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Summary of Mendoza-Lobos v. State, 125 Nev. Adv. Op. No. 49

Ryan McInerney
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***Mendoza-Lobos v. State*, 125 Nev. Adv. Op. No. 49 (Oct. 29, 2009)¹**

Criminal Law – Enhancement Sentences

Summary

Appellant Douglas Mendoza-Lobos was convicted of one count each of burglary, robbery with the use of a deadly weapon, sexual assault with the use of a deadly weapon, attempted sexual assault with the use of a deadly weapon, assault with a deadly weapon, and battery with a deadly weapon. On appeal, Mendoza-Lobos argued that the district court failed to comply with NRS 193.165(1) in imposing the sentences for the deadly weapon enhancements because it failed to articulate sufficient findings on the record. As a preliminary matter, the Court addressed whether NRS 193.165(1) (1) violated the separation-of-powers doctrine and (2) required the district court to make findings on the record before imposing the sentence enhancement.

Disposition/Outcome

The Court concluded that NRS 193.165(1) violated the separation-of-powers doctrine, but they nonetheless affirmed the district court because the statute served a compelling legislative goal. They further concluded that the district court's failure to make sufficient findings, although a violation of the plain language of the statute, did not amount to plain error warranting reversal. The Court therefore affirmed the judgment of conviction on all of the aforementioned counts.

Factual and Procedural History

The district court sentenced Mendoza-Lobos to serve numerous consecutive prison terms totaling 35 years to life. For the enhanced offenses, the district court imposed an enhancement sentence² that was equal to the sentence for the underlying offense (48-120 months) with respect to the charges of robbery and attempted sexual assault with the use of a deadly weapon. The court also imposed an enhancement sentence at the high end of the enhancement range (96-240 months) for the sexual assault with the use of a deadly weapon.

At the Mendoza-Lobos sentencing, the district court made “finding[s] on the record” in accordance with NRS 193.165(1). The district court briefly considered all five factors listed in the statute. Mendoza-Lobos did not object to the sufficiency of the district court's compliance with and findings under NRS 193.165(1) during sentencing.

Discussion

On appeal, Mendoza-Lobos contended that the district court failed to comply with NRS 193.165(1)³ in imposing the sentences for the deadly weapon enhancements because it failed to articulate sufficient findings on the record. The Court disagreed.

¹ By Ryan McInerney

² The enhanced sentence was applied to the original sentence pursuant to NEV. REV. STAT. § 193.165 (2007).

³ NEV. REV. STAT. § 193.165(1) states in relevant part: “. . . any person who uses a firearm or other deadly weapon . . . in the commission of a crime shall, in addition to the term of imprisonment prescribed by statute for the crime, be punished by imprisonment . . . for a minimum term of not less than 1 year and a maximum term of not more than 20 years. In determining the length of the additional penalty imposed, the court shall consider the following information: (a) The facts and circumstances of the crime; (b) The criminal history of the person; (c) The impact of

Separation-of-powers Doctrine

The Court found that the prescribed factors were included in NRS 193.165(1) as the result of a public policy determination made by the Legislature, and thus the factors themselves do not run afoul of the separation-of-powers doctrine. In so concluding, the Court first looked to United States Supreme Court precedent affirming Congress' power to remove judicial discretion to determine a criminal penalty.⁴ After subsequent review of supporting state precedent,⁵ the Court concluded that it was within the Legislature's power to limit judicial discretion by mandating factors to be considered by the courts when imposing a sentence.

Conversely, the Court found that the relevant portion of NRS 193.165(1), which requires the district courts to state on the record that they have considered the enumerated factors, went beyond the authority granted to the Legislature in determining the appropriate sentence for a crime and thus violated the separation-of-powers doctrine. However, although a statute which intrudes on the powers of the judiciary is ordinarily construed as directory rather than mandatory,⁶ the Court decided to abide by the legislative mandate in NRS 193.165(1) because it served the laudable legislative goal of ensuring that all factors are properly considered.

Whether the district court made sufficient findings under NRS 193.165(1)

The Court held that NRS 193.165(1) requires the district court to make findings prior to imposing a sentence for a deadly weapon enhancement. Mendoza-Lobos argued NRS 193.165(1) required the district court to articulate all findings on the record. The State contended that the statute merely required the district court to state that it had considered the factors in the statute. The Court initially found the plain language of the statute to be ambiguous and subsequently relied on legislative intent to support its holding. The Court concluded that the legislative history indicated that the intent of the language, "state on the record," was to "require[] sentencing judges to be more communicative regarding their discretion."⁷ Therefore, the Court concluded that the plain language of the statute required district courts to articulate actual findings, on the record, regarding each of the listed factors for each of the deadly weapon enhancements.

Here, the Court concluded that, while the district made some findings, it failed to make any findings regarding the facts and circumstances of the robbery and attempted sexual assault or

the crime on any victim; (d) Any mitigating factors presented by the person; and (e) Any other relevant information. The court shall state on the record that it has considered the information described in paragraphs (a) to (e), inclusive, in determining the length of the additional penalty imposed."

⁴ Chapman v. U.S., 500 U.S. 453, 467 (1991) ("Congress has the power to define criminal punishments without giving the courts any sentencing discretion").

⁵ See, e.g., U.S. v. Kerr, 686 F. Supp. 1174, 1183 (W.D. Pa. 1988) ("[F]rom Congress' power to eliminate entirely judicial discretion in sentencing follows the power to limit discretion and assign specific values to the sentencing factors"); Carter v. State, 422 N.E.2d 742, 744 (Ind. Ct. App. 1981) (the establishment of a list of factors to be considered when determining sentences "does not invade the power of the judiciary"); Matchett v. State, 941 S.W.2d 922, 932 (Tex. Crim. App. 1996) (stating that it is within the legislative power to establish guidelines for deciding when a sentence of death is appropriate); see also Fisher v. State, 690 So.2d 268, 275-76 (Miss. 1996) (holding that a sentencing statute requiring imposition of a death sentence or life imprisonment did not run afoul of the separation of powers doctrine; but see State v. McCoy, 486 P.2d 247, 251-52 (Idaho 1971) (holding the courts have an inherent right to suspend a sentence and a statute imposing a mandatory sentence, without any right to exercise judicial discretion, is unconstitutional).

⁶ State of Nevada v. American Bankers, Inc., 106 Nev. 880, 883, 802 P.2d 1276, 1278 (1990).

⁷ Hearing on A.B. 63 Before the S. Judiciary Comm., 2007 Leg., 74th Sess. (Nev. 1999).

in the context in which the weapon was used in those two crimes. However, applying a plain-error review, the Court further held that nothing in the record indicated that the district court's failure to make these findings had any bearing on sentencing decision. This conclusion was based on the fact that there was no evidence that this omission caused any prejudice warranting relief for Mendoza-Lobos.

Conclusion

The section of NRS 193.165(1) that requires district courts to state on the record that they have considered the listed factors violates the separation-of-powers doctrine. However, as a matter of public policy, district courts must still adhere to that provision. NRS 193.165(1) also requires the district courts to articulate findings on the record, for each factor, when imposing a sentence for a deadly weapon enhancement. If the court is imposing a weapon enhancement on multiple counts, separate findings must be made for each enhancement. However, here, the district court's failure to articulate findings on the record for all counts did not amount to a plain error warranting relief. Accordingly, the Court affirmed the judgment of conviction.

Concurring in part & Dissenting in part (Douglas, J., Parraguirre, J., and Pickering, J.)

Justices Douglas, Parraguirre, and Pickering concurred with the majority with respect to the result reached and the classification of the enumerated factors provision of NRS 193.165(1) as nonviolative of the separation-of-powers doctrine. However, the Justices noted that they disagreed with the majority's conclusion that NRS 193.165(1) was ambiguous. The dissent argued that the plain language only requires the district court to "state on the record that it has considered" the enumerated factors rather than also mandating an articulation of findings. The Justices further concluded that precedent only supports a review of sentencing determinations when they are "unreasonably disproportionate to the offense as to shock the conscience."⁸ Therefore, in light of the unambiguous language of NRS 193.165(1), the Justices concluded that district courts should not be required to make findings in the absence of an explicit mandate to do so.

⁸ Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 222 (1979)).