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Summary of Pitmon v. State, 131 Nev. Adv. Op. 16 (Mar. 26, 2015)

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CONSTITUTIONAL LAW: VAGUENESS AND DUE PROCESS

Summary

The Court determined that (1) NRS 176.035(1) was not unconstitutionally vague, (2) its grant of discretion to district court judges was not unconstitutionally arbitrary, and (3) Nevada’s sentencing scheme does provide meaning appellate review of district court sentencing.

Background

Pitmon was originally charged in three separate cases with multiple counts of attempted lewdness with a child under the age of 14 for allegedly fondling the genitals of multiple 4-year-old children over the course of many years. Two of the cases were consolidated into one case (the “first case”), to which Pitmon plead guilty to one count. The remaining counts were dropped except for one count (the “instant case”), to which Pitmon also plead guilty.

Before sentencing, Pitmon underwent psychological testing and was determined to be a high risk of re-offense, making him ineligible for probation. During psychological testing, it was determined that Pitmon had victimized at least four children over the course of ten years.

For the first case, Pitmon was given the maximum sentence—imprisonment for a minimum 8-year term with a maximum of 20 years. Two days later, Pitmon was sentenced in the instant case and again given the maximum sentence. The district court judge ordered this term be served consecutively with his prior sentence.

Discussion

NRS 176.035(1) provides that a district court may impose consecutive subsequent sentences. Pitmon did not argue that the district court abused its discretion in imposing a consecutive sentence. Rather, Pitmon makes three constitutional arguments. First, Pitmon argues that NRS 176.035(1) is unconstitutionally vague in violation of his due process right under the Fourteenth Amendment.² Second, Pitmon argues that the statute lacks meaningful guidance or a specific standard for the district court in imposing consecutive versus concurrent sentencing, leading to arbitrary imposition. Finally, Pitmon argues that the Nevada sentencing scheme lacks meaningful appellate review.

As to Pitmon’s first argument, the Court analyzed NRS 176.035(1) and found it to be straightforward. The statute clearly states that the district court *may* impose consecutive subsequent sentences if it so chooses. The Court found that language of NRS 176.035(1) is plain and unambiguous, and meant to give district courts discretion in imposing consecutive sentences.

¹ By Aleem A. Dhalla.

² U.S. CONST. AMEND. XIV; additionally, NEV. CONST. ART. 1, § 8, cl. 5 also provides that no person shall be deprived of “life, liberty, or property, without due process of law.”

In arriving at this conclusion, the Court analyzed the legislative history of NRS 176.035(1), as well as subsequent revisions.³

As to Pitmon's second argument, the Court found that allowing district courts discretion to making case specific determinations on imposing sentences concurrently or consecutively did not render the statute's application arbitrary. The Court stated those who choose to commit multiple offenses should reasonably anticipate the possibility, and perhaps the high likelihood, that they will face consecutive terms. To expect otherwise would favor those who commit multiple crimes over those that commit one.

Finally, the Court stated sentencing is reviewable on appeal when the district court abuses its discretion. If the record demonstrates a sentence is the result of prejudice or accusations not supported by the facts, the sentence may be reversed on appellate review. Additionally, if the sentence is so unreasonably disproportionate to the crime that it shocks the conscious of the court, it may also be reversed. The Court could not find a compelling argument why the Due Process Clause requires Nevada appellate courts should have more authority than they currently possess to review district court sentences.

Conclusion

The Court held that NRS 176.035(1) was not unconditionally vague, nor did the wide discretion of district courts to impose sentences concurrently or consecutively under the statute violate the Due Process Clause. Further, the appellate review of sentencing under an abuse of discretion standard did not violate the Due Process Clause.

³ NEV. REV. STAT. § 176.035(1) was originally enacted in 1967. In 1985, the Governor and Legislature established a "Commission to Establish Suggested Sentences for Felonies" which revised the statute in 1987. In 2013, the Legislature enacted Senate Bill 71, effective July 2014, to again update the statute.