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Summary of Sasser v. State, 130 Nev. Adv. Op. 41

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CRIMINAL LAW: PRESENTENCE INVESTIGATION REPORT AMENDMENT

Summary

The Court determined three issues: 1) whether a district court can amend a presentence investigation report (PSI) in the judgment of conviction rather than amending the PSI itself; 2) whether the district court properly declined to strike information from the PSI; and 3) whether the district court relied on impalpable or highly suspect evidence when sentencing the defendant.

Disposition

A district court has discretion to amend a PSI in the judgment of conviction or amend the PSI itself. A challenging party must present the Court the evidence the district court relied on to determine if information in the PSI is based on impalpable or highly suspect evidence for the Court to assess if the district court abused its discretion. A district court may enter a judgment of conviction amending a PSI after sentencing where the district court expressly states in the record it will not consider the stricken information during sentencing.

Factual and Procedural History

The defendant, Sasser, pled guilty to robbery, but portions of the victim's statement were unclear. Sasser moved to strike portions of the victim's statement and other information from the PSI as unsupported by evidence prior to his sentencing. The district court found certain information in the PSI unsupported by evidence, but declined to strike everything Sasser requested, and entered its findings to amend the PSI in the judgment of conviction.

Discussion

The district court did not err in amending Sasser's PSI in his judgment of conviction.

Nevada law requires that a criminal defendant have the opportunity to object to a PSI and that the objection be resolved prior to sentencing² but does not specify a procedure for amending a PSI. Other courts allow various methods to amend a PSI other than amending the actual PSI.³ Because Nevada statutes require transmittal of both the PSI and judgment of conviction to a subsequent reviewing authority,⁴ amending the judgment of conviction effectively communicates the changed findings. Accordingly, the Court held that district court may properly amend a PSI in the judgment of conviction rather than returning it to the Division of Parole and Probation.

¹ By Jeffrey Pike.

² Stockmeier v. State, Bd. of Parole Comm'rs, 127 Nev. ___, ___, 255 P.3d 209, 213–14 (2012); *See also* NEV. REV. STAT. § 176.156(1).

³ State v. Waterfield, 248 P.3d 57, 59 (Utah Ct. App. 2011) (by entering inaccuracy findings on the record); State v. Craft, 490 S.E.2d 315, 319 (W. Va. 1997) (by appending written inaccuracy findings to the PSI); Fed. R. Crim. P. 32(i)(3)(C) (same).

⁴ NEV. REV. STAT. §§ 176.159(1), 176.325, 176.335(2) (2013).

The district court struck impalpable or highly suspect information from Sasser's PSI and relied on the remaining supported information when sentencing Sasser.

The Court rejected Sasser's arguments that the district court should have stricken additional information from the PSI and that the district court relied on the Division of Parole and Probation's (P&P) recommendation based on inaccurate information in the PSI because the judgment of conviction did not actually strike the information prior to sentencing.

The district court properly declined to strike information from Sasser's PSI that was not based on "impalpable and highly suspect evidence."

A PSI may not contain impalpable or highly suspect information that is a bald assertion unsupported by any evidence⁵ but the Court will defer to the district court's findings⁶ and not change the sentence if such information does not prejudice the defendant.⁷ Sasser alleged several statements in the PSI where unsupported by evidence to which the state responded by providing additional supporting evidence. The Court deferred to the district court's discretionary findings to strike some unsupported information from the PSI but not everything Sasser requested because Sasser failed to provide the evidence the district court considered to the Supreme Court to review for abuse of discretion.

The district court did not rely on impalpable or highly suspect evidence when sentencing Sasser.

Sasser's argued that the district court relied on the P&Ps recommendation based on the original PSI because the judgment of conviction did not actually amend the PSI until after sentencing. The Court rejected this argument because the record shows the district court expressly stated, twice, that it would not consider the stricken information when sentencing Sasser.

Conclusion

The Court denied Sasser's argument that the PSI itself must be amended and held a district court has discretion to amend the PSI through the judgment of conviction because a subsequent review authority will receive the judgment of conviction containing the amendments. The Court denied Sasser's argument that the district court should have stricken additional information from the PSI because Sasser failed to provide the Court for its consideration the evidence the district court relied on for its findings. The Court denied Sasser's argument the district court relied on the information stricken from the PSI because the judgment of conviction did not amend the PSI until after sentencing because the district court expressly stated it would not consider the stricken information.

⁵ Stockmeier, 127 Nev. at ___, 255 P.3d at 213; Goodson v. State, 98 Nev. 493, 496, 654 P.2d 1006, 1007 (1982).

⁶ Browning v. State, 124 Nev. 517, 518, 188 P.3d 60, 70 (2008).

⁷ Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009).