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Summary of Stockmeier v. State, Bd. of Parole Comm'rs, 127 Nev. Adv. Op. No. 19

Chelsey Bosworth
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CRIMINAL LAW AND PROCEDURE

Summary

A proper person appeal and counsel cross-appeal to have factual statements in a presentence investigation report (PSI) corrected after a prisoner's sentencing.

Disposition/Outcome

District court's opinion affirmed in part and reversed in part because the Division of Parole and Probation of the Department of Public Safety ("Division") and the district court do not have authority to amend a PSI after a prisoner's sentencing.

Factual and Procedural History

In 1990, Robert Leslie Stockmeier ("Stockmeier") pled guilty to two counts of sexually assaulting a nine-year-old boy. Although neither count alleged that Stockmeier threatened or used a weapon, the PSI included a statement from the victim that Stockmeier had threatened him with a weapon. During his sentencing hearing, Stockmeier objected to this statement, but the district court did not rule on the issue and Stockmeier did not appeal the weapon allegation.

In 2000, Stockmeier was denied parole and filed a district court action objecting to the weapon allegation contained in his PSI. The district court concluded that it did not have jurisdiction to amend the PSI and denied Stockmeier's petition. Stockmeier then requested that the Division amend his PSI. The Division denied his request. Between 2003 and 2006, Stockmeier successfully litigated an action against the Psychological Review Panel on claims unrelated to the PSI. In 2006, the Parole Board found for the first time that Stockmeier's offense involved a weapon and denied his parole based on the nature and severity of his crimes and public safety concerns.

Stockmeier filed the instant action in the district court alleging (1) a tort claim against the Division for its failure to amend his PSI, (2) a tort claim against the Parole Board for relying on the PSI, despite evidence that it contained inaccurate statements, and (3) a retaliation claim against the Parole Board for denying his parole in 2006 in response to his successful litigation against the Psychological Review Panel.

Discussion

Justice Hardesty wrote for the unanimous three-judge panel. The Court affirmed the district court's grant of summary judgment to the Division on Stockmeier's tort claim against the Division for its failure to amend his PSI. While the Division has a duty to prepare a PSI, once a defendant receives a sentence, the Division no longer has any statutory duties related to the PSI.

¹ By Chelsey Bosworth

Additionally, the Division does not have any implied authority to amend the PSI because the Division does not have any express post-sentencing duties related to a prisoner's PSI. Where the Division does not have any authority to amend a prisoner's PSI after sentencing, the Division cannot be liable in tort for failing to amend the PSI. Additionally, the Court reversed the district court's order requiring the parties to discuss possible corrections to the PSI because the district court does not have post-sentencing authority to make such an order.

The Court also affirmed the district court's grant of summary judgment in favor of the Parole Board on Stockmeier's tort claim against the Parole Board for relying on the PSI. The Parole Board is required to adopt standards for determining whether to grant parole.² However, the Parole Board is not required to amend a prisoner's PSI or consider evidence that a prisoner presents showing inaccuracy of a PSI. Thus, where the Parole Board does not have authority to amend Stockmeier's PSI, it is entitled to rely on the original PSI.

Finally, the Court affirmed the district court's grant of summary judgment to the Parole Board on Stockmeier's retaliation claim. To state a claim for retaliation in the prison context, a prisoner must assert that an adverse action has been taken against him, resulting in a limitation of his First Amendment rights without a legitimate correctional goal.³ The Court determined that summary judgment was proper because the record indicated that the Parole Board denied Stockmeier's parole based on the allegations contained in the PSI and the seriousness of his crime. Although Stockmeier asserted that the Parole Board members mentioned the prior litigation, without further evidence Stockmeier's allegations are insufficient to defeat a motion for summary judgment.

Conclusion

Once a prisoner has received a sentence, he may not seek to amend his PSI and the district court cannot order such amendment. The Parole Board is entitled to rely on a PSI, even if there is evidence showing it is inaccurate. In a retaliation claim, a prisoner must present evidence beyond assertions of conjecture and speculation to survive a motion for summary judgment.

² NEV. REV. STAT. §§ 213.10705, 213.1099(1) (2007).

³ Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).