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### Summary of State v. Dist. Ct. (Pullin), 124 Nev. Adv. Op. No. 54

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*Nevada Law Journal*

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*State v. Dist. Ct. (Pullin)*, 124 Nev. Adv. Op. No. 54 (July 24, 2008)<sup>1</sup>

**CRIMINAL LAW – RETROACTIVE APPLICATION OF LAW**

**Summary**

This case came to the Court on a petition for a writ of mandamus challenging a district court's order sentencing the real party in interest pursuant to NRS 193.165 amendments, which were made affective after the crimes in question were committed.

**Disposition/Outcome**

The writ of mandamus was granted; and the district court was directed to enter an amended judgment of conviction that does not apply the retroactive changes to the statute.

**Factual and Procedural History**

On September 2, 2006, defendant Pullin murdered Laurie Jean Lawrence using a firearm. Pullin pleaded guilty to that offense and the matter was set for sentencing. Prior to Pullin's sentencing hearing on September 28, 2007, the Legislature enacted A.B. 510, which altered the sentencing scheme in NRS § 193.165 for the deadly weapon enhancement.

Prior to sentencing, the parties submitted arguments concerning the application of these newly enacted amendments in the instant case. The district court determined that Pullin should be sentenced pursuant to the amendments. It then orally imposed a sentence of life without the possibility of parole for first degree murder, with a consecutive sentence of 8 to 20 years for the deadly weapon enhancement. The district court entered a judgment of conviction but altered the sentence for the deadly weapon enhancement from the oral pronouncement of 8 to 20 years to a term of 8 to 12 years. The State then filed the instant petition.

**Discussion**

The Court found that writ review was appropriate because the State does not have the right to appeal from a final judgment of conviction. The Court concluded that the petition for a writ presented important issues of law requiring clarification, and therefore exercised its discretion to intervene by way of the writ and addressed the petition's merits.

**The amendments to NRS 193.165**

On June 14, 2007, the Legislature amended several statutes, including NRS § 193.165. Previously, NRS § 193.165 had required a defendant to serve an equal and consecutive sentence for the use of a deadly weapon in the commission a crime. The statute was amended to give district court judges broader discretion in sentencing, allowing them to impose a consecutive sentence with a minimum term of not less than one year and a maximum term of not more than 20 years. The amendment was effective as of July 1, 2007, but the Legislature did not indicate whether the amendment would apply retroactively.

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<sup>1</sup> By Katie Maw

The Supreme Court agreed with the State that, because the Legislature had expressed no intent regarding the retroactivity of the statute, the district court erred when it sentenced Pullin under the amended statute. In so doing, the Court reaffirmed that “unless the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires the application of the law in effect at the time of the commission of a crime.”<sup>2</sup>

#### Statutory retroactivity under Nevada case law

The Court supported its general rule that a statute is not retroactive absent a clear expression of intent by the Legislature with previous Nevada case law. In *Tellis v. State*<sup>3</sup>, the defendant argued for application of the statute in effect at the time of his conviction and sentencing, as opposed to the stricter statute in effect at the time of the commission of the offense.<sup>4</sup> The Court held in that case that the general savings clause set forth in NRS 193.130 prevented the defendant from being sentenced under amendments enacted after he committed his crime.<sup>5</sup>

Similarly, in *Sparkman v. State*<sup>6</sup>, the defendant challenged his sentence, which would have been the prescribed sentence in effect at the time he committed the subject offense and instead sought to be sentenced under the amended statute.<sup>7</sup> Again, the Court reiterated the general rule that “the proper penalty is that in effect at the time of the commission of the offense” absent clear legislative intent to the contrary.<sup>8</sup> Despite this general rule, the Court found that the district court erred in sentencing the defendant based on the previous version of the statute because the newly enacted amendment specifically indicated that it was to be applied retroactively (as distinguished from the present case).<sup>9</sup>

Finally, in *Castillo v. State*<sup>10</sup>, the Court declined to apply amendments made to NRS § 62.080 retroactively.<sup>11</sup> The Court noted that “[i]n Nevada and neighboring jurisdictions, changes in statutes are presumed to operate prospectively absent clear legislative intent to apply a statute retroactively.”<sup>12</sup>

The Court determined that these cases show continued adherence to the general rule in Nevada regarding statute retroactivity.

#### Public policy considerations

The Court further agreed with the State’s argument that “retroactive application of criminal statutes violates important public policy considerations.”<sup>13</sup> This is because “it is irrational to have a sentencing scheme whereby defendants could benefit by manipulating the

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<sup>2</sup> *State v. Dist. Ct.*, 124 Nev. Adv. Op. No. 54 (July 24, 2008).

<sup>3</sup> *Tellis v. State*, 445 P.2d 938 (1968).

<sup>4</sup> *Id.* at 941.

<sup>5</sup> *Id.*

<sup>6</sup> *Sparkman v. State*, 590 P.2d 151 (1979).

<sup>7</sup> *Id.* at 155.

<sup>8</sup> *Id.* at 155-56 (citing *Tellis*, 445 P.2d at 938).

<sup>9</sup> *Sparkman*, 590 P.2d at 156.

<sup>10</sup> *Castillo v. State*, 874 P.2d 1252 (1994), disapproved on other grounds by *Wood v. State*, 892 P.2d 944, 946 (1995).

<sup>11</sup> *Id.* at 1256.

<sup>12</sup> *Id.*

<sup>13</sup> *State v. Dist. Ct.*, 124 Nev. Adv. Op. No. 54 (July 24, 2008).

date of their sentencing hearings or by becoming fugitives from justice.”<sup>14</sup> Thus, public policy concerns were also behind the Court’s decision to reiterate that amendments to criminal statutes do not apply retroactively in the absence of clear legislative intent to the contrary.

#### Retroactive application of procedural statutes

The defendant relied on a Michigan case, *People v. Miller*<sup>15</sup>, for the proposition that the general rule should not be applied in his case because statutes that are remedial or procedural in nature may be applied retroactively.<sup>16</sup> The Court rejected this argument based on *Castillo*, where it had observed that it had previously declined to apply procedural rules prospectively unless the rules were of a constitutional dimension.<sup>17</sup> Here, the amendments to NRS § 193.165 in question were not of a constitutional dimension, but rather served to merely give the district court additional discretion in sentencing.

#### The applicability of the general rule to sentence enhancements

Pullin further contended that the general rule did not apply because his case involved a sentence enhancement, while previous cases dealt with changes in the sentencing scheme for primary offenses. He suggested that his sentence enhancement be treated differently because the enhancement does not create a separate offense, but rather provides an additional penalty for the primary offense. The Court disagreed, stating that “[t]he mere fact that NRS 193.165 does not create a separate offense does nothing to alter the fact that the deadly weapon enhancement is an additional punishment for using a deadly weapon in the commission of the primary offense.”<sup>18</sup> The Court concluded that the penalty for the use of a deadly weapon should be the one in effect at the time the defendant used the weapon to commit the primary offense because that is when the wrongdoing supporting the enhancement occurred.

#### Conclusion

The Nevada Supreme Court found that crimes are punishable in accord with the law in force at the time the crime is committed, so long as the Legislature does not express its clear intent otherwise. Thus, the district court erroneously sentenced Pullin pursuant to the amended provisions of NRS 193.165, which did not take effect until after the time the crime was committed. The Court instructed the district court to sentence Pullin pursuant to the law in effect at the time the offense was committed.

Therefore, the petition was granted. The Court further instructed the clerk of the court to issue a writ of mandamus instructing the district court to conduct a new sentencing hearing pursuant to its opinion.

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<sup>14</sup> *Id.*

<sup>15</sup> *People v. Miller*, 453 N.W.2d 269 (Mich. Ct. App. 1990).

<sup>16</sup> *State v. Dist. Ct.*, 124 Nev. Adv. Op. No. 54 (July 24, 2008).

<sup>17</sup> *Castillo*, 874 P.2d at 1256.

<sup>18</sup> *State v. Dist. Ct.*, 124 Nev. Adv. Op. No. 54 (July 24, 2008).