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High Desert State Prison v. Sanchez, 135 Nev., Adv. Op. 68 (Dec. 26, 2019)

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CHALLENGING TIME SERVED CALCULATIONS

Summary

NRS § 209.4465 does not allow for good time served to be credited for those who commit child lewdness. The Court held that in order for a violation to be a continuous crime, the statute must be explicitly label the crime as continuous. Here, Respondent's time served had been properly calculated by the district court because Respondent's violation was codified as a one-time offense and occurred before the 2007 amendment to NRS § 209.4465. The language of the violated statutes define attempted lewdness with a child to be a one-time offense and not a continuous offense.² Furthermore, the State's assertion that the crime occurred between 2006-2013 is meritless because by definition an attempted crime is not a continuous crime. Thus, the 2007 amended version of NRS § 209.4465 that does not allow for good time served to be credited for those who commit child lewdness, is not applicable.

Background

Legislative History

NRS § 209.4465(7)(b) allowed a criminal to apply good time served to their minimum sentence for parole eligibility so long as the violation of the statutes occurred on or after July 17, 1997. The legislature amended NRS § 209.4465 to add NRS § 209.4465(8), which excludes some kinds of offenses from being able to credit good time served to their parole eligibility. The excluded crimes were sex offenses and category A or B felonies. The new amendment applied only to violations that occurred after the amendment took effect in 2007.

Facts of Case at Bar

Respondent pled guilty to two counts of attempted child lewdness that occurred on or between May 8, 2006, and January 31, 2013. When calculating Respondent's parole eligibility, the Nevada Department of Corrections applied the 2007-amended version of NRS § 209.4465, believing Respondent's crime was continuous and the most recent violations occurred in 2013. The district court disagreed and granted the time served under the pre-2007 version of § NRS 209.4465, stating the violation was a one-time offense.³

Discussion

The State argues that Respondent's violations were continuous between 2006 and 2013 and is thus unable to deduct good time served from his minimum sentence. If the violations of the statutes were continuous then the violations were committed in 2013. As a result, NRS § 209.4465(8) would apply and Respondent would be unable to credit his minimum sentence for parole because

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² NEV. REV. STAT. §§ 201.230, 193.330.

³ *Williams v. State*, 133 Nev. 594, 402 P.3d 1260 (2017).

the violations committed were excluded in the 2007 amendment. Therefore, Respondent is unable to credit his minimum sentence for parole.

The Court first looked to the language of the statute written by the legislature. Respondent violated statutes that are sexual offenses and category B felonies, but the Court determined the violated statutes defined his crime as one-time offenses and not continuous offenses. The Court reasoned that if the statutes were meant to be continuous offenses, then they would explicitly state so.⁴ Furthermore, the statutes were for attempted crimes, and an attempt is a one-time event and not ongoing behavior. Lastly, the date range provided by the state is not a sufficient replacement for a specific date of a violation and does not mean that an offense was continuous.

Conclusion

The District Court made the correct decision in permitting Respondent to apply good time served to his minimum sentence for parole under NRS § 209.4465 before the 2007 amendment. The statutes violated by Respondent statute violations are one-time violations and not continuous violations. The violations occurred before NRS § 209.4465(8) was enforceable and thus the pre-2007 NRS § 209.4465 is applicable.

⁴ Rimer v. State, 131 Nev. 307, 319, 351 P.3d 697, 706 (2015).