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SUPREME COURT OF LOUISIANA

NO. 2015-KK-1799

STATE OF LOUISIANA

VERSUS

MICHAEL BURNS

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS**

Crichton, J., would grant and assigns reasons:

I would grant this application to consider the merits of the defendant's case. As I recently expressed in *State v. James*, 2015-KK-1193 (La. Oct. 30, 2015), -- So. 3d --, I am troubled by the repeated use of the *nolle prosequi* procedure in a way that effectively usurps the authority of the trial judge. While I respect the discretionary authority of the district attorney to dismiss and reinstitute indictments (La. C.Cr.P. arts. 61, 576, 691), I do not condone what appears to be the cavalier abuse of this process. In my view, under certain circumstances, the dismissal and reinstitution of an indictment has the effect of circumventing a trial court's ruling denying the district attorney a continuance. This, in turn, interferes with the trial court's inherent authority to control its docket (La. C.Cr.P. art. 17), and renders meaningless a trial court's decision to deny a continuance.