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Summary of Winkle v. Warden, 127 Nev. Adv. Op. No. 42

Tim Mott
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Summary

Petitioner sought a writ of mandamus directing Respondents to release her to the 305 program based on the language of NRS 209.427 and 209.429.

Disposition/Outcome

The Court granted the petition for a writ of mandamus for two reasons. First, the express language of NRS 209.427 and 209.429 “mandates release of qualified offenders to the program for alcohol treatment and residential confinement.” Second, the express language of NRS 109.429(4)(a) deems assignment to the 305 Program as “imprisonment” and not a release on parole.

Factual and Procedural History

In 2009, Petitioner Jessica Lynn Winkle pleaded guilty to driving under the influence of alcohol that resulted in the death of another. Prior to the expiration of Petitioner’s prison term of two to five years, she was released to the 305 Program. A couple months later, a local paper complained that courts and law enforcement were improperly releasing several felony DUI offenders. In response, Howard Skolnik² determined that Petitioner was in residential confinement and did not serve her minimum two years, and therefore had her rearrested. Petitioner’s mandamus petition followed.

Discussion

Propriety of Writ Relief

Petitioner’s writ petition warranted the Court’s consideration because neither Skolnik’s decision to return Petitioner to incarceration, nor his refusal to release her to residential confinement were appealable. Thus, Petitioner did not have a plain, speedy, and adequate remedy in the ordinary course of law.

Petitioner must be Released to the 305 Program

Petitioner argued, and the Court agreed, that Skolnik was under a duty as a matter of law to release her to the 305 Program. Assignment to the 305 Program³ must be for the year “immediately preceding the date the offender is due to be released from prison, either on parole

¹ By Tim Mott

² Howard Skolnik is the Director of the Nevada Department of Corrections.

³ The 305 Program’s purpose is to rehabilitate “abuser[s] of alcohol or drugs.” NEV. REV. STAT § 209.425(1) (2009). If an evaluation indicates that an offender abuses alcohol or drugs and said offender may have success in the Program, the Director *shall* assign the offender to the program. *Id.* (emphasis added).

or at the expiration of the offender's term.”⁴ After an initial period of mental and physical rehabilitation, if the offender meets certain requirements, “the Director shall assign [her] to serve a term of residential confinement.”⁵ Such assignment is a continuation of imprisonment, not a release on parole.⁶ The Court further noted that the “Legislature chose to qualify the mandatory sentencing scheme of NRS 484C.430(1) when it created the 305 Program and mandated that qualified offenders be assigned to the program prior to the expiration of their minimum term for the purpose of rehabilitation”

Finally, although both NRS 484C.430(1) and 209.429(4)(a) use the term “imprisonment,” the Court refused to extend the holding in *State v. District Court (Jackson)* to the 305 Program because the statute at issue in *Jackson*, NRS 484C.430(1), did not equate pretrial confinement with imprisonment as NRS 209.429(4)(a) does.⁷ NRS 209.429(4)(a) and (b) “specifically state that assignment to the 305 Program is ‘[a] continuation of the offender’s imprisonment and not a release on parole,’ and for classification purposes is ‘an assignment to a facility of the Department [of Corrections].’”

Conclusion

The express language of NRS 209.427 and 209.429 requires the Director of the Nevada Department of Corrections to “assign an eligible offender to the 305 Program for alcohol treatment and residential confinement one year prior to parole eligibility.” Also, under NRS 209.429, assignment to the Program is “imprisonment,” not release on parole. The Court therefore granted Petitioner’s writ of mandamus because Petitioner was within one year of parole eligibility and was otherwise eligible for the program.

⁴ NEV. REV. STAT § 209.425(1) (2009).

⁵ *Id.* at 209.429(1) (2009).

⁶ *Id.* at 209.429(4)(a)-(b).

⁷ *State v. District Court*, 121 Nev. 413, 116 P.3d 834 (2005).