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Harte v. State, 132 Nev., Adv. Op. 40 (June 2, 2016)

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Harte v. State, 132 Nev., Adv. Op. *40* (June 2, 2016) [1]

CRIMINAL PROCEDURE: PENALTY HEARINGS

Summary

The Court reaffirmed *Flanagan v State,*[2] holding that the district court has discretion to admit evidence of a codefendant's sentence in penalty hearings and affirming the district court's sentence in the matter.

Background

Appellant Shawn Russell Harte and two codefendants were charged and convicted of first-degree murder and robbery. Harte was subsequently convicted of felony murder and sentenced to death. The only aggravating factor to support a death sentence was the fact the murder was committed during the course of a robbery. Harte's codefendants were sentenced to life without the possibility of parole. Harte previously appealed, but the Nevada Supreme Court affirmed his conviction and death sentence.

Subsequently, the Court decided *McConnell v. State,*[3] holding that the same felony may not be used both to establish felony murder and as a capital aggravator, and *Bejarano v. State,*[4] which applied *McConnell* retroactively. Harte challenged his conviction under *McConnell* in a post conviction petition for a writ of habeas corpus; the district court granted Harte's petition and vacated the death sentence. The Nevada Supreme Court affirmed the district court's decision, and after a second penalty hearing, a jury sentenced Hart to life in prison without the possibility of parole. Harte appealed.

Discussion

The district court was within its discretion when it admitted evidence of the codefendants' sentences.

Harte argued the district court erred by admitting evidence of his codefendants' sentences, because it deprived him of his right to be sentenced individually. Harte asked the Nevada Supreme Court to overrule *Flanagan v. State* [5] which gave district courts discretion to admit or deny evidence of codefendants' sentences; and instead issue an overarching rule that evidence of codefendants' sentences never be admissible in a penalty hearing. The State argued that the decision to admit or deny such evidence be left to the discretion of the district court on a case by case basis. The Court agreed with the State because the trial judge's discretion in a first-degree murder penalty hearing is broad and every case has unique facts and circumstances.[6] The Court reaffirmed its

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[1] By Brandonn Grossman.
[2] Flanagan v. State, 107 Nev. 243, 247-48. 810P.2d 759, 762 (1991).
[3] McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004).
[4] Bejarano v. State, 122 Nev. 1066, 146 P.3d 265 (2006).
[5] *Flanagan*, 107 Nev. at 247-48. 810 P.2d at 762.
[6] Nunnery v. State, 127 Nev. 749, 769, 263 P.3d 235, 249 (2011); Lisle v. State, 113 Nev. 540, 557, 937 P.2d 473, 484 (1997).

holding in *Flanagan* and held that NRS 175.552 allows the district court to admit this type of evidence particularly with an instruction to the jury that jurors are not bound by the previous sentences.[7]

The district court did not abuse its discretion when it allowed the State to open and conclude the closing arguments

Harte claimed the district court erred, arguing NRS 175.141(5) does not apply in a penalty hearing.[8] Additionally, Harte argued the mandate in *Schoels v. State*[9] does not apply here in a non death penalty case. The Court held it is within the district courts' discretion to let the State argue twice, because district courts have wide discretion in many facets of trial procedure.[10] Since NRS 175.141(5)[11] already extends to the penalty phase of a capital trial,[12] "the district court did not abuse its discretion when it allowed the State to start and conclude during closing arguments."

Harte's sentence was not cruel and unusual

Harte argued life without parole is an excessive sentence and cited *Naovarath v. State.*[13] Interpreting Harte's argument as a cruel and unusual challenge, the Court explained a sentence within statutory limits—like here[14]—is not cruel and unusual unless the law setting punishment is unconstitutional or the sentence is "so unreasonably disproportionate to the offense as to shock the conscience." [15] Here, Harte does not allege NRS 200.030(4) is unconstitutional; and the Court easily distinguished *Naovarath* from this case and holding that Harte's sentence was valid, because it is not grossly disproportionate to the crime.

Justice Gibbons's concurrence in part and dissent in part

Justice Gibbons calls for the Court to revisit the holding in *Flanagan*, noting he agrees with the appellant that there should be a uniform rule for the district courts regarding the admission of sentences for codefendants for all penalty hearings: he would preclude allowing evidence of the codefendants' sentences.

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[7] *Id.*

[8] NEV. REV. STAT. §175.141(5) (requiring the district attorney or other State counsel to open and conclude the argument after evidence is concluded).

[9] Schoels v. State, 114 Nev, 981, 966 P.2d 735 (1998) (mandating that the State argue last).

[10] *See, e.g.*, Manley v. State, 115 Nev. 114, 125, 979 P.2d 703, 710 (1999); see *Williams v. State*, 91 Nev. 533, 535, 539 P.2d 461, 462-63 (1975); *See* State v. Harrington, 9 Nev. 91, 94 (1873).

[11] NEV. REV. STAT. § 175.141(5).

[12] *Schoels*, 114 Nev, at 989, 966 P.2d at 741.

[13] Naovarath v. State, 105 Nev. 525, 526, 779 P.2d 944, 944 (1989).

[14] Here, Harte's sentence is imposed within the parameters of NEV. REV. STAT. 200.030(4).

[15] Blume v. State, 112 Nev. 474, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

Conclusion

The Court reaffirmed *Flanagan v State*, holding that the district court has discretion to admit evidence of a codefendant's sentence in penalty hearings and affirming the district court's sentence in the matter.