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### Summary of Goudge v. State, 128 Nev. Adv. Op. 52

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CRIMINAL LAW AND PROCEDURE – SEXUAL OFFENDER:  
LIFETIME SUPERVISION PETITION FOR RELEASE

**Summary**

An appeal addressing a district court’s discretion when deciding a petition for release from a special sentence of lifetime supervision under NRS 176.0931(3) and whether the district court has the discretion to deny the release if the requirements in the statute have been met.

**Disposition**

The Court held that the plain language of NRS 176.0931(3) restricts the district court’s discretion to deny a petition for release from lifetime supervision if the district court finds the petitioner has met the statutory provisions.

**Factual and Procedural History**

In 2000, the State charged Evan Goudge with one count of lewdness with a child under 14 years of age and one count of sexual assault of a minor under 14 years of age, each count with a different victim. Goudge pled guilty to one count of attempted lewdness with a child under 14 years of age and acknowledged in the plea agreement that his sentence would include lifetime supervision. In 2001, the district court sentenced Goudge to a suspended sentence of incarceration, five years’ probation and registration as a sex offender. In 2005, the district court amended judgment to include lifetime supervision upon Goudge’s release; the next year he was honorably discharged from probation.

Goudge petitioned for release from lifetime supervision in 2011, arguing that he complied with all legal requirements imposed on him. Goudge’s petition included a letter from a licensed clinical social worker that stated he presented a low risk for sexual recidivism and was an appropriate candidate for release. The State observed, in opposition to his release, that he had met the requirements of NRS 176.0931 and was entitled to release from supervision under the statute.

The district court denied Goudge’s petition for release “based on the severity of the crime committed.” The district court held that it had discretion to consider witness testimony to evaluate whether Goudge was a proper candidate for release, and was not satisfied that he was no longer a threat to society, without analyzing the NRS 176.0931 factors.

**Discussion**

Justice Hardesty wrote the opinion of the Court sitting en banc. The Court subjects questions of statutory interpretation such as this one to de novo review.<sup>2</sup> The court applies plain language in interpreting a statute with clear language.<sup>3</sup>

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<sup>1</sup> By Joseph Sakai

<sup>2</sup> See *Webb v. Shull*, 128 Nev. \_\_\_, \_\_\_, 270 P.3d 1266, 1268 (2012).

## I.

Goudge argued, and the Court agreed, that his compliance with the statutory requirements for release from lifetime supervision required the district court to grant his petition for release.

The district court is required to include a special sentence of lifetime supervision when a person is convicted of a sexual offense,<sup>4</sup> which begins after any period of probation, imprisonment, or period of release on parole.<sup>5</sup> A person sentenced to such supervision can petition the district court for release if he or she satisfies three statutory requirements:<sup>6</sup>

1. The petitioner must have complied with Nevada's statutory requirements governing registration of sex offenders.<sup>7</sup>
2. The petitioner must not have "been convicted of an offense that poses a threat to the safety or well-being of others for an interval of at least 10 consecutive years after the person's last conviction or release from incarceration, whichever occurs later."<sup>8</sup>
3. The petitioner must not be "likely to pose a threat to the safety of others, as determined by a person professionally qualified to conduct psychosexual evaluations, if released from lifetime supervision."<sup>9</sup>

The Court held the language of NRS 176.0931, stating the district court "shall grant petition" for release if the petitioner meets statutory requirements, divests the district court of judicial discretion.<sup>10</sup> The Court explained the word "shall" prohibits judicial discretion and mandates the result set forth by the statute.<sup>11</sup> The Justices held that the Legislature is empowered to define crimes and determine punishments, as long as it does so within constitutional limits.<sup>12</sup> Further, the legislature has the power to remove any judicial discretion regarding criminal penalties with the creation of mandatory sentencing schemes.<sup>13</sup>

The Court concluded, based on the plain language of NRS. 176.0931, that the Legislature limited district court discretion such that if the district court determined a petitioner complied with statutory requirements it could not deny the petition for release from lifetime supervision.

## II.

The Court then considered the district court's assessment of Goudge's petition for release. Satisfaction of NRS 176.0931(3) involves factual determinations that are given

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<sup>3</sup> *Id.*; *See also* *Otak Nevada LLC v. Dist. Court*, 127 Nev. \_\_, \_\_, 260 P.3d 408, 411 (2011) (explaining that when a statutory phrase is clear and unambiguous, this court must give effect to that clear meaning and will not consider sources beyond the language of the statute to interpret it).

<sup>4</sup> NEV. REV. STAT. § 176.0931(1) (2007).

<sup>5</sup> *Id.* at § 176.0931(2).

<sup>6</sup> *Id.* at § 176.0931(3).

<sup>7</sup> *Id.* at § 176.0931(3)(a); § 179D.010-.550.

<sup>8</sup> *Id.* at § 176.0931(3)(b).

<sup>9</sup> *Id.* at § 176.0931(3)(c).

<sup>10</sup> *See Id.* at § 0.025(1)(d); *See also* *Otak Nevada LLC v. Dist. Court*, 127 Nev. \_\_, at \_\_, 260 P.3d 408, 411 (2011).

<sup>11</sup> *Id.*; *See also*, *Johanson v. Dist. Court*, 124 Nev. 245, 249-50, 182 P.3d 94, 97 (2008).

<sup>12</sup> *Schmidt v. State*, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978).

<sup>13</sup> *Mendoza-Lobos v. State*, 125 Nev. 634, 640, 218 P.3d 501, 505 (2009).

deference on appeal if supported by substantial evidence and not clearly erroneous.<sup>14</sup> A district court decision as to the qualifications of a person to conduct psychosexual evaluation is reviewed for an abuse of discretion.<sup>15</sup> Proper review by this Court is based upon factual findings by the district court.

In the present case the State only disputed, and this Court focused solely on, the requirement that a determination of the likelihood of sexual recidivism be made by a person qualified to conduct psychosexual evaluations.<sup>16</sup> The district court, however, did not address the expert's qualifications, or make any finds about the sufficiency of the expert's opinion.<sup>17</sup> The district court focused on victim testimony, which is not a factor to be considered under NRS 176.0931(3). Thus, the Court was unable to review the district court's factual findings for clear error because the district court did not make any relevant findings related to the requirement in NRS 176.0931(3).

### **Conclusion**

The Court was unable to review the denial of Goudge's petition because the district court failed to make any relevant factual findings related to the statutory requirements in NRS 176.0931(3)(c); remanded to district court.

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<sup>14</sup> Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

<sup>15</sup> Austin v. State, 123 Nev. 1, 8, 151 P.3d 60, 64 (2007).

<sup>16</sup> NEV. REV. STAT. § 176.0931(3)(c) (2007).

<sup>17</sup> Rosky v. State, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005) (explaining, in the context of a motion to suppress, that "[r]eviewing courts should not be required to surmise what factual findings that the trial court has made" (internal quotation omitted)).