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2026 VT 55

No. 25-AP-254

State of Vermont — Supreme Court

v. — On Appeal from Superior Court, Bennington Unit, Criminal Division

Deven Moffitt — September Term, 2026

Kerry Ann McDonald-Cady, J.

Jared Bianchi, Deputy State's Attorney, Bennington, for Plaintiff-Appellant.

Matthew Valerio, Defender General, and Rebecca Turner, Appellate Defender, Montpelier, for Defendant-Appellee.

PRESENT: Reiber, C.J., Eaton, Waples and Nolan, JJ., and Tomasi, Supr. J., Specially Assigned

¶ 1. **WAPLES, J.** In June 2022, defendant Deven Moffitt was charged with one count of second-degree murder for the death of Jessica Hildenbrandt. The week before defendant's trial was scheduled to begin, the State moved for a continuance because it had neglected to obtain confirmatory DNA testing of Hildenbrandt's remains. The trial court denied the motion. The State then dismissed the prosecution but stated publicly that it intended to refile the charge once it obtained the DNA testing results. At defendant's request, the trial court dismissed the case with prejudice, concluding that the State was attempting to grant itself the continuance that the court had denied. The State appeals, arguing that the trial court lacked jurisdiction to convert the dismissal into one with prejudice or, alternatively, that the court should have considered the factors set forth in State v. Sauve, 164 Vt. 134, 666 A.2d 1164 (1995), before deciding defendant's motion.

We conclude that the court had authority to impose a sanction up to and including dismissal with prejudice, but that it should have considered the Sauve factors before permanently ending the prosecution. We therefore reverse and remand for further proceedings consistent with this opinion.

I. Facts

¶ 2. According to the affidavit of probable cause, in September 2019 a member of the public reported to Vermont State Police that he had found what appeared to be a human jawbone in a gravel pit near Somerset Road in Searsburg. Police searched the area and discovered a shallow grave that had been disturbed by animals. The grave contained a large amount of human hair still attached to a scalp as well as fingernails, teeth, and jewelry. In June 2020, the Vermont Forensic Laboratory determined that the DNA profile recovered from the remains matched that of Hildenbrandt, who had last been heard from in July 2019. Defendant and Hildenbrandt were dating prior to her disappearance and Hildenbrandt told various individuals, including police, that she was fearful of defendant. In the spring of 2019, defendant made threatening phone calls to Hildenbrandt from the facility where he was incarcerated. Police interviewed numerous associates of defendant, who reported that defendant had made statements indicating that he killed Hildenbrandt and buried her in a shallow grave.

¶ 3. Defendant was charged with one count of second-degree murder in June 2022 and held without bail. While the case was pending, defendant was charged with federal drug crimes and placed in federal custody.

¶ 4. The matter was initially set for a ten-day trial in May 2024 but was continued at the State's request because defendant's federal trial was set to occur at the same time. The court rescheduled the trial for November 2024. The State's attorney moved for the court to set the trial for October 2024 instead due to his scheduled vacation. Defense counsel responded that he was unavailable for trial in October and argued that the trial should take place after defendant's federal

sentencing in November 2024. The court rescheduled the trial for January 9-24, 2025, with jury draw to begin on January 7.

¶ 5. In November 2024, defense counsel moved to continue the trial because his investigator would be out of the country for the month of January and he needed time to investigate a new witness recently disclosed by the State. He also asserted that the parties were negotiating a global resolution to defendant's state and federal charges. The court denied the motion, concluding that these issues did not constitute good cause to continue the trial.

¶ 6. On December 31, 2024, one week before jury draw was scheduled to begin, the State moved to continue the trial because it had not performed what it considered a necessary forensic test. At a hearing on January 2, 2025, the prosecutor explained that Hildenbrandt's remains "were identified through what they call a CODIS hit several months ago," but he believed the result would likely be inadmissible hearsay and therefore confirmatory DNA testing was needed.[1] The prosecutor informed the court that the State needed to obtain DNA samples from Hildenbrandt's parents and that the confirmatory test would take two weeks. Defendant objected to continuing the trial and to receiving the results in the middle of trial.

¶ 7. On January 3, 2025, the court issued an order denying the State's request. The court found that the State's failure to conduct critical DNA testing was not a reasonable basis for continuing the trial because it was not due to circumstances outside of the State's control. The court noted that the State knew or should have known that it needed to perform confirmatory testing since the information was filed in June 2022.

[1] The prosecutor was presumably referring to "the Combined DNA Index System (CODIS), the national DNA repository maintained by the Federal Bureau of Investigation." State v. Medina, 2014 VT 69, ¶ 6, 197 Vt. 63, 102 A.3d 661; see C.S. Fishman & A.T. McKenna, 7 Jones on Evidence § 60:7 (7th ed. 2025) (explaining that fact of CODIS match may not be admissible at trial).

¶ 8. On January 6, 2025, the day before trial was scheduled to begin, the court held an emergency hearing to discuss a message the court had received over the weekend from the U.S. Attorney's Office, which stated that it would not allow defendant to be transported to the state court for trial.[2] The court informed the attorneys that it would communicate again with the U.S. Attorney's Office to confirm defendant's availability because the trial could not take place without him. After the hearing, the court received notice that defendant's federal defense attorney had filed an emergency motion in federal court seeking enforcement of the state court writ. The court set a status conference for 4 p.m. that afternoon to find out if the motion had been granted.

¶ 9. The federal court granted the motion at 11:49 a.m. and ordered defendant to appear in state court for trial. Defense counsel shared the order with the State's attorney. At 2:22 p.m., the State filed a notice that it was dismissing the second-degree murder charge without prejudice. The court then canceled the status conference and the trial.

¶ 10. On January 10, 2026, defendant moved to dismiss the second-degree murder charge with prejudice. Defendant asserted that on January 8, a local newspaper had published an article about the case in which the Bennington County State's Attorney was quoted as saying that she would refile the second-degree murder charge if the DNA testing confirmed the identification. Defendant argued that this showed that the State had dismissed the prosecution to circumvent the trial court's denial of its motion to continue the trial, and the case should therefore be dismissed with prejudice under State v. Jones, 157 Vt. 553, 601 A.2d 502 (1991). The State opposed the motion, arguing that Jones was distinguishable and that the circumstances did not support dismissal with prejudice.

¶ 11. The court held a hearing on the motion in April 2025 and issued a decision dismissing the case with prejudice in July 2025. The court explained that Vermont Rule of

[2] The record shows that the U.S. Attorney's Office had previously complied with orders to make defendant available for video hearings in the state court. It is unclear why the Office refused to comply with the order to transport defendant for his murder trial.

Criminal Procedure 48(b)(2) permitted it to dismiss a criminal case with prejudice over the State's objection if it concluded that dismissal would "serve the ends of justice and the effective administration of the court's business." It noted that in State v. Sauve, 164 Vt. at 140-41, 666 A.2d at 1168, this Court had identified a list of factors for courts to consider in weighing whether to dismiss a case with prejudice. However, the court reasoned that the Sauve factors only applied to pending prosecutions and were inapplicable here because the State had already dismissed the case. The court concluded that under State v. Jones, 157 Vt. at 557, 601 A.2d at 504, the relevant question was whether the State had dismissed the case for the purpose of obtaining the continuance the court had denied. The court determined that the timing of events leading up to the State's dismissal notice, coupled with the State's Attorney's public statement that she intended to refile the charge once the DNA testing confirmed the victim's identity, showed that the State had misused its discretionary dismissal power to give itself the continuance that the court had denied. The court further determined that the State's precipitous dismissal of the case deprived the court of the opportunity to warn the State of the potential consequence of dismissal with prejudice. It therefore granted defendant's motion. This appeal followed.

II. Analysis

¶ 12. Vermont Rule of Criminal Procedure 48(b)(2) permits the trial court to dismiss a prosecution with prejudice if it "concludes that such dismissal will serve the ends of justice and the effective administration of the court's business." The rule codifies "the courts' inherent powers to dismiss a prosecution with prejudice." Reporter's Notes—1989 Amendment, V.R.Cr.P. 48. Because dismissal of a criminal prosecution implicates separation-of-powers principles, and because the State, victims, and the public have an interest in prosecuting individuals charged with crimes, "dismissal with prejudice under Rule 48(b)(2) over the objection of the prosecutor is appropriate only in exceptional cases where fundamental fairness compels such a result." State v. Hanlon, 164 Vt. 125, 128, 665 A.2d 603, 605 (1995); see Sauve, 164 Vt. at 140, 142, 666 A.2d at

1167, 1169 (stating same). We review a court's decision to dismiss a prosecution under Rule 48(b)(2) for abuse of discretion. State v. Gillard, 2013 VT 108, ¶ 27, 195 Vt. 259, 88 A.3d 389.

¶ 13. The State's first argument on appeal is that the court lacked subject-matter jurisdiction to decide defendant's motion once the State dismissed the case. Subject-matter jurisdiction is an issue that "need not be preserved and can be raised for the first time on appeal." State v. Washburn, 2024 VT 45, ¶ 10, 219 Vt. 552, 325 A.3d 136 (quotation omitted). However, "an issue is one of subject-matter jurisdiction . . . only where a party disputes the power of a court to hear and determine a general class or category of cases." Id. ¶ 11 (quotation omitted). "[W]hen a court has jurisdiction over a general category of case, the fact that the court errs in exercising its jurisdiction in a particular case within that general category is generally not sufficient to make the resulting judgment void for lack of subject-matter jurisdiction." In re B.C., 169 Vt. 1, 7, 726 A.2d 45, 50 (1999) (quotation omitted), abrogated in part on other grounds by In re C.P., 2012 VT 100, 193 Vt. 29, 71 A.3d 1142. The State's claim on appeal does not implicate subject-matter jurisdiction because the criminal division undisputedly had authority to hear and determine the second-degree murder charge in this case. See 4 V.S.A. § 32(a) ("The Criminal Division shall have jurisdiction to try, render judgment, and pass sentence in prosecutions for felonies and misdemeanors."); see also In re C.P., 2012 VT 100, ¶ 19 (recognizing court had subject-matter jurisdiction where power to hear general category of case was granted by statute).

¶ 14. Rather, the State is essentially arguing that the court exceeded its authority by converting the dismissal to one with prejudice in the absence of a pending case.[3] We conclude that, under our decision in State v. Jones and the trial court's inherent authority, the court had the

[3] The State's position on this issue below was somewhat muddled. While it suggested in its memorandum opposing defendant's motion that the court lacked authority to dismiss with prejudice where there was no pending proceeding, the State's attorney opined at the April 2025 hearing that the court had discretion to dismiss the case with prejudice under Jones, though it was not required to do so.

power to impose an appropriate sanction where the record showed that the State's dismissal was an improper effort to obtain a continuance that the State had been denied, as occurred here.

¶ 15. In Jones, the defendant was charged with selling cocaine to an undercover informant. At a status conference the day before jury draw, the State sought to continue the trial because a police-officer witness was not available. The court concluded that other witnesses could present the same evidence as the officer and denied the State's motion. The State indicated that it could not proceed without the officer's testimony and filed a notice of dismissal without prejudice. The defendant orally moved for dismissal with prejudice, which the court initially denied. As the defendant left the courtroom, she was cited on a refiled charge. The defendant refiled her motion later that day. The court granted the motion under Rule 48(b)(2), finding that dismissal with prejudice would serve the ends of justice and ensure effective administration of court business because the State's dismissal was motivated entirely by its desire to obtain a continuance that had been denied. 157 Vt. at 555, 601 A.2d at 503.

¶ 16. The State appealed to this Court, arguing that its dismissal under Rule 48(a) deprived the court of jurisdiction to take further action. We rejected this argument as "overly simplistic and rigid." Id. at 556, 601 A.2d at 504. We explained that although the State had unilateral authority to dismiss the case prior to trial, and the trial court could not reject the dismissal or impose terms on it, the issue was "not whether the case is dismissed but rather the consequence of the dismissal." Id. at 557, 601 A.2d at 504. We concluded that "[i]t is consistent with the wording of the rule and the nol pros[4] power of prosecutors to hold that the court's power to dismiss with prejudice extends also to cases dismissed by the State." Id. . We noted that dismissal with prejudice should be used "sparingly," and ordinarily required forewarning. Id. at 559, 601 A.2d

[4] "Nol pros" means "nolle prosequi," which was the common-law rule permitting prosecutors to voluntarily dismiss a prosecution. See State v. Villar, 2017 VT 109, ¶ 10 n.1, 206 Vt. 236, 180 A.3d 588. The term is sometimes used as a shorthand for the procedure now contained within Vermont Rule of Criminal Procedure 48(a). See, e.g., Jones, 157 Vt. at 557, 601 A.2d at 504.

at 505 (quotation omitted). We ultimately affirmed the court's decision to dismiss with prejudice because the State's Rule 48(a) dismissal was clearly motivated by its inability to proceed to trial and a forewarning would not have changed the result.[5] Id. at 560, 601 A.2d at 505-06.

¶ 17. In Jones, as here, the trial court dismissed the original case with prejudice; it did not purport to dismiss the newly filed case, although that was the practical effect of its ruling. See id. at 558, 601 A.2d at 504 ("In effect, the trial court, in terminating the first proceeding with prejudice, acted to dismiss the refiled case."). Jones made clear that the court retained authority to convert a "nol pros" to a dismissal with prejudice if it found that the State had misused its dismissal power to obtain a continuance and did not limit that power to situations where the case had already been refiled. See id. at 557, 601 A.2d at 504 (stating court has power to convert Rule 48(a) dismissal to dismissal with prejudice under Rule 48(b), and stating that sanction should be in original case); State v. Seagroves, 161 Vt. 309, 311, 637 A.2d 1379, 1380 (1993) (explaining that prior to Jones, State could continue case by dismissing without prejudice, but "Jones limited this practice by holding that, when the State goes too far and abuses its dismissal prerogative, it may have to forego prosecution altogether"). The trial court could not, and did not, stop the State from dismissing the case or impose any terms on the dismissal, but it could decide the consequences of that dismissal. Jones, 157 Vt. at 557, 601 A.2d at 504. This power was derived from the court's authority to manage its docket, "which includes taking appropriate action when prosecutors engage in sham procedures." Id. at 559, 601 A.2d at 505 (quoting State v. Ericksen, 607 P.2d 666, 669 (N.M. Ct. App. 1980)); see State v. Cabrera, 127 Vt. 193, 196, 243 A.2d 784, 787 (1968) (stating that this Court does not condone use of nolle prosequi to delay trial); cf. Chambers v. NASCO, Inc., 501 U.S. 32, 43-45 (1991) (explaining that courts have implied powers including "the ability to fashion an appropriate sanction for conduct which abuses the judicial

[5] The State does not argue in this case that it lacked forewarning, and as the trial court noted, the timeline of events preceding dismissal indicates that the court had no opportunity to issue such a warning.

process"); United States v. Correia, 531 F.2d 1095, 1098 (1st Cir. 1976) ("It is axiomatic that the district court has inherent power to control its own docket to ensure that cases proceed before it in a timely and orderly fashion.").

¶ 18. The State relies heavily on State v. Quinn, an unpublished decision by a three-Justice panel, to support its argument that the court lacked jurisdiction to consider defendant's motion. No. 2003-027, 2003 WL 25745101 (Vt. July 1, 2003) (unpub. mem.), https://www.vtcourts.gov/sites/default/files/documents/eo03027.pdf. In Quinn, we affirmed the trial court's denial of the defendant's motion to dismiss a case with prejudice where he filed the motion three years after the State dismissed the charge, reasoning briefly that "[t]here was . . . no proceeding to dismiss when defendant filed his motion." Id. at *1. Three-Justice panel decisions "may be cited for their 'persuasive authority' but are 'not . . . considered as controlling precedent.' " State v. Carrolton, 2011 VT 131, ¶ 10 n.*, 191 Vt. 68, 39 A.3d 705 (quoting V.R.A.P. 33.1(d)). Moreover, Quinn did not involve a claim that the State had abused its authority under Rule 48(a), and it did not refer to our holding in Jones. Accordingly, Quinn does not alter our conclusion here.[6]

¶ 19. The State claims that Jones is distinguishable because there, the defendant immediately moved for dismissal with prejudice at the same pretrial hearing during which the State dismissed the case, while here defendant's motion was filed four days after dismissal. Thus, the State claims, defendant's motion was untimely. This argument is unpersuasive for two reasons.

[6] The State also cites In re Crepeault, 125 Vt. 360, 215 A.2d 524 (1965); State v. Robinson, 124 Vt. 225, 204 A.2d 163 (1964); and State v. Van Ness, 109 Vt. 392, 199 A. 759 (1938), in support of its claim that its dismissal deprived the court of authority to act. None of these cases involve a claim that the State acted in bad faith in exercising its dismissal power, and all were decided prior to Jones. Accordingly, they do not alter our conclusion that the trial court may, in rare circumstances, convert the State's dismissal to one with prejudice. We note that in a more recent three-Justice panel decision, we affirmed the trial court's denial of the defendant's motion to dismiss his domestic-assault charge with prejudice after the State dismissed the prosecution under Rule 48(a), reasoning that unlike in Jones, the State had not abused its dismissal power. State v. Warner, No. 22-AP-016, 2022 WL 2763105, at *2 (Vt. July 14, 2022) (unpub. mem.), https://www.vtcourts.gov/sites/default/files/documents/eo22-016.pdf. Although the record in Warner shows that the defendant's motion was filed eight days after the State dismissed the case, we did not rely on this fact as a basis to uphold the denial.

First, as explained above, the operative motion in Jones was also filed after the State dismissed that case. 157 Vt. at 555, 601 A.2d at 503. Second, the trial court here found that defendant's request was filed within a reasonable time, and we conclude that it acted within its discretion in so concluding. The State dismissed the second-degree murder charge before a hearing could take place, so defendant did not have an immediate opportunity to object. Moreover, it was not until the State subsequently told the press that it intended to refile the charges if the DNA evidence was favorable that defendant arguably had a good-faith basis to claim that the dismissal had been an improper effort to obtain the continuance the court had denied. The cases cited by the State in support of its argument that defendant's motion was untimely are inapposite because neither involved a claim that the State had dismissed the original prosecution to obtain a continuance to which it was not entitled. See Seagroves, 161 Vt. at 310-11, 637 A.2d at 1380 (affirming denial of motion to convert dismissal to one with prejudice filed shortly after Jones decision where record did not show that State abused dismissal power, State previously had power to dismiss to obtain continuance, and defendant waited eighteen months to file motion); Quinn, 2003 WL 25745101, at *1 (affirming denial of motion to convert dismissal to one with prejudice filed three years after State dismissed original prosecution).

¶ 20. The State further argues that the plain language of Rule 48 prohibited the court from dismissing the case without prejudice where there was no pending proceeding. The State does not identify how it preserved this argument, which was not raised in its opposition to defendant's motion or at the hearing. "We have repeatedly stressed that we will not decide issues that have not been properly preserved for appeal." State v. Gurung, 2025 VT 52, ¶ 4, ___ Vt. ___, 346 A.3d 459 (quotation omitted); State v. Ben-Mont Corp., 163 Vt. 53, 61, 652 A.2d 1004, 1009 (1994) ("To properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it."). In any event, the State's argument fails because as explained above, we concluded in Jones and reiterate here that the trial

court retains authority to dismiss a case with prejudice under Rule 48(b)(2) if the State abuses its authority to dismiss under Rule 48(a). See Jones, 157 Vt. at 559, 601 A.2d at 505 (rejecting argument that trial court had no authority to act once prosecutor dismissed case).

¶ 21. Having determined that the trial court had authority to dismiss the prosecution with prejudice, we turn to the State's argument that it abused its discretion in doing so. "Generally, trial courts may dismiss prosecutions in furtherance of justice against the wishes of the prosecutor only in rare and unusual cases when compelling circumstances require such a result to assure fundamental fairness in the administration of justice." Sauve, 164 Vt. at 140, 666 A.2d at 1167. In Sauve, the trial court dismissed sexual-assault charges against the defendant after the jury failed to reach a verdict following a five-day trial. We held that although the trial court had discretion to dismiss criminal prosecutions in the furtherance of justice under Rule 48(b)(2), this discretion was necessarily limited and should be exercised only after considering the following factors:

> (1) the seriousness and circumstances of the charged offense; (2) the extent of harm resulting from the offense; (3) the evidence of guilt and its admissibility at trial; (4) the likelihood of new or additional evidence at trial or retrial; (5) the defendant's history, character, and condition; (6) the length of any pretrial incarceration or any incarceration for related or similar offenses; (7) the purpose and effect of imposing a sentence authorized by the offense; (8) the impact of dismissal on public confidence in the judicial system or on the safety and welfare of the community in the event the defendant is guilty; (9) the existence of any misconduct by law enforcement personnel in the investigation, arrest, or prosecution of the defendant; (10) the existence of any prejudice to defendant as the result of the passage of time; (11) the attitude of the complainant or victim with respect to dismissal of the case; and (12) any other relevant fact indicating that judgment of conviction would serve no useful purpose.

Id. at 140-41, 666 A.2d at 1168. We concluded that these factors required reversal of the trial court's decision to dismiss the charges, reasoning that the trial court's concerns about the effect of retrial on the victim, the fact that the evidence would be the same at a second trial, and the age of the evidence were outweighed by the seriousness of the charges, the absence of prosecutorial misconduct, and the absence of prejudice to the defendant. Id. at 143-45, 666 A.2d at 1169-70.

¶ 22. Here, the trial court concluded that the Sauve factors were not applicable because the State had already dismissed the charge.[7] This was a legal error, and therefore an abuse of discretion. See Spooner v. Town of Topsham, 2010 VT 71, ¶ 7, 188 Vt. 293, 9 A.3d 672 ("When a trial court commits an error of law, it is an abuse of discretion."). Although this case was in a different posture than that of Sauve when defendant filed his motion, in both cases the court acted under Rule 48(b)(2). Sauve made clear that in deciding a Rule 48(b)(2) motion, the court is required "to look at all relevant factors against a general standard of fundamental fairness and substantial justice." State v. Fitzpatrick, 172 Vt. 111, 118, 772 A.2d 1093, 1099 (2001) (quotation omitted). Nearly all of the factors we identified in Sauve were relevant to defendant's dismissal motion, and we see no reason why the court should not consider these factors in deciding whether to exercise its discretion to dismiss a case with prejudice in contexts other than a mistrial. See, e.g., State v. Hanlon, 164 Vt. 125, 128, 665 A.2d 603, 605 (1995) (explaining that Sauve factors would apply to defendant's pretrial motion to dismiss sexual-assault charges on ground that defendant had been convicted of similar charge in Massachusetts and sentenced to three consecutive life terms); In re W.C., No. 2019-191, 2020 WL 1695045, at *5 (Vt. Apr. 3, 2020) (unpub. mem.), https://www.vtcourts.gov/sites/default/files/documents/eo19-191.pdf (affirming trial court's application of Sauve factors to deny juvenile's request to dismiss delinquency petition). The court therefore abused its discretion by declining to consider the Sauve factors. State v. Caballero, 2022 VT 25, ¶ 30, 216 Vt. 406, 279 A.3d 676 (holding trial court abused discretion when it applied wrong legal standard).

¶ 23. The State argues that we should reverse on the ground that, as applied to this case, the Sauve factors do not support a dismissal with prejudice. Because the trial court declined to consider the factors at all, this Court "cannot make assumptions about how the trial court would

[7] We did not analyze the Sauve factors in Jones because Sauve was decided four years later. Jones did, however, state that it was following Rule 48(b), from which the Sauve factors flow. 157 Vt. at 555, 601 A.2d at 503.

have exercised its discretion if it had concluded that it had such discretion." Mongeon Bay Props., LLC v. Malletts Bay Homeowner's Ass'n, Inc., 2017 VT 27, ¶ 17, 204 Vt. 351, 168 A.3d 463; see also Fitzpatrick, 172 Vt. at 116, 772 A.2d at 1097 (explaining that trial court's assessment of Sauve factors is reviewed for abuse of discretion). Rather, "[w]here the trial court declines to exercise its discretion in the mistaken belief that it has no discretion, the proper remedy is a remand." Mongeon Bay Props., LLC, 2017 VT 27, ¶ 17; see also State v. Cavett, 2015 VT 91, ¶ 19, 199 Vt. 546, 126 A.3d 1287 (reversing and remanding for court to exercise discretion to determine if defendant violated probation condition requiring him to complete sex-offender programming where trial court erroneously concluded it could not review defendant's compliance with programming). We therefore reverse and remand for the trial court to fully exercise its discretion in the first instance.

¶ 24. However, we emphasize that the sanction of dismissal with prejudice should be reserved for "rare and unusual cases when compelling circumstances require such a result to assure fundamental fairness in the administration of justice." Sauve, 164 Vt. at 140, 666 A.2d at 1167; In re F.E.F., 156 Vt. 503, 515, 594 A.2d 897, 905 (1991) ("The use of a dismissal sanction is proper only if the court finds that the defendant would be prejudiced by anything less than dismissal."), overruled on other grounds by In re S.D., 2022 VT 44, 217 Vt. 180, 287 A.3d 547; see also Chambers, 501 U.S. at 44 ("Because of their very potency, inherent powers must be exercised with restraint and discretion."). While Jones indicates that the court cannot delay consideration of sanctions until the case is refiled when the State abuses its dismissal power, 157 Vt. at 557, 601 A.2d at 504, this does not mean that the trial court is faced with a binary choice of dismissing a serious charge with prejudice or not acting at all. The trial court has inherent power to impose sanctions, including but not limited to dismissal, "when necessary, in its discretion, to protect the integrity of the judicial system or instill respect in both litigants and litigators for the law and the legal process." Lamell Lumber Corp. v. Newstress Int'l, Inc., 2007 VT 83, ¶ 23, 182

Vt. 282, 938 A.2d 1215 (quotation omitted); see also In re F.E.F., 156 Vt. at 515, 594 A.2d at 905 (explaining that court has "broad authority" to impose sanctions for violation of discovery rule or order in criminal case, including dismissal); In re Duckman, 2006 VT 23, ¶ 17, 179 Vt. 467, 898 A.2d 734 (affirming order holding defense attorney in summary contempt for willful violation of court order and disrespectful demeanor toward court); State v. Wade, 2003 VT 99, ¶ 10, 176 Vt. 550, 839 A.2d 559 (mem.) (holding that court erred in dismissing case for prosecution's discovery violation because defendant did not show prejudice, but noting that court can impose "more narrowly tailored" sanctions such as referring complaint against attorney to Professional Responsibility Board (quotation omitted)); State v. Edwards, 153 Vt. 649, 649, 569 A.2d 1075, 1076 (1989) (mem.) (affirming preclusion of witnesses as discovery sanction). The trial court accordingly may choose to fashion an alternative prospective sanction appropriate to the circumstances if the Sauve factors do not weigh in favor of the ultimate sanction of dismissal with prejudice.

¶ 25. We therefore reverse and remand for the trial court to exercise its discretion to determine if the Sauve factors support dismissal with prejudice of this second-degree murder prosecution, or if a lesser prospective sanction is appropriate.

Reversed and remanded for further proceedings consistent with this opinion.

FOR THE COURT:

_____

Associate Justice