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Warren, Jr. (Joseph) v. Eighth Judicial Dist. Court, 134 Nev. Adv. Op. 77 (Sep. 27, 2018) (en banc)

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CRIMINAL LAW: OPTIONS TO APPEAL JUSTICE COURT DETERMINATIONS

Summary

The Court determined that NRS § 177.015(1)(a) authorizes the State to appeal from a justice court dismissal of a criminal complaint because such a decision is a final judgment, and that NRS § 178.562(2) does not limit the State's remedies to appeal a justice court's decision to dismiss a criminal complaint because this provision does not mention final judgment.

Background

The State filed a criminal complaint against Joseph Warren, Jr., charging him with four felonies and two gross-misdemeanors. At the preliminary hearing for these charges, the justice court dismissed the complaint because the State's evidence was based on hearsay, so it lacked probable cause. The State then moved for leave to file an information by affidavit or a grand jury indictment, which was denied under NRS § 173.035.

The State also appealed to the district court from the dismissal of the complaint. Warren moved to dismiss the State's appeal, arguing that (1) the district court lacked jurisdiction because the only remedies available on dismissal are a motion for leave to file an information by affidavit or a grand jury indictment, and (2) no statute permitted the State's appeal. The district court concluded it had jurisdiction over the appeal under NRS § 177.015(1)(a) and denied Warren's motion. Further, it concluded that the justice court erred in dismissing the complaint and remanded.

Warren petitioned for writ of certiorari, mandamus, or prohibition to the Court, where he challenged the district court's jurisdiction over the State's appeal. The Court transferred the petition to the Court of Appeals,² which held that the district court had jurisdiction under the remedies in NRS § 178.562(2). Warren then petitioned the Court for review, which was granted.³

Discussion

A writ of certiorari is a discretionary remedy granted when a lower court has exceeded its jurisdiction with no available remedy to an aggrieved party.⁴ Thus, Warren's petition was appropriate because his argument presented an important issue pertaining to the appellate jurisdiction of the district court and there was no other recourse available to him. He argued that no law authorizes an appeal from a justice court's dismissal of a criminal complaint,⁵ and that the State's only recourse was a motion for leave to file an information by affidavit or a grand jury indictment.

¹ By James Puccinelli.

² See NRAP 17(b).

³ See NRAP 40B.

⁴ NEV. REV. STAT. § 34.020(2) (2017); *Zamarripa v. First Judicial Dist. Court*, 103 Nev. 638, 640, 747 P.2d 1386, 1387 (1987).

⁵ The appellant relies on NEV. REV. STAT. § 178.562(2) (2017) and *State v. Sixth Judicial Dist. Court*, 114 Nev. 739, 964 P.2d 48 (1998).

NRS § 177.015(1)(a) provides that either the state or a criminal defendant may appeal “[t]o the district court of the county from a final judgment of the justice court,” so the plain language of the statute vests appellate jurisdiction in the district court over the final judgment of a justice court.⁶ The question then became whether a justice court dismissing a criminal complaint constitutes a final judgment. A final judgment “disposes of all issues and leaves nothing for future consideration.”⁷ In *Sandstrom v. Second Judicial Dist. Court*, the Court held that NRS § 177.015(1)(a) granted the district court appellate jurisdiction from a justice court’s dismissal of a criminal complaint.⁸

Warren countered that the crime in *Sandstrom* was a misdemeanor, so the Court’s holding is limited to misdemeanors. But the *Sandstrom* opinion does not turn on whether a complaint alleges a felony or misdemeanor; it turns on if the justice court made a final judgment ruling. NRS § 177.015(1)(a) also does not distinguish between misdemeanors and felonies; it is concerned only with whether the justice court made a final judgment. Therefore, the Court concluded that a justice court dismissing a criminal complaint is a final judgment because it leaves nothing left for the justice court to consider.

Warren contended that NRS § 178.562(2) limits the state’s remedies. NRS § 178.562(2) states “[t]he discharge of a person accused upon preliminary examination is a bar to another complaint against the person for the same offense, but does not bar the finding of an indictment or filing of an information.” This provision limits the State’s means for additional prosecution for the same offense. But these are new cases. They do not alter the final judgment of the justice court’s dismissal. The plain language of NRS § 178.562(2) does not mention final judgment.

Conclusion

The Court held that, under NRS § 177.015(1)(a), the State may appeal justice court’s dismissal of a criminal complaint because such a decision is a final judgment, and NRS § 178.562(2) does not limit the State’s remedies to appeal because this provision does not apply to final judgments. Moreover, it held that the district court did not exceed its jurisdiction on appeal. Accordingly, the Court denied Warren’s petition.

CHERRY, J. with whom PICKERING, J. agrees, dissenting:

The State’s only available remedies to appeal a justice court’s dismissal are those listed in NRS § 178.562(2), which states that “[t]he discharge of a person accused upon preliminary examination is a bar to another complaint against the person for the same offense, but does not bar the finding of an indictment or filing of an information.” Crucially, this provision does not mention an appeal from a justice court order dismissing charges. Therefore, the dismissal of felony charges is not final because the State may still pursue charges in either an information or in an indictment, thereby granting the state “future consideration.” The *Sandstrom* decision is distinguishable because that case involved misdemeanor charges that may do not apply under NRS § 178.562(2).

The government should not be given multiple bites at the apple for felony dismissals. For example, in *Cranford v. Smart* the Court recognized that NRS § 173.035(2) safeguards against

⁶ NEV. REV. STAT. § 177.015(a)(1) (2017); see *Walker v. Eighth Judicial Dist. Court*, 120 Nev. 815, 819, 101 P.3d 787, 790 (2004).

⁷ *Sandstrom v. Second Judicial Dist. Court*, 121 Nev. 657, 659, 119 P.3d 1250, 1252 (2005).

⁸ *Id.* at 659-60, 119 P.3d at 1252.

error and is not a device for a prosecutor to satisfy deficiencies in evidence at a preliminary hearing.⁹ Similarly, in *Maes v. Sheriff* the Court held that a new proceeding for the same offense, by either indictment or information, is not permitted when the complaint is dismissed due to the prosecutor's failure to comply with procedural rules.¹⁰ The majority's opinion does not address the finality of a justice court's decision to bind over some charges and dismiss others. Judicial resources will thus be wasted if one district court has to take an appeal and another gets the bound over charges.

⁹ See *Cranford v. Smart*, 92 Nev. 89, 91, 545 P.2d 1162, 1163 (1976).

¹⁰ See *Maes v. Sheriff*, 86 Nev. 317, 319, 468 P.2d 332, 333 (1970).