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### Summary of State v. Lucero, 127 Nev. Adv. Op. No. 7

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*Nevada Law Journal*

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*State v. Lucero*, 127 Nev. Adv. Op. No. 7 (Mar. 17, 2011)<sup>1</sup>  
Criminal Law and Procedure

**Summary**

An appeal of the Second Judicial District Court’s denial of the State’s motion to correct a reduced sentence imposed upon revocation of probation.

**Disposition/Outcome**

The district court’s order affirmed. It was within the court’s discretion to apply NRS 453.3405(2)’s substantial-assistance exception to “reduce” the defendant’s sentence below the statutory minimum provided in NRS 453.3385 upon revoking his probation.

**Factual and Procedural History**

In January 2008, Arthur Lucero (“Lucero”) pleaded guilty to one count of level-three trafficking in a controlled substance, a violation of NRS. 453.3385(3), which carried a mandatory minimum prison term of ten years.<sup>2</sup> However, because the court determined Lucero rendered “substantial assistance” to law enforcement, the district court had discretion under NRS 453.3405(2) to reduce or suspend Lucero’s mandatory minimum sentence.<sup>3</sup> The district court therefore sentenced Lucero to life in prison with eligibility for parole after ten years, but suspended his sentence, placing him on probation for up to five years.

Several months later, Lucero violated the terms of his probation. After a hearing, the district court revoked Lucero’s probation. However, because of its prior finding of substantial assistance, the district court reduced Lucero’s original sentence to fifteen years with eligibility for parole after two years.

The State then filed a motion to correct Lucero’s new sentence, arguing it was illegal because (1) the sentence violated the minimum sentence requirements of NRS 453.3385(3), and (2) NRS 453.3405(2)’s substantial-assistance provision was limited to original sentences imposed by the district court, not subsequent probation revocation proceedings. Lucero countered that the applicable sentencing statute, NRS 453.3385(3), contained an exception to its minimum sentencing requirements for defendants who provided “substantial assistance” to law enforcement. Thus, the controlling sentencing statute at the time of his probation revocation authorized the district court’s reduction of his sentence below the statutory ten-year minimum.

Finding it had authority under NRS 453.3405(2) to reduce Lucero’s sentence when it revoked his probation, the district court denied the State’s motion to correct Lucero’s sentence. The State subsequently appealed the district court’s decision to the Nevada Supreme Court.

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<sup>1</sup> By Brian Blaylock

<sup>2</sup> See NEV. REV. STAT. § 453.3385(3) (2007).

<sup>3</sup> See *id.* § 453.3405(2).

## **Discussion**

The Court focused on interpreting NRS 176A.630(5), which precludes a district court, upon revoking a defendant's probation, from sentencing the defendant to a prison term "less than the minimum term of imprisonment prescribed by the applicable penal statute."<sup>4</sup> Explaining that legislative intent "is the controlling factor" in statutory interpretation,<sup>5</sup> the Court first considered whether the statute was plain or ambiguous. Because NRS 176A.630(5)'s "minimum term of imprisonment" could reasonably include or exclude the substantial-assistance provision of NRS 453.3405(2), the Court held that NRS 176A.630(5) is ambiguous.

The Court then examined the legislative history, rationale, and public policy behind NRS 176A.630(5) and 453.3405(2), respectively. The Court ultimately rejected this additional information, however, because it "shed no light" on whether the legislature intended for the district court to have discretion to consider NRS 453.3405(2)'s substantial-assistance provision after revoking probation on an original sentence that had already taken this provision into account.

Finally, to resolve NRS 176A.630(5)'s ambiguity, the Court applied the rule of lenity, which is a rule of construction that "demands that ambiguities in criminal statutes be liberally interpreted in the accused's favor."<sup>6</sup> Accordingly, the Court held that NRS 176A.630(5)'s "minimum term of imprisonment" included NRS 453.3405(2)'s substantial-assistance provision. Therefore, it was within the district court's discretion to "reduce" Lucero's sentence below the ten-year minimum prescribed in NRS 453.3385 upon revoking his probation.

## **Conclusion**

NRS 176A.630(5)'s "minimum term of imprisonment prescribed by the applicable penal statute" includes NRS 453.3405(2)'s substantial-assistance provision. Thus, it was within the district court's discretion to "reduce" Lucero's sentence below the ten-year minimum prescribed in NRS 453.3385 upon revoking his probation.

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<sup>4</sup> *Id.* § 176A.630(5).

<sup>5</sup> *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983).

<sup>6</sup> *Moore v. State*, 122 Nev. 27, 32, 126 P.3d 508, 511 (2006).