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Matter of T.R., 119 Nev. Adv. Op. 67, 80 P.3d 1276 (Nev. 2003)¹

JUVENILE DELINQUENCY - SEX OFFENDER REGISTRATION AND NOTIFICATION - VOID FOR VAGUENESS DOCTRINE

Summary

Appeal from the Eighth Judicial District Court, Family Court Division order finding a juvenile delinquent for sexual assault of a victim under the age of fourteen.

Disposition

Affirmed in part and reversed in part. The court affirmed the order declaring the juvenile a delinquent and reversed the order for the juvenile to appear for a hearing when he reached the age of twenty-one to determine if he would be required to register as an adult sex offender.

Factual and Procedural History

T.R., a fourteen year old minor, was charged with three counts of sexual assault. Namely, sodomizing a four year old victim, forcing the victim to orally copulate him and orally copulating the victim. At an evidentiary hearing before a hearing master, the court heard evidence from the victim's grandmother and the victim regarding the alleged sexual abuse including the grandmother's account of statements to her conveying the sexual assault.

The hearing master found that T.R. did in fact sodomize the victim and force the victim to orally copulate him. The hearing master found the charge of orally copulating the victim however, should be dismissed. The district court adopted the hearing master's findings and entered an order to that effect. T.R. moved for a rehearing, alleging that the charges were not proved beyond a reasonable doubt and that the grandmother's hearsay statements were improperly admitted.

At the second hearing, the court upheld the sodomy charge but found that the State did not prove beyond a reasonable doubt that T.R. forced the victim to orally copulate him. Additionally, the district court adopted the recommendations of the juvenile probation department, which recommended that T.R. complete a correctional program, comply with community notification requirements under NRS 62.500 through 62.600, and return for a hearing pursuant to NRS 62.590² to determine if, upon reaching

¹ By Kathleen Hamers

² NEV. REV. STAT. 62.590 provides in relevant part, "If a child who has been adjudicated delinquent for a sexual offense or a sexually motivated act is not relieved of being subject to community notification as a juvenile sex offender before the child reaches 21 years of age, the court shall hold a hearing when the child reaches 21 years of age to determine whether the child should be deemed an adult sex offender for the purposes of registration and community notification If the Court determines at the hearing that the child has not been rehabilitated to the satisfaction of the court or that the child is likely to pose a threat to the safety of others, the court shall deem the child to be an adult sex offender for the purposes of registration and community notification"

the age of twenty-one, T.R. would be required to comply with adult sex offender and registration statutes.

T.R. appealed to the Nevada Supreme Court challenging that the charges were not supported by sufficient evidence and that NRS 62.590, requiring juvenile sex offenders to comply with adult sex offender registration and notification requirements, is unconstitutionally vague.

Discussion

I. Sufficiency of Evidence

The court held that when an offense has been proven beyond a reasonable doubt in a juvenile case the court will affirm a judgment that is supported by sufficient evidence.³ The court will determine if, when viewing the evidence in the light most favorable to the State, a rational fact finder could have found the elements of the offense beyond a reasonable doubt.⁴ The credibility of the witnesses and the weight to be given to their testimony is within the discretion of the fact finder.⁵

T.R. argued that there was insufficient evidence presented before the hearing master to prove any sexual assault beyond a reasonable doubt. Specifically, that the victim's testimony was unreliable and the victim's grandmother's testimony should have been excluded as inadmissible hearsay. The District Court did however find that sufficient evidence in the record to prove the offense of sodomy beyond a reasonable doubt. Additionally, the hearsay statements of the grandmother were properly admitted under NRS 51.385, allowing hearsay statements by a sexually assaulted child to be admitted. The Nevada Supreme Court, therefore, affirmed the district court's finding.

II. Constitutional Challenge

T.R. further alleged that NRS 62.590, which required a hearing to determine if T.R. must comply with adult sex offender registration and notification requirements after he reached the age of twenty-one, was invalid as unconstitutionally vague and violated the Due Process Clause. The State contended that T.R. did not have standing to bring a challenge because NRS 62.590 had not yet been applied to T.R. and he had not suffered any injury. The Nevada Supreme Court held that the proper inquiry however was ripeness, not standing, because it deals with the timing of review.⁶

Determining whether an issue is ripe for review, involves the weighing of factors including, (1) the hardship to the parties if there is no review; and (2) whether the issues are suitable for review.⁷ The issue was ripe for review because the application of NRS 62.590 to T.R. was certain.⁸ T.R. would have been subject to harm, in that, he did not know how his current and future life choices would affect the determination made

³ In re E.R.L., 109 S.W.3d 123, 127 (Tex. App. 2003).

⁴ Hutchings v. State, 110 Nev. 103, 107-08, 867 P.2d 1136, 1139 (Nev. 1994).

⁵ Lay v. State, 110 Nev. 1189, 1192, 886 P.2d 448, 450 (Nev. 1994).

⁶ Smith v. Wisconsin Dept. of Agriculture, 23 F.3d 1134, 1141 (7th Cir. 1994).

⁷ See Abbott Laboratories v. Gardner, 387 U.S. 136, 149 (1967).

⁸ See Chang v. U.S., 327 F.3d 911, 922 (9th Cir. 2003).

pursuant to the statute. There was no advantage to deferring review until T.R. reached the age of twenty-one. Moreover, the record was adequately developed in order to conduct review. Therefore, the Nevada Supreme Court held that the issue was ripe for review.

The substantive due process doctrine of void-for-vagueness has its foundation in the principle that “a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.”⁹ If a law is so unclear that its meaning is thoroughly vague, it will be facially invalid.¹⁰ In order for a statute to be void-for-vagueness, “the complainant must demonstrate that the law is impermissibly vague in all of its applications.”¹¹

The Nevada Supreme Court applied the standards set forth by the United States Supreme Court¹² in order to evaluate whether the statute should be void for vagueness. Specifically, the statute must provide “a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly” and the statute must provide specific standards to be applied.¹³

NRS 62.590 provides no specific guidance and the language “has been rehabilitated to the satisfaction of the court”¹⁴ is completely subjective. Therefore, it is likely to be applied arbitrarily and discriminatorily and is void for vagueness.

Dissent By Justice Leavitt

Justice Leavitt noted that an assault victim’s testimony need not necessarily be corroborated but some circumstances leave a victim’s testimony incredible as a matter of law.¹⁵ In this case, Justice Leavitt found specifically that the victim had engaged in fellatio with another four year old child, providing an alternate explanation for the victim’s sexual knowledge and that the nurse who examined the victim could not determine if he had in fact been sexually assaulted. Additionally, Justice Leavitt noted that the hearing master doubted T.R.’s credibility because he had been subjected to sexual abuse himself. In sum, Justice Leavitt stated that a rational fact finder could not have found the sodomy offense proved beyond a reasonable doubt and would therefore reverse the order adjudicating T.R. a juvenile delinquent for committing sexual assault.

Conclusion

The Nevada Supreme Court found this issue ripe for review because it was certain to be applied, delay would have harmed T.R., and the record was sufficiently developed to conduct review. A statute will be found void-for-vagueness when the statute is

⁹ Connally v. General Const. Co., 269 U.S. 385, 391 (1926).

¹⁰ See City of Las Vegas v. District Court, 118 Nev. __, __, 59 P.3d 477, 479 (Nev. 2002).

¹¹ Hoffman Estates v. Flipside, Hoffman Estates, 455 U.S. 489, 497 (1982); accord Sheriff v. Martin, 99 Nev. 336, 340, 662 P.2d 634, 637 (Nev. 1983).

¹² Grayned v. City of Rockford, 408 U.S. 105, 108.

¹³ *Id.* at 108.

¹⁴ NRS 62.590(3).

¹⁵ State v. Diamond, 50 Nev. 433, 437, 264 P.2d 697, 698-99 (Nev. 1928).

thoroughly vague and there are no specific standards to be applied, making arbitrary and discriminatory application likely.