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Summary of Gomez v. State, 130 Nev. Adv. Op. 43

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CRIMINAL LAW: PRESENTENCE INVESTIGATION REPORT

Summary

The Court determined two issues: 1) whether the district court properly relied on the incident reports when determining whether to amend the PSI 2) whether a defendant is entitled to due process protections when erroneous statements in his or her PSI will potentially affect his or her prison classification and compromise whether he or she will be released on parole.

Disposition

The district court did not abuse its discretion when it determined that the LVMPD reports provided a factual basis for the gang affiliation noted in Gomez's PSI. The Court declined to consider Gomez's claims that his PSI will affect his parole and prison classification. Gomez's judgment of conviction is affirmed.

Factual and Procedural History

Ulises J. Gomez pled guilty to murder, conspiracy to commit robbery, and conspiracy to commit first-degree kidnapping for his involvement in a robbery and homicide at Llantera Del Norte Tire Shop in North Las Vegas. In exchange for his plea, the parties agreed to recommend a term of life with possibility of parole after 20 years for the murder. The Nevada Division of Parole and Probation (P&P) prepared a PSI before sentencing as required by NRS 176.135. Gomez's PSI stated, "[per contact with the Las Vegas Metropolitan Police Gang Unit, the defendant is a known. . . primary member of, 'Brown Pride Locotes' and a secondary member of '18th Street,' with a last known contact date of July 23, 2009."

Gomez filed an objection to his PSI, stating the statements about his gang membership were false and unsupported by "factual information." The LVMPD produced several field interview cards and incident reports; one noted that Gomez "admitted Blythe Street [gang]" and another noted Gomez was a known member of the 18th Street gang as determined by his "gang dress/frequents gang area/affiliates w/gang." The district court heard argument on Gomez's objection and found the reports provided a factual basis for the information in the PSI and thus the PSI was not based on "impalpable or highly suspect information."² The district court denied Gomez's request for an evidentiary hearing stating the gang information was "not actually even part of the sentence. It's just a classification problem which is an administrative issue." The district court then adjudged Gomez guilty and sentenced him to life in prison with the possibility of parole after 20 years for murder and 28-72 months for each conspiracy offense, with the sentences to run concurrently.

¹ By Laura Guidry.

² See *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. ___, ___, 5 P.3d 209, 213 (2011)

Discussion

Gomez was not entitled to an evidentiary hearing

Nevada law affords a defendant the opportunity to object to factual errors in his or her PSI. NRS 176.156(1). But, as this court acknowledged in Stockmeier, "the process by which the district court must resolve objections to a PSI is not entirely clear."³ The Court concluded that Stockmeier does not require the district court to hold evidentiary hearings to address alleged factual errors in a defendant's PSI. Here, the district court reviewed the LVMPD incident reports and determined that there was a factual basis to support them and the reports was not based on impalpable or highly suspect evidence.⁴

The statements in Gomez's PSI were not based on impalpable or highly suspect evidence.

NRS 176.135(1) mandates that P&P "prepare a PSI to be used at sentencing for any defendant who pleads guilty to or is found guilty of a felony."⁵ The PSI must not include information based on "impalpable or highly suspect evidence."⁶ The Court concluded the district court did not abuse its discretion in ruling that the gang information in Gomez's PSI was not based on impalpable or highly suspect evidence and was instead based on the LVMPD field interview cards and incident reports.⁷

Gomez's remaining arguments are moot

Since the district court did not err in finding the information in Gomez's PSI regarding his gang affiliation was not based on impalpable or highly suspect evidence, the Court did not consider whether the gang affiliation within Gomez's PSI could possibly materially prejudice his prison classification or his chances of being released on parole.

Conclusion

Since the district court did not abuse its discretion when it determined the LVMPD reports provided a factual basis for the gang affiliation noted in Gomez's PSI, the Court affirmed Gomez's judgment of conviction. A result, the Court declined to consider Gomez's claims that his PSI will affect his parole and prison classification.

³ *Id.*

⁴ *Id.* at 212-14.

⁵ *Id.* at 212.

⁶ *Id.* at 213.

⁷ See *Nunnery v. State*, 127 Nev. ___, ___, 263 P.3d 235, 241 (2011).