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Summary of Picetti v. State, 124 Nev. Adv. Op. No. 68

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Picetti v. State, 124 Nev. Adv. Op. No. 68 (Sep. 11, 2008)¹

CRIMINAL LAW- PROCEDURE

Summary

This appeal arises from a judgment of conviction, pursuant to a guilty plea, of one count of driving under the influence (DUI), which is his third offense within 7 years, a class B felony. Paul Thomas Picetti (“Picetti”) contends that the district court erred by denying his motion to suppress his prior DUI convictions. Moreover, he claims the district court erroneously refused to allow him an opportunity to apply for a treatment program established in NRS 484.37941² for third offense DUI offenders.

Disposition/Outcome

The Nevada Supreme Court held the mass advisements and individual colloquies involved were constitutionally sufficient as the justice court appropriately informed Picetti of his rights. Furthermore, the Court concluded the State met its burden in establishing the validity of Picetti’s prior DUI convictions. Additionally, the Court held NRS 484.37941 does not apply retroactively, as it only applies to offenders who enter a guilty plea on or after July 1, 2007.

Factual and Procedural History

On March 10, 1999, Picetti entered a guilty plea to his first-offense misdemeanor DUI in Lyon County, Nevada. Counsel did not represent him, but the justice court verbally counseled him in a mass advisement addressed to all misdemeanor defendants as to their right to an attorney at every stage of the proceedings. Furthermore, the advisement notified all of the defendants of the possible pleas they could enter as well as the possible punishments for their offenses. Subsequently, the justice court individually canvassed Picetti in order to ascertain whether he understood the charges and penalties for a first-offense DUI. Picetti indicated that he understood and entered a guilty plea. Immediately after his guilty plea, Picetti signed forms waiving his right to counsel, DUI rights, and misdemeanor rights.

On August 11, 1999, Picetti was convicted, pursuant to a guilty plea, of a second-offense misdemeanor DUI. There is no record of Picetti being present during the mass advisement; however, Judge Stephan W. Lehman signed Picetti’s waiver forms and he also personally canvassed Picetti. Similar to the first instance, Picetti signed a form waiving his right to counsel. At his sentencing hearing, counsel represented Picetti, but he did not challenge the validity of his guilty plea at that time.

On September 11, 2006, Picetti entered a plea of not guilty to his third-offense felony

¹ By Kristopher Zeppenfeld

² Under NRS 484.37941, a third-time DUI offender may seek to undergo a program of treatment for a minimum of three years.

DUI. He filed a motion to suppress his prior DUI convictions and it was denied. Thereafter, on April 30, 2007, Picetti pleaded guilty to the third-offense felony DUI. He filed an application for treatment pursuant to NRS 484.37941, which was supported by the Lyon County DA. On October 1, 2007, the district court denied Picetti's application for treatment and pronounced his sentence.

Picetti appeals from the judgment of conviction. On appeal he contends the district court erred by denying his motion to suppress his prior DUI convictions. Additionally, Picetti claims the district court erroneously refused to allow him an opportunity to apply for a treatment program established in NRS 484.37941 for third offense DUI offenders.

Discussion

Court considered whether the State met its burden in demonstrating the constitutionality of Picetti's first two convictions and whether NRS 484.37941 applies retroactively to the date of Picetti's guilty plea.

Constitutionality of Mass Advisements

The constitution only requires a trial judge to inform the "accused of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments attendant upon the entry of a guilty plea."³ Additionally, when reviewing the sufficiency of a plea canvass, each case must be decided upon the particular facts and circumstances of the case.⁴

The Court concluded that the mass advisements and individual colloquies given in this case were constitutionally sufficient. Moreover, Picetti's plea canvasses were sufficient to pass constitutional muster. During the mass advisement of the first offense, the justice court advised Picetti of his right to counsel, the nature of the charges against him, and of the possible punishments involved.

There is no record regarding the content of Picetti's second-offense mass advisement; however, Judge Lehman signed Picetti's waiver of DUI rights and he personally canvassed Picetti as to his rights. Furthermore, the Court noted Picetti did not allege he was absent during any portion of either of the mass advisements given by the justice courts or that he did not understand his right to counsel in either of his prior convictions. As a result the Court held the justice court's mass advisements and individual colloquies of Picetti respecting his guilty plea for first-offense and second-offense DUI convictions were constitutionally sufficient

Constitutionality of the Prior DUI Convictions

To establish the validity of a prior misdemeanor conviction, the State must "affirmatively show either that counsel was present or that the right to counsel was validly waived, and that the

³ Iowa v. Tovar, 541 U.S. 77 (2004).

⁴ State v. Freese, 13 P.3d 442, 448 (2000).

spirit of constitutional principles was respected.”⁵ The Court uses a totality of the circumstances test, the standard for reviewing the validity of guilty pleas for some years.⁶

A. Picetti’s First Conviction

The Court held the totality of the facts and circumstances in this case demonstrated Picetti knowingly and voluntarily waived his right to counsel. The Court opined that the justice court asked Picetti to sign his misdemeanor waiver of rights, which included the waiver of the right to counsel. Additionally, the fact Picetti executed the waiver documents after he plead guilty was not relevant in determining whether the conviction was consistent with the constitutional principles.

B. Picetti’s Second Conviction

The Court concluded the record from Picetti’s second-offense DUI conviction reflected the justice court respected the spirit of constitutional principles and Picetti knowingly and voluntarily waived his right to counsel. Moreover, Picetti entered a guilty plea to his first-offense DUI charge only four months prior to committing his second-offense DUI, and therefore Picetti was experienced in the process of entering a guilty plea. Therefore, the district court did not err when it denied Picetti’s motion to suppress his second-offense DUI conviction.

Applicability of NRS 484.37941

In order for the Court to determine whether NRS 484.37941 applies in this case, the Court must determine whether the Legislature has clearly expressed its intent to apply the law retroactively. This statute states, “an offender who enters a guilty plea may... at the time he enters his plea, apply to the court to undergo a program of treatment.”⁷ The act becomes effective on July 1, 2007.

Picetti argued that since the district court sentenced him on October 1, 2007, after the statute’s effective date, the provisions of the statute should apply. The Court reasoned the Legislature’s intent did not intend for the statute to operate retroactively. Furthermore, the Court reasoned had the Legislature wished to make the statute retroactive, it certainly could have expressed that desire; instead, the Legislature clearly stated that the effective date of the statute is July 1, 2007. The Court further noted Picetti’s guilty plea date of April 30, 2007 is the date used to determine whether NRS. 484.37941 is applied. Therefore, the statute applies only to those defendants entering guilty pleas on or after the statute’s effective date.

Finally, as a result of the Court’s conclusions above, they affirmed the lower court’s conviction of Picetti’s third-offense felony DUI.

Conclusion

⁵ Dressler v. State, 819 P.2d 1288, 1295 (1991).

⁶ *Id.*

⁷ NEV. REV. STAT. § 484.37941 (2007).

Picetti's former DUI conviction were valid because the court's actions and applicable law did not violate the constitution. Further, Picetti entered his guilty plea before the effective date of NRS *484.37941* and therefore its protections were not available to him.