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### Martinez-Hernandez v. The State of Nevada, 132 Nev. Adv. Op. 61 (Aug. 12, 2016)

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*Nevada Law Journal*

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## CRIMINAL PROCEDURE LAW: MOOTNESS OF PETITION FOR HABEAS CORPUS

### **Summary**

The Nevada Supreme Court determined that (1) if collateral consequences of a criminal conviction exist, a post-conviction petition for a writ of habeas corpus challenging the validity of a judgment of conviction, filed while imprisoned, is not moot once the petitioner is released, and (2) a criminal conviction creates a presumption that collateral consequences exist.

### **Background**

In 2008, a jury found appellant, Lazaro Martinez-Hernandez, guilty of one count of assault with a deadly weapon. The district court suspended Martinez-Hernandez's sentence, placed him on probation, and entered a judgment of conviction. He did not appeal. Subsequently, Martinez-Hernandez violated his probation in 2010. The district court re-imposed his original sentence and issued an amended judgment of conviction. Again, Martinez-Hernandez did not appeal.

In 2011, however, while still imprisoned, Martinez-Hernandez filed a post-conviction petition for a writ of habeas corpus, alleging ineffective assistance of counsel and appeal deprivation. The district court granted in part, finding he was wrongfully deprived of an appeal, and therefore permitted to file an untimely appeal. His ineffective assistance of counsel claim was not addressed. Martinez-Hernandez then filed a direct appeal from the judgment of conviction, but the Nevada Supreme Court affirmed his conviction and sentence.

On February 24, 2015, Martinez-Hernandez filed a supplement to the 2011 petition, again alleging ineffective assistance of counsel. The district court dismissed the petition as moot because Martinez-Hernandez was no longer imprisoned, nor on probation or parole. Now, Martinez-Hernandez appeals by questioning whether his post-conviction petition for a writ of habeas corpus is moot due to his release from physical custody.

### **Discussion**

*Other jurisdictions allow proceedings on habeas petitions to continue where collateral consequences exist stemming from the conviction*

The issue addressed here is whether a post-conviction habeas petition filed while imprisoned later becomes moot when the petitioner is released from physical custody and supervision. The Court held that a petition is not moot after release from custody where collateral consequences exist from a criminal conviction.

In *Carafas v. LaVallee*, the Supreme Court held that petitioner continued to face "collateral consequences" after release (inability to engage in certain businesses, vote in state elections, or serve as a juror).<sup>2</sup> These consequences rendered his claim not moot.<sup>3</sup> Further, in

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<sup>1</sup> By Angela Lee.

<sup>2</sup> 391 U.S. 234, 237 (1968).

<sup>3</sup> *Id.*

*Knight v. State*, the Nevada Supreme Court held that collateral consequences, such as the "impact [such convictions have on] penalty considerations in [...] subsequent criminal action[s]," can prevent mootness in regard to a timely appeal.<sup>4</sup> Thus, pursuant to *Carafas* and *Knight*, in instances where collateral consequences of a criminal conviction exist, a habeas petition challenging the validity of a judgment of conviction does not become moot when the petitioner is released from custody subsequent to the filing of the petition.

*A criminal conviction creates a presumption that collateral consequences exist*

The Court further held that collateral consequences presumptively follow whenever there is a criminal conviction. In *Spencer v. Kemna*, the Supreme Court went beyond the collateral consequences illustrated in *Carafas*, and held there is a presumption that "a wrongful criminal conviction has continuing collateral consequences."<sup>5</sup> While other states determine the existence of collateral consequences on a case-by-case basis, Nevada caselaw follows the presumption found in *Spencer*. In *Knight*, the Nevada Supreme Court reasoned that "it is an obvious fact of life that criminal convictions...entail adverse collateral legal consequences."<sup>6</sup> Therefore, pursuant to *Spencer*, *Carafas*, and *Knight*, the Nevada Supreme Court found that there is a presumption of continuing collateral consequences in cases where a criminal conviction exists.

## **Conclusion**

The Nevada Supreme Court ruled that Martinez- Hernandez's appeal was not moot solely based on the fact that he was no longer in custody because he still faced collateral consequences, which presumptively follow from a criminal conviction. The Court reversed and remanded the district court's order for further proceedings.

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<sup>4</sup> 116 Nev. 140, 143, 993 P.2d 67, 70 (2000).

<sup>5</sup> 523 U.S. 1, 8 (1998).

<sup>6</sup> *Knight*, 116 Nev. at 143, 993 P.2d at 70 (quoting *Spencer*, 523 U.S. at 12, internal quotations omitted).