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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2026**

State of Minnesota,
Appellant,

vs.

Samantha Marie Hall,
Respondent.

**Filed May 5, 2009
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CR-08-28068

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

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James Kamin, Hennepin County Acting Chief Public Defender, Paul J. Maravigli, Michelle Monteiro, Assistant Public Defenders, 701 4th Avenue South, Suite 1400, Minneapolis, MN 55415 (for respondent)

Considered and decided by Ross, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this pretrial appeal, the state challenges the district court's dismissal of the misdemeanor charge "with prejudice" based on the state's failure to issue a formal complaint after respondent's demand. The state argues that a complaint demand must be made before the entry of a plea and not after arraignment. Because the rules of criminal procedure do not prohibit a defendant who is charged with a misdemeanor from demanding a formal complaint after entry of a plea or after arraignment, we affirm.

FACTS

Respondent Samantha Marie Hall was tab-charged on May 22, 2008, for misdemeanor underage drinking and driving. Respondent's arraignment took place on July 18, 2008. The district court record indicates that a public defender was appointed to represent respondent, respondent pleaded not guilty, and a pretrial hearing was scheduled for August 20, 2008.¹

At respondent's request, the hearing scheduled for August 20, 2008, was continued. The next scheduled hearing was to occur on August 29, 2008. That hearing was continued to November 17, 2008, which was also the date for respondent's jury trial. At the state's request, the pretrial hearing and jury trial were rescheduled for November 13, 2008.

¹ Respondent contends that she never entered a "formal not guilty plea" on the record. We do not reach the merits of this issue.

On September 19, 2008, respondent's counsel sent the state a written demand for, among other things, a formal complaint pursuant to Minn. R. Crim. P. 4.02, subd. 5(3), and a speedy trial pursuant to Minn. R. Crim. P. 6.06. The state concedes that it did not issue a formal complaint.

Respondent did not attend the November 13 proceeding, but her attorney was present. Respondent's counsel argued that the case could not proceed because the state had not issued a formal complaint pursuant to Minn. R. Crim. P. 4.02, subd. 5(3), and requested that the district court bar further prosecution. The state argued that dismissal "with prejudice" was not mandated by the rules of criminal procedure.

The district court stated its decision:

I've reviewed the rules, and while the language about requesting a complaint appears in Rule 4 talking about the procedure upon arrest, but it does not, in reading over the rules this morning, actually with counsel, I don't see anything which prohibits the defense [from] bringing the motion. It was certainly brought in sufficient time before the trial date for the State to have responded.

So I am going to grant the defense request. And based on the argument set forth by the defense, dismiss the matter with prejudice.

According to the transcript, the district court agreed to stay the order for five days.² The state appeals the dismissal.

² The file does not include a written order. We therefore rely on the transcript of the November 13 proceeding. We further note that we have not considered any material presented to us that was not part of the district court record.

DECISION

To appeal a pretrial order, “the state must ‘clearly and unequivocally’ show both that the [district] court’s order will have a ‘critical impact’ on the state’s ability to prosecute the defendant successfully and that the order constituted error.” *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995) (quoting *State v. Kim*, 398 N.W.2d 544, 547 (Minn. 1987)); *see also* Minn. R. Crim. P. 28.04, subd. 2(2). The critical impact of the district court’s order “must be first determined before deciding” whether the order was made in error. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998). Here, because the case was dismissed,³ we conclude that the critical-impact requirement has been met.

The state argues that a formal complaint must be demanded before a misdemeanor defendant enters a plea and that a demand cannot be made after the arraignment.⁴ “The interpretation of the rules of criminal procedure is a question of law subject to de novo review.” *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005). We proceed under the assumption that respondent entered a plea of not guilty at her arraignment.

Minn. R. Crim. P. 4.02, subd. 5(3), provides in relevant part:

[I]n a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint shall

³ We note that “appeals from outright dismissals are prohibited in those cases where the prosecution may pursue the matter anew.” *City of St. Paul v. Halvorson*, 301 Minn. 48, 52, 221 N.W.2d 535, 538 (1974); *see also* Minn. R. Crim. P. 17.06, subd. 4 (providing that in misdemeanor cases “dismissed for failure to file a timely complaint within the time limits as provided by Rule 4.02 subd. 5(3), further prosecution shall not be barred unless additionally a judge or judicial officer of the court has so ordered”). The parties do not dispute that the district court barred further prosecution of this matter.

⁴ Our research has yielded no Minnesota caselaw addressing whether a complaint may be demanded after a misdemeanor arraignment or entry of a plea.

be made and filed . . . within thirty (30) days of such demand if the defendant is not in custody. If no valid complaint has been made and filed within the time required by this rule, the defendant shall be discharged, the proposed complaint, if any, and any supporting papers shall not be filed, and no record shall be made of the proceedings. . . . Upon the filing of a valid complaint in a misdemeanor case, the defendant shall be arraigned.

See also State v. Loeffler, 626 N.W.2d 424, 425 (Minn. App. 2001) (“The accused in a misdemeanor case is entitled to a formal complaint within 30 days after a demand by the defendant.”). The state argues that this rule “plainly requires a defendant to demand a complaint at or before the arraignment.” We disagree. While rule 4.02, subdivision 5(3), contemplates a demand for a formal complaint before arraignment, it does not prohibit a demand after arraignment or entry of a plea.

Minn. R. Crim. P. 5.01(e) provides that when a defendant is arraigned for a misdemeanor offense, she shall be advised that she “may either plead guilty or not guilty, or demand a complaint prior to entering a plea.” The state argues that Minn. R. Crim. P. 5.01(e) gives a defendant only three alternatives: (1) to plead guilty; (2) to plead not guilty; or (3) to demand the complaint. As a result, the state contends that the rule precludes a defendant from demanding a complaint after entering a plea. We disagree with the state’s strict interpretation. The rule allows a defendant to demand a complaint before pleading, but it does not prohibit a defendant from making a demand after entry of a plea. Furthermore, the state concedes that a defendant would be permitted to plead not guilty at arraignment and later change her plea to guilty. But the state offers no reason

why rule 5.01(e) would prohibit such a defendant from demanding a formal complaint before entering a post-arraignment guilty plea.

We therefore conclude that the plain language of rules 5.01(e) and 4.02, subdivision 5(3), does not prohibit a defendant from demanding a formal misdemeanor complaint after entry of a plea or after arraignment.⁵

Affirmed.

⁵ We note that respondent's formal complaint demand was made well in advance of trial.