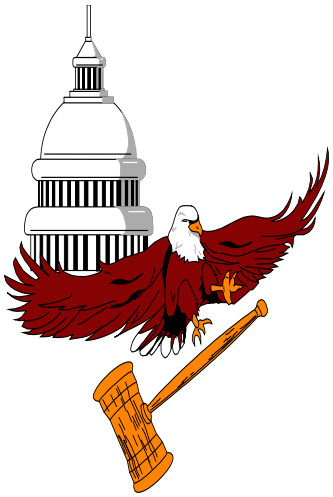

KLOPFER v. NORTH CAROLINA

SUPREME COURT OF THE UNITED STATES
386 U.S. 213
March 13, 1967
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OPINION: Chief Justice Warren…The question involved in this case is whether a State may indefinitely postpone prosecution on an indictment without stated justification over the objection of an accused who has been discharged from custody. It is presented in the context of an application of an unusual **North Carolina** criminal procedural device known as the 'nolle prosequi with leave.'

Under North Carolina criminal procedure, when the prosecuting attorney of a county, denominated the solicitor, determines that he does not desire to proceed further with a prosecution, he may take a nolle prosequi, thereby declaring 'that he will not, at that time, prosecute the suit further…The defendant…is discharged and permitted to go whither-so-ever he will, without entering into a recognizance to appear at any other time. But the taking of the nolle prosequi does not permanently terminate proceedings on the indictment. On the contrary, 'When a nolle prosequi is entered, the case may be restored to the trial docket when ordered by the judge upon the solicitor's application.' And if the solicitor petitions the court to nolle prosequi the case 'with leave,' the consent required to reinstate the prosecution at a future date is implied in the order 'and the solicitor (without further order) may have the case restored for trial.' Since the indictment is not discharged by either a nolle prosequi or nolle prosequi with leave, the statute of limitations remains tolled.

When the statute of limitations is "tolled," that means the deadline by which the State must file charges is not running to the detriment of the State.

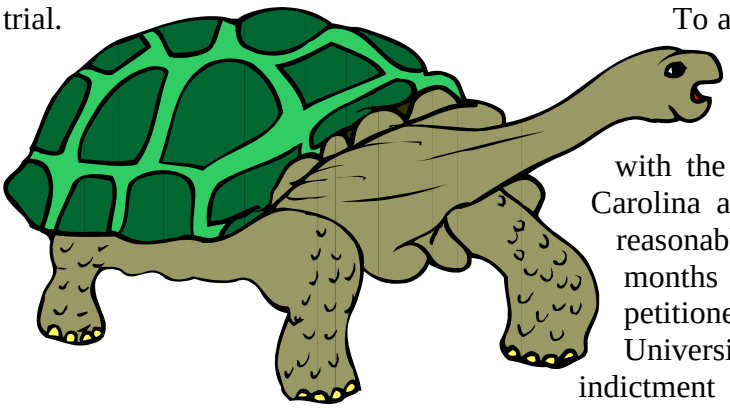
Although entry of a nolle prosequi is said to be 'usually and properly left to the discretion of the Solicitor,' early decisions indicate that the State was once aware that the trial judge would have to exercise control over the procedure to prevent oppression of defendants. But, in the present case, neither the court below nor the solicitor offers any reason why the case of petitioner should have been nolle prossed except for the suggestion of the Supreme Court that the solicitor, having tried the defendant once and having obtained only a mistrial, 'may have concluded that another go at it would not be worth the time and expense of another effort.'…

The consequence of this extraordinary criminal procedure is made apparent by the case before the Court. A defendant indicted for a misdemeanor may be denied an opportunity to exonerate himself in the discretion of the solicitor and held subject to trial, over his objection, throughout the unlimited period in which the solicitor may restore the case to the calendar. During that period, there is no means by which he can obtain a dismissal or have the case restored to the calendar for trial. In spite of this result, both the Supreme Court and the Attorney General state as a fact, and rely upon it for affirmance in this case, that this procedure as applied to the petitioner placed no limitations upon him, and was in no way violative of his rights. With this we cannot agree…

On February 24, 1964, petitioner was indicted by the grand jury of Orange County for the crime of criminal trespass, a misdemeanor punishable by fine and imprisonment in an amount and duration determined by the court in the exercise of its discretion. The bill charged that he entered a restaurant on January 3, 1964, and, 'after being ordered…to leave the said premises, wilfully and unlawfully refused to do so…Prosecution on the indictment began with admirable promptness…; but, when the jury failed to reach a verdict, the trial judge declared a mistrial and ordered the case continued for the term.

Several weeks prior to the April 1965 Criminal Session of the Superior Court, the State's solicitor informed petitioner of his intention to have a nolle prosequi with leave entered in the case. During the session, petitioner, through his attorney, **opposed** the entry of such an order in open court…In spite of petitioner's opposition, the court indicated that it would approve entry of a nolle prosequi with leave if requested to do so by the solicitor. But the solicitor declined to make a motion for a nolle prosequi with leave. Instead, he filed a motion with the court to continue the case for yet another term, which motion was granted.

The calendar for the August 1965 Criminal Session of the court did not list Klopfer's case for trial. To ascertain the status on his case, petitioner filed a motion expressing his desire to have the charge pending against him 'permanently concluded in accordance with the applicable laws of the State of North Carolina and of the United States as soon as is reasonably possible.' Noting that some 18 months had elapsed since the indictment, petitioner, a professor of zoology at Duke University, contended that the pendency of the indictment greatly interfered with his professional



activities and with his travel here and abroad. 'Wherefore,' the motion concluded, 'the defendant…petitions the Court to…ascertain the intention of the State in regard to the trial of said charge and as to when the defendant will be brought to trial.'

In response to the motion, the trial judge considered the status of petitioner's case in open court on Monday, August 9, 1965, at which time the solicitor moved the court that the State be permitted to take a nolle prosequi with leave. Even though no justification for the proposed entry was offered by the State, and, in spite of petitioner's objection to the order, the court granted the State's motion.

On appeal to the Supreme Court of North Carolina, petitioner contended that the entry of the nolle prosequi with leave order deprived him of his **right to a speedy trial** as required by the Sixth and Fourteenth Amendments to the United States Constitution. Although the Supreme Court acknowledged that entry of the nolle prosequi with leave did not permanently discharge the indictment, it nevertheless affirmed. Its opinion concludes:

> 'Without question a defendant has the right to a speedy trial, if there is to be a trial. However, we do not understand the defendant has the right to compel the State to prosecute him if the state's prosecutor, in his discretion and with the court's approval, elects to take a nolle prosequi. In this case one jury seems to have been unable to agree. The solicitor may have concluded that another go at it would not be worth the time and expense of another effort.
>
> 'In this case the solicitor and the court, in entering the nolle prosequi with leave followed the customary procedure in such cases. Their discretion is not reviewable under the facts disclosed by this record. The order is affirmed.'

The North Carolina Supreme Court's conclusion—that the right to a speedy trial does not afford affirmative protection against an unjustified postponement of trial for an accused discharged from custody—has been explicitly rejected by every other state court which has considered the question. That conclusion has also been implicitly rejected by the numerous courts which have held that a nolle prossed indictment may not be reinstated at a subsequent term.

We, too, believe that the position taken by the court below was erroneous. The petitioner is not relieved of the limitations placed upon his liberty by this prosecution merely because its suspension permits him to go 'whithersoever he will.' The pendency of the indictment may subject him to **public scorn** and **deprive him of employment**, and almost certainly will force curtailment of his speech, associations and participation in unpopular causes. By indefinitely **prolonging** this oppression, as well as the 'anxiety and concern accompanying public accusation,' **the criminal procedure condoned in this case by the Supreme Court of North Carolina clearly denies the petitioner the right to a speedy trial which we hold is guaranteed to him by the Sixth Amendment of the Constitution of the United States…**

That this right was considered fundamental at this early period in our history is evidenced by its guarantee in the constitutions of several of the States of the new nation as well as by its prominent position in the Sixth Amendment. Today, each of the 50 States guarantees the right to

a speedy trial to its citizens. The history of the right to a speedy trial and its reception in this country clearly establish that it is one of the most basic rights preserved by our Constitution.

For the reasons stated above, the judgment must be reversed and remanded for proceedings not inconsistent with the opinion of the Court. It is so ordered…

CONCURRENCE: Justice Stewart…[Not Provided.]

CONCURRENCE: Justice Harlan…[Not Provided.]