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Summary of Douglas v. State, 124 Nev. Adv. Op. No. 37

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Douglas v. State
124 Nev. Adv. Op. No. 37
June 5, 2008¹

Summary

Appeal from district court denial of plaintiff's writ of mandamus.

Disposition/Outcome

Reversed and remanded. Under NRS 213.1214, the Parole Board only needs to require psych panel certification on the offender's last sex offense, not for the last offense prior to being released into society for anyone ever convicted of a sex offense.

Factual and Procedural History

In 1996, Douglas was convicted of robbery and attempted sexual assault and paroled. While on parole, Douglas committed an attempted burglary and the district court revoked his parole. He was convicted on that charge and sentenced to 14 to 48 months. Shortly after, the psych panel recertified Douglas on his attempted sexual assault charge.

Two years later, Douglas sought to be paroled from the attempted burglary charge. The parole board informed him that he would have to again receive psych panel certification. The psych panel later refused to certify Douglas and he filed a petition for writ of mandamus arguing that the State violated a statutory duty when it required him to be certified by the Psych Panel on a nonsexual offense. The district court concluded that NRS 213.1214 required Douglas to obtain psych panel certification.

Discussion

District court misplaced its reliance on NRS 213.1214(3). The court concluded that the plain language of NRS 213.1214 was "unambiguous and clearly requires recertification only when a prisoner previously convicted of a sex offense receives certification, is paroled to the street, and then returns to the custody of the Department of Corrections."² Because Douglas was recertified on the sexual assault charge after his parole was revoked, and he remained in custody, he was not required to obtain another psych panel certification on his attempted burglary charge.

The state did not and could not revoke Douglas' certification under NRS 213.1214(3). Even if the psych panel revoked Douglas' certification, there is no statutory

¹ By Tyler Ure

² *Douglas v. State*, 124 Nev. Adv. Op. No. 37 (June 5, 2008).

authority for requiring him to be recertified for an offense not enumerated in NRS 213.1214(5).

The Court further discussed the scope of NRS 213.1214. If determined that the Legislature intended to limit the number of offenses that required certification because of its prohibitive cost, and therefore would not likely want sex offenders to be continually recertified on non-sex offenses.

Acknowledging that its previous decision in *Stockmeier v. Psychological Review Panel*,³ was a source of confusion, the court took the opportunity to clarify its decision. In *Stockmeier*, the plaintiff was convicted on multiple counts of sexual assault involving consecutive sentences and the court concluded he only needed to be certified on the last offense before being released to the street. The court clarified that when a prisoner has multiple sex offenses as well as non-sex offenses, he only needs to be certified on the last sex offense before being released to the street or institutional parole.

Conclusion

NRS 213.1214(2) only requires prisoners to be recertified when they are released to the streets and are returned to custody. A prisoner convicted of both sex offenses and non-sex offenses needs to be certified on his last sex offense regardless of whether he is being released to the street or institutional parole, but does not need to be certified on his last offense if it is not a sex offense.

³ 122 Nev. 534, 135 P.3d 807 (2006).