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Summary of State v. Tricas, 128 Nev. Adv. Op. 62

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CRIMINAL LAW AND PROCEDURE

Summary

The Court considered the State's appeal from a district court order granting the defendant's motion to withdraw her guilty plea and to dismiss the criminal case under Nevada's prosecutorial immunity statutes, NRS 178.572 and NRS 178.574.

Disposition

First, the Court concluded that when testimony has been compelled of a defendant, the Nevada immunity statutes grant transactional immunity. Second, when a testifying defendant obtains transactional immunity in exchange for his or her testimony after he or she has pled guilty to, but not yet sentenced for, an offense implicated by his or her testimony, the Nevada immunity statutes prevent further prosecution, including sentencing.

Factual and Procedural History

Having stopped a vehicle driven by Gary Taylor, the Nevada Highway Patrol found drugs, including methamphetamine, on the vehicle's passenger, Shannon Tricas. Tricas pled guilty to one count of conspiracy to commit a felony under the Uniform Controlled Substances Act. Tricas then made a written statement for her presentence investigation report, explaining that the drugs belonged to Taylor and that she was motivated by her fear of Taylor to hold them. Based on this declaration, the State compelled Tricas to testify at Taylor's preliminary hearing. The State filed a motion, which the justice court granted, requesting immunity for Tricas in exchange for her compelled testimony against Taylor.

After involuntarily providing testimony against Taylor, Tricas filed a motion to have her case dismissed, a motion to have her plea withdrawn, and a request for hearing under NRS 178.572 and NRS 178. 574. NRS 178.572 provides that, on motion of the state, a court "may order that any material witness be released from all liability to be prosecuted or punished on account of any testimony or other evidence the witness may be required to produce." NRS 178.574 states that "[s]uch order of immunity shall forever be a bar to prosecution against the witness for any offense shown in whole or in part by such testimony or other evidence except for perjury committed in the giving of such testimony."

The district court granted the motion to dismiss and the motion to withdraw the plea. The State appealed.

Discussion

Justice Gibbons wrote the unanimous opinion of the Court sitting en banc. The question before the Court was whether a defendant, who has been granted immunity in exchange for her

¹ By Katelyn Franklin.

compelled testimony, is protected under the Nevada immunity statutes when the defendant provides the testimony after she has already pled guilty, but before the court has imposed a sentence.

The State argued that immunity here only bars subsequent criminal prosecutions. Furthermore, there was no Fifth Amendment violation in prosecuting Tricas following her testimony. Because she had already pled guilty, it was too late for the testimony to be used against her.

Tricas argued that because the immunity statutes confer transactional immunity, as opposed to the more narrow “use” or “derivative use” immunity, she could enjoy full amnesty regardless of the stage of the proceeding against her.

The Court rejected the State’s argument that the immunity was limited to future prosecutions, concluding that the statutes confer broad transactional immunity.² The Nevada legislature enacted the immunity statutes when transactional immunity was the only immunity recognized as agreeing with the Fifth Amendment’s protection against self-incrimination.³ Furthermore, the Illinois Supreme Court has interpreted the Illinois statute, from which the Nevada immunity statutes are modeled upon, as conferring transactional immunity.⁴

The plain language of NRS 178.572 precludes future prosecution as well as pending prosecution because it specifically references immunity for the prosecuted or the punished. The Court concluded that the addition of the word “punished” clearly evidences the legislature’s intent to extend immunity to sentencing after the defendant has pled or been found guilty. Even absent this language, transactional immunity would still prevent prosecution after a guilty plea because it is an absolute bar to all criminal actions related to the testimony,⁵ and sentencing is an essential component of prosecution.⁶ The Court further reasoned that compelled testimony can result in further incrimination or an increase in severity of the sentence, rejecting the State’s argument that no Fifth Amendment violation occurred.

Finally, the Court looked at immunizations conferred upon defendants in similar situations in other courts in an effort to determine whether immunization bars further prosecution even after a defendant has pled guilty. Courts in Washington and Colorado agree that a

² However, the Court noted that use and derivative use immunity can be valid, but only when such immunity has been negotiated in a contractual situation.

³ *Counselman v. Hitchcock*, 142 U.S. 547, 585-86 (1892).

⁴ *See People ex rel Cruz v. Fitzgerald*, 363 N.E.2d 835, 837 (Ill. 1977) (concluding its transactional immunity statutory language was clear and unambiguous); *see also People v. Giokaris*, 611 N.E.2d 571, 573 (Ill. App. Ct. 1993).

⁵ *See NEV. REV. STAT. 178.574* (2007) (“Such order of immunity shall forever be a bar to prosecution. . . .”); *see also Kastigar v. United States*, 406 U.S. 441, 453 (1972) (explaining that transactional immunity “accords full immunity from prosecution for the offense to which the compelled testimony relates.”).

⁶ *See NEV. REV. STAT. 176.105* (2007) (providing that a judgment of conviction must include adjudication and the sentence); *Steinberger v. Dist. Court in & for Tenth Judicial Dist.*, 596 P.2d 755, 758 (Colo. 1979) (“A recital of the sentence is an essential part of a judgment of conviction.”).

defendant will obtain immunity whenever his testimony could incriminate him or influence the court to impose a more severe penalty.⁷

Conclusion

The Court affirmed the district court in granting the defendant's motion to dismiss and motion to withdraw her guilty plea.

⁷ State v. McCullough, 744 P.2d 641, 643 (Wash. Ct. App. 1987) (citing *Steinberger*, 665 P.2d at 757); *Steinberger*, 596 P.2d at 758.