

Ashland, OH 44805

Gwin, P.J.

{¶1} The State of Ohio appeals a judgment of the Court of Common Pleas of Ashland County, Ohio, which dismissed counts one and three of the indictment against defendant-appellee Robert T. Daugherty. Appellant assigns a single error to the trial court:

{¶2} “BY DISMISSING THE INDICTMENT AGAINST APPELLEE ON REMAND, THE TRIAL COURT FAILED TO FOLLOW THE LAW OF THE CASE, AND THEREFORE, ABUSED ITS DISCRETION.”

{¶3} On May 23, 2000, the Ashland County Grand Jury indicted appellee on two counts of illegal processing of drug documents in violation of R.C. 2925.23, and one count of possession of criminal tools in violation of R.C. 2923.24. Count one charged appellee attempted to have a forged prescription for Vicodin filled at a CVS Pharmacy. Count two charged on March 2, March 23, April 13, and April 28, 2000, appellee successfully had four other forged prescriptions filled at a Rite-Aid Pharmacy. Over the objection of the prosecutor, the trial court amended count two by striking the dates after March 23, 2000. Appellant argues the court’s purpose in doing so was to render appellee eligible for treatment in lieu of conviction, because the statute was amended effective March 23, 2000, to make anyone having a prior felony conviction ineligible for treatment in lieu of conviction. The trial court granted appellee’s motion for treatment in lieu of conviction on count two, and held counts one and three in abeyance.

{¶4} On August 8, 2003, appellee filed his motion to dismiss counts one and three of the indictment, which were still pending. Appellee’s memorandum in support

alleged he had successfully completed both in-patient and after-care treatments, and had been released from treatment. Appellee urged dismissal of the remaining counts would allow him to continue his profession as a corporate pilot. To prosecute him on the remaining counts, would cost him his employment and his ability to support his family, and would constitute a punishment greatly outweighing the crime. The State opposed the motion.

{¶5} On August 28, 2003, the trial court sustained appellee's motion to dismiss, and the State of Ohio appealed this decision to us in Ashland Appellate No. 03COA050. This court reversed the common pleas decision, and ordered counts one and three reinstated.

{¶6} On remand, the trial court entered a judgment on April 27, 2004. The court's judgment entry found our remand was based upon our decision the trial court had not applied the proper legal standard to its prior dismissal. The court found its original reasoning was that no useful purpose could be served by prosecuting appellee on the remaining charges. Our opinion cited *State v. Busch* (1996), 76 Ohio St. 3d 613 and Crim. R. 48 (B) as holding a trial court has discretion to dismiss an indictment over the objection of the State if a dismissal serves the interest of justice.

{¶7} On remand, the trial court applied the *Busch* standard and found a dismissal of counts one and three of the indictment serves the interest of justice, and again ordered counts one and three dismissed. The State brings the matter back before us.

{¶8} We find the trial court misconstrued our prior opinion. In our opinion of April 19, 2004, this court found appellee was eligible for treatment in lieu of conviction on only

one of three charges in the indictment. Counts one and three of the indictment remained pending even after appellee successfully completed the treatment on count two. This court cited Crim. R. 48 and *Busch*, supra, as requiring a trial court which dismisses an indictment over the objection of the State to place on the record its findings of fact and reasons for dismissal. We found the court's determination no useful purpose would be served by further prosecution was an insufficient basis for dismissing the two remaining counts. We concluded the court abused its discretion in dismissing the two counts.

{¶9} The trial court's judgment entry of April 27, 2004, merely states the legal standard a court must apply in dismissing an indictment over the objection of the State. The trial court has not stated on the record its findings of fact and reasons why dismissing the remaining counts of the indictment serves the interest of justice.

{¶10} We find the trial court has still not stated a sufficient basis for dismissal of the remaining counts of the indictment. Accordingly, we conclude the trial court again abused its discretion in dismissing counts one and three of the indictment.

{¶11} The assignment of error is sustained.

{¶12} For the foregoing reasons, the judgment of the Court of Common Pleas of Ashland County, Ohio, is reversed, and we reinstate counts one and three of the indictment. The matter is remanded to the Ashland County Common Pleas Court for further proceedings in accord with law and consistent with this opinion.

By Gwin, P.J.,
Hoffman, J., and
Boggins, J., concur

JUDGES