

**IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

MICHAEL LARECO DANIEL

DEFENDANT.

*
*
*
*
*
*
*

Case No.: SU-22-CR-0888-N

FILED IN OFFICE
CLERK OF SUPERIOR COURT
ATHENS-CLARKE COUNTY, GEORGIA

SU22CR0888-EWN

7/7/2023 3:40PM


ELISA ZARATE, Clerk

ORDER GRANTING MOTION TO VACATE NOLLE PROSEQUE

The State of Georgia by and through District Attorney Pro Tempore of the Western Judicial Circuit filed a Motion to Vacate the Order of Nolle Prosequi issued on April 18, 2023 in the above-styled case. After reviewing the record and considering the relevant law, the Court finds as follows:

This case was scheduled for trial the week of April 17, 2023. After selecting the jury, but before the jury members were sworn, Assistant District Attorney Robert Wilson presented a Motion to Nolle Prosequi, and the Court signed the Order entering a dismissal of the indictment. Shortly thereafter, the victim filed a motion requesting a hearing on Marsy's Law. During the hearing on May 19, 2023, District Attorney Deborah Gonzalez withdrew her office from the case. After she notified the Court and the Prosecuting Attorneys' Counsel ("PAC") of the disqualification, PAC appointed Randy McGinley to act as District Attorney Pro Tempore "to prosecute [this case] in the name of the State, for the time period beginning from

Labelled by copies to counsel WSM 7/7/23

investigation, arrest or Grand Jury proceedings, whichever comes first, until all appeals are exhausted...” Following his appointment, Mr. McGinley reviewed the evidence and record and filed the instant Motion to Vacate.

“During the term of court at which a judgment is rendered the court has power, on its own motion, to vacate the same for irregularity, or because it was improvidently or inadvertently entered...” *Buice v. State*, 272 Ga. 323, 324-325 (2000) (quoting *Jones v. Heilig Meyers*, 223 Ga. App. 277, 278 (1996)). “[A]n order of nolle prosequi may be vacated within the same term of court in which it was rendered in those instances where the State has demonstrated a meritorious reason and there is no prejudice to the accused which would constitute a manifest abuse of the trial court’s discretion in vacating the order.” *Id.* at 326.

In the Motion to Enter Nolle Prosequi, the State contends, “Although there is probable cause to indict the case, there is insufficient evidence to prove the defendant guilty beyond a reasonable doubt.” A review of the events leading up to the dismissal, however, shows that, for various reasons, the State was not prepared to move forward when the case was called for trial, and the State’s attention may have been focused on an upcoming murder trial. Thus, the evidence adduced suggests that the nolle prosequi was entered improvidently.

Finally, there is no prejudice to the defendant in vacating the nolle prosequi. Jeopardy has not attached and the case stands in the same procedural posture as

before the April 17, 2023 trial week. Moreover, the undersigned will recuse from this case to ensure a fair trial untainted by the evidence and pleadings put forth since the dismissal.

Therefore, the Motion to Vacate is HEREBY GRANTED. Prosecution in this case may be renewed. By effect of this order, the original indictment is reinstated. The Athens Clarke County Sherriff is directed to restore the original charges on which Defendant presently has no bond.

SO ORDERED this 7th day of July, 2023.



HONORABLE ERIC W. NORRIS
Chief Judge, Western Judicial Circuit