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Summary of State v. Eighth Judicial Dist. Ct., 129 Nev. Adv. Op. 52

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JUVENILE JUSTICE – SEX OFFENDER REGISTRATION FOR JUVENILES

Summary

The Court considered whether Assembly Bill 579, which required mandatory registration for juveniles older than 14 who had been adjudicated delinquent for certain sex offenses and required those delinquents to be subject to community notification, violated the Due Process and Ex Post Facto Clauses of the Nevada Constitution or the United States Constitution.

Disposition/Outcome

Although the Court explicitly suggested that the legislature reconsider this bill, it found that the bill did not violate either the Nevada Constitution or the United States Constitution.

Factual and Procedural History

The Nevada Legislature passed Assembly Bill 579 in 2007 in response to federal legislation. This bill removed certain discretions from the juvenile court and required that all juveniles older than 14 who were adjudicated delinquent for certain sex offenses to register as sex offenders. This registration would then make those juveniles subject to community notification requirements. Juveniles under 14 could not be subject to registration or community notification requirements. The offenses which would make the delinquent a “sex offender” included sexual assault, battery with the intent commit sexual assault, lewdness, or attempt or conspiracy to commit any of those offenses if the offender was older than 14 at the time the offense occurred.²

Several juveniles that would be affected by this change filed motions asking for this requirement to be found unconstitutional. The juveniles alleged that it was unconstitutionally vague and violated procedural due process and substantive due process. The juveniles further alleged that it violated the contracts clause and the ex post facto clause. They also claimed it constituted cruel and unusual punishment. The juvenile court found that it violated substantive

¹ By Timothy A. Wiseman

² NEV. REV. STAT. §§ 62F.200(1), 179D.095(1)(b) (2011).

due process since it was not tied, in a rational way, to the “rehabilitation and public safety goals of Juvenile Court and the Department of Juvenile Justice nor the public safety goals of the Adam Walsh Act.” The juvenile court found that it did not help rehabilitation or help avoid recidivism. The Nevada Supreme Court denied the State’s appeal for lack of jurisdiction. The State then petitioned for a writ of prohibition or mandamus.

Discussion

Juvenile Court’s Holding

The juvenile court found that the bill violated substantive due process because it did not further the rehabilitation goals of the juvenile justice system and did not have a rational relationship to the public safety goal of the bill. The juvenile court was concerned that the bill required community notification for all juveniles over 14, even if they were unlikely to reoffend, and forbade notification for those under 14, even if they were found likely to reoffend.

The Nevada Supreme Court reviewed the constitutionality of the law de novo using rational basis review. The Court stated that statutes are “cloaked with a presumption of validity.” The court also reiterated that the legislature is not required to state its purpose and that statutes will be upheld if there is any set of facts that can reasonably justify them.³ In this case, the law could have been passed to protect the public from sex offenders, and because the Legislature has long presumed that children older than 14 know the wrongfulness of their actions,⁴ those children pose a greater risk to the public. Although legislative history suggests that the main purpose of the Nevada Legislature was to comply with the federal Walsh Act and avoid losing grant money, the existence of other justifications means that this bill passes rational basis review.

Substantive Due Process

The Court then determined whether the community notification provisions of the bill impinge on juveniles’ fundamental right to privacy and are therefore subject to strict scrutiny review. The Court found that the right to keep records of juvenile adjudications confidential is

³ FCC v. Beach Communications, Inc., 508 U.S. 307, 315 (1993).

⁴ See NEV. REV. STAT. 194.010(1)-(2) (2011).

not a fundamental right protected by the Fourteenth Amendment.⁶ Nor is it so “deeply rooted” in Nevada’s history as to render confidentiality a fundamental right under our state constitution. Records of juvenile sex offenders have long enjoyed less protection than those of other juvenile delinquents. Therefore, the disclosure does not implicate a fundamental right, and strict scrutiny is not warranted. Under rational basis review, the bill does not violate substantive due process.

Procedural Due Process.

The Court then determined whether the bill deprives juveniles of a privacy right without procedural safeguards. The Court noted that no additional facts beyond their age and adjudication for certain crimes are relevant to the statutory system. Thus, they are not entitled to a hearing to establish any other facts.

Vagueness

The Court next considered whether the bill is unconstitutional vague. The juveniles argued that the bill grants juvenile courts jurisdiction for the duration of the registration, and pointed out that a person is legally a child while he is subject to the jurisdiction of the juvenile court.⁷ The juveniles allege that this creates a vagueness issue in that it could therefore define an offender as a child for a lifetime.

However, the court noted that the statute itself limits the purpose of the juvenile court’s continuing jurisdiction to “carrying out the provisions of” the statute, and it is clear on what those provisions entail and that those provisions are primarily administrative.⁸ Therefore, the statute itself is not unconstitutionally vague.

V. Statutory Conflict

The juveniles also alleged that the new bill conflicts with the existing statutory system for registration and that the rule of lenity should be applied. They point out that Nevada law⁹

⁶ This is in accord with decisions reached by other courts. *See, e.g., Doe v. Mich. Dep’t of State Police*, 490 F.3d 491, 400 (6th Cir. 2007).

⁷ NEV. REV. STAT. §§ 62A.030(1)(c), 62F.200-.260 (2011).

⁸ NEV. REV. STAT. § 62F.200-.260 (2011).

⁹ NEV. REV. STAT. § 169.025(2) (2011).

exempts minors from Title 14, which includes the registration and community notification requirements, but that the new bill would specifically subject minors to that very title.

The Court noted that, as a general rule of statutory interpretation, when a statute has a specific provision that contradicts a general prohibition, the specific provision is viewed as an exception. The inapplicability of Title 14 to juvenile proceedings is a general prohibition, but the new bill is a specific provision, which therefore provides an exception and the rule of lenity does not apply.

Conflict the Purpose of Juvenile Justice System.

The juveniles next contended that the bill conflicts with the purposes of the juvenile justice system. The Supreme Court noted that historically the juvenile justice system avoided treating juveniles as criminals and focused on the best interests of the child, but, since 1949, the juvenile courts in Nevada have also considered the public interest.¹⁰ Given the ability to focus on the public interest, there is no conflict with the purpose of the juvenile justice system.

Ex post facto

Since this law applies retroactively, the juveniles also complained that it violates the Ex Post Facto Clauses of the U.S. and Nevada Constitutions. When conducting an ex post facto analysis, the court looks to see if it is a law that “changes the legal consequences of acts completed before its effective date.”¹¹ Since this bill does not create or redefine a criminal act, it would only be invalid if it poses an additional punishment for a prior act.

A statute imposes a punishment if the legislature intended it to be punitive, or if the effect is “so punitive, either in purpose or effect as to negate the State’s intention to deem it civil.”¹² Here, the legislative intent was primarily to comply with federal statutes, and prior versions of the law were intended to create a regulatory scheme only.¹³ Thus, the legislature did not intend to create a punitive measure. The court then looked at the effects of the challenged provision. Specifically, the court examined seven factors: whether the statutory scheme (1) had traditionally

¹⁰ In re Seven Minors, 99 Nev. 427, 431-32, 664 P.2d 947, 950-51 (1983).

¹¹ Weaver v. Graham, 450 U.S. 24, 31 (1981).

¹² Smith v. Doe, 538 U.S. 84, 92 (2003).

¹³ Nollette v. State, 118 Nev. 341, 346, 46 P.3d 87, 91 (2002).

been a form of punishment, (2) imposed an affirmative disability, (3) promoted the goals of punishment, (4) was rationally related to non-punitive purpose, (5) was excessive in relation to that purpose, (6) required a finding of scienter, and (7) applied to behavior that is already a crime.¹⁴

First, registration scheme is not akin to historical forms of punishment. Although it may come with some stigma, it is not “an integral part of the objective of the regulatory scheme.”¹⁵ Second, while it does require the offender to appear in person for registration and may have an effect on his public standing, that is not considered an affirmative disability or restraint by the court. Third, the registration has a deterrent effect, though that alone is not sufficient to make it serve the traditional aims of punishment. Registration also serves the purpose of protecting the public because it is reasonable to conclude that juvenile offenders who have committed the most severe offenses pose the greatest risk to the public. Therefore, the bill does promote the goals of punishment. Fourth, because the bill protects the public, it has a rational connection to a non-punitive purpose.

Fifth, the juveniles claimed that it was excessive because it did not consider the low recidivism rate for juveniles and because it was not cost effective. However, the court concluded that the risk of recidivism for juveniles and adults is similar for these types of crimes. The court also stated that the high cost of administering this system was a compelling policy argument but was not relevant to the ex post factor analysis. Sixth, the statutory requirements are not founded on any “present or repeated violation,” so finding of scienter is required. Seventh, the bill does apply to conduct that is already a crime, which weighs in favor of finding the bill to be punitive, but that factor is of less weight than the others.¹⁶ Thus, Six of the seven factors favor it not being punitive. Therefore, the effects of the bill are not punitive and it cannot be invalidated by an ex post facto analysis.

Right to Jury Trial

The Court then determined whether the registration scheme makes the juvenile system into a criminal system, implicating the right to a jury trial. Even with this addition, the juvenile

¹⁴ Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963).

¹⁵ *Smith*, 538 U.S. at 99.

¹⁶ *See Smith*, 538 U.S. at 105.

system has a greater focus on rehabilitation and on the child's welfare, which is not present in the criminal system.¹⁷ Further, the court found that registration is not punitive. Therefore, there is no right to a jury trial.

Conclusion

The Court rejected the arguments of the juveniles that Assembly Bill 579 is unconstitutional. The Court rejected the arguments that it violated substantive due process or procedural due process. The Court also rejected the arguments that it was overly vague or that it suffered from statutory conflict or from conflict with the purpose of the juvenile justice system. The Court found it was not an ex post factor law and that it did not require a jury trial. Although the Court found that the scheme was permitted by the constitution, it also explicitly suggested that the legislature reconsider this law and favored discretion for the juvenile court.

¹⁷ See NEV. REV. STAT. 62A.360(1)(a) (2011).