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Summary of Armenta-Carpio v. State, 129 Nev. Adv. Op. No. 54

Drew Wheaton
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CRIMINAL LAW AND PROCEDURE

Summary

The Court considered whether a concession-of-guilt strategy is equivalent to a guilty plea, thus requiring the district court to canvass a defendant to determine whether he knowingly and voluntarily consented to the concession of guilt.

Disposition/Outcome

The Court concluded that a concession-of-guilt strategy is not equivalent to a guilty plea; therefore, the district court had no obligation to canvass the defendant with regard to his concession-of-guilt strategy. Consequently, the Court overruled *Hernandez v. State*², which held that a concession of guilt is the functional equivalent of a guilty plea, on the grounds that the rationale behind *Hernandez* was unsound and inconsistent with the Supreme Court's decision in *Florida v. Nixon*.³ As such, the Court affirmed the district court's ruling.

Factual and Procedural History

Armenta-Carpio was charged with attempted sexual assault of a child under 14 years of age, five counts of lewdness with a child under 14 years of age, attempted lewdness with a child under 14 years of age, and child abuse and neglect for his reproachable behavior towards his young daughter over a five year period. During opening statement at trial, defense counsel conceded that three of the eight incidents charged by the State were consistent with Armenta-Carpio's police statement, instead arguing that the State had overcharged the case. In a hearing outside of the jury's presence, the district court asked Armenta-Carpio about "whether he had agreed to counsel's strategy to conceded guilt as to some conduct while challenging the number of incidents alleged by the State," and he responded that he agreed to the concession-of-guilt strategy.⁴

The defense counsel's tactics failed, and the jury found Armenta-Carpio guilty on all counts. This appeal followed.

Discussion

Justice Parraguirre delivered the unanimous opinion of the court.

Relying on *Hernandez*, Armenta-Carpio argued that the district court inadequately canvassed him after he revealed his concession strategy. In *Hernandez*, the Court concluded that

¹ By Drew Wheaton.

² *Hernandez v. State*, 124 Nev. 978, 194 P.3d 1235 (2008).

³ *Florida v. Nixon*, 543 U.S. 175 (2004).

⁴ *Armenta-Carpio v. State*, 129 Nev. Adv. Op. No. 54 at 3 (July 25, 2013).

a “concession of guilt involves the waiver of a constitutional right that must be voluntary and knowing.”⁵ Furthermore, the *Hernandez* Court found that the district court must canvass a defendant who employs a concession-of-guilt strategy to ensure that the defendant knowingly and voluntarily entered into the agreement.⁶

The Court pointed out that *Hernandez* relied heavily on *State v. Perez*, which found that a concession of guilt was the “functional equivalent” of a guilty plea because it deprives the defendant of constitutionally guaranteed rights.⁷ However, the Supreme Court in *Nixon* rejected the reasoning in *Perez*, finding that the concession-of-guilt strategy still preserves a defendant’s rights to cross-examination, confrontation, and trial by jury.⁸ Therefore, having now considered *Hernandez* in light of the Supreme Court’s decision in *Nixon*, the Court concluded that a concession-of-guilt strategy is fundamentally different from a guilty plea. Thus, the district court need not canvass a defendant because there is no waiver of constitutional rights that must be made knowingly and voluntarily.

In its conclusion, the Court stated that, in the instant case, its departure from *stare decisis* was justified for two reasons. First, the *Hernandez* ruling that established district court procedures to address concession-of-guilt strategies went beyond the limited question before the *Hernandez* court, and was thus *dicta*. Second, *Hernandez* was clearly at odds with the Supreme Court’s holding in *Nixon*.

Conclusion

Consistent with the Supreme Court’s holding in *Nixon*, the Court found that a concession-of-guilt strategy was different than an admission of guilt, and thus did not require the district court to canvass a defendant about the waiver of constitutional rights. By this finding, the Court overruled *Hernandez* and affirmed the Eighth Judicial District Court’s decision.

⁵ *Hernandez*, 124 Nev. at 990, 194 P.3d at 1243.

⁶ *Id.* at 990-91.

⁷ *State v. Perez*, 522 S.E.2d 102 at 106 (N.C. Ct. App. 1999).

⁸ *Nixon*, 543 U.S. 175, 188 (2004).