Minnesota Statute section 609.38. This reliance was misplaced. That statute applies to crimes "for which the Sentencing Guidelines establish a presumptive executed sentence." Minn. Stat. § 609.38 (2016). And it allows a "court [to] stay imposition or execution *of the sentence* if it finds that a stay is in the best interest of the complainant or the family unit and that the defendant is willing to participate in any necessary or appropriate treatment." *Id.* (emphasis added). Because section 609.38 allows the district court to stay execution of a sentence, not to refuse to accept a guilty plea in an attempt to essentially stay an adjudication, it does not on its face support the district court's action.

The district court looked past the face of the statute and saw in section 609.38 the opportunity to further what it believed to be the legislature’s underlying policy. This was error. The district court saw the statute’s directive to the district court, “[i]n determining an appropriate sentence when there is a family relationship between the complainant and the defendant,” to “be guided by the policy of preserving and strengthening the family unit whenever possible.” Minn. Stat. § 609.38. Neither the district court’s observation of legislative policy nor its admirable concern for the family’s wellbeing can justify its disregard for the constitutional restraint on its authority. The legislature has urged courts to look only to the express and unambiguous “letter” of the law rather than to disregard the letter “under the pretext of pursuing the spirit.” Minn. Stat. § 645.16 (2016). Focusing on the legislature’s concern for preserving families rather than on the legislature’s specific and limited expression of that concern in the form of sentencing decisions rather than adjudication decisions, the district court exercised authority that the statute never confers.

Nor did a clear abuse of prosecutorial discretion authorize the district court’s refusal to accept the guilty pleas. The district court “question[ed] whether or not there was a need for the prosecution in this case in the first instance.” But a judge’s “mere disagreement” with a prosecutor’s charging decision does not authorize the district court to refuse to adjudicate the defendant’s guilt. *See Martin*, 849 N.W.2d at 105. The district court’s misgivings about the prosecutor’s decision to charge Bailey and Yarbrough appear to reflect only the district court judge’s disagreement with the prosecutor’s decision. Although the district court also referred to “an abus[e of] prosecutorial discretion,” it never actually found that the prosecutor abused her prosecutorial discretion by charging the

couple. And we see no facts in the record that come close to supporting a finding that the prosecutor clearly abused her discretion by charging Bailey and Yarbrough with child neglect and child endangerment.

Reversed and remanded.