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In re Application of Finley, Nevada Ct. App., No. 76715-COA (July 25, 2019)

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Recommended Citation

Coonan, Ben, "In re Application of Finley, Nevada Ct. App., No. 76715-COA (July 25, 2019)" (2020). *Nevada Supreme Court Summaries*. 1286.

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Summary

The court found that the lower court had erroneously applied the incorrect statute in determining the requisite waiting period to file an application to seal records, and reversed and remanded with instructions for the lower court to apply the updated statute. The court found Finley’s argument – that a later court is prohibited from considering that conviction in an application to seal further records once record of a conviction has been sealed – without merit because statutory language expressly permits courts to consider sealed records in future applications.

Background

Finley petitioned the district court to seal records related to a number of criminal convictions from various courts within Clark County. The State of Nevada and the City of Henderson opposed the petition, so it went before the district court for adjudication. The district court denied Finley’s petition with respect to some of the convictions, concluding that he had failed to satisfy the statutory waiting period. Finley appealed, arguing that 1) the district court’s interpretation rendered NRS 179.2595 meaningless, 2) the court miscalculated the statutory waiting period by using the wrong version of NRS 179.245, and 3) the court failed to apply the rule of lenity in his favor or consider the public policy underlying sealed records statutes.

Discussion

The court first agreed with Finley, as does the State in its brief, that the district court applied the incorrect version of NRS 179.245 when ruling on Finley’s petition. The district court applied the 2015 version, under which the statutory waiting period was 15 years. But NRS 179.245 was amended in 2017, decreasing the waiting period to 10 years, and it was this version that should have been applied because Finley filed his application in 2018. The court then remands to the district court with instructions to consider Finley’s petition in under the updated state.

The court then moves on to Finley’s main argument on appeal, that the district court erred in its interpretation of NRS 179.245, NRS 179.2595, and NRS 179.285, leading to an absurd result. NRS 179.285 provides that once a record has been sealed, the underlying conviction is deemed never to have occurred.² Finley thus argues that a court working in reverse chronological order would, if it granted a petition to seal the most recent record, be estopped from considering that sealed record on subsequent petitions to seal older records.

The court then reviews the statutory language of the three statutes at issue, and analyzes whether the statutes’ purpose is frustrated by allowing a court to consider evidence of a sealed record in subsequent hearings to seal older records. The court concludes that Finley’s argument is flawed because it fails to consider NRS 179.295, a statute that none of the parties cited in their briefs. NRS 179.295(4) states that “[t]his section does not prohibit a court from considering a

¹ By Benjamin Coonan.

² NEV. REV. STAT. 179.285.

proceeding for which records have been sealed pursuant to NRS . . . 179.245 [or] 179.2595 . . . in determining whether to grant a petition pursuant to NRS . . . 179.245 [or] 179.2595 . . . for a conviction of another offense.”³ NRS 179.295(4). The court found that a district court has discretion on whether or not to consider evidence of earlier proceedings to seal records when evaluating a later petition to seal a different set of records. The court then remanded the case back to the district court, instructing the district court to 1) use its discretion in determining whether, in light of the fact that Finley’s convictions fall within the statutory period under the revised NRS 179.245, to grant his petition to seal those records, and 2) use its discretion in subsequent hearings to decide whether to consider evidence of previously sealed records in making a determination of whether to seal the records then at issue.

Conclusion

The district court erred when it applied the incorrect version of the sealed records statute, and the case is reversed and remanded to apply the correct version. The district court is not estopped from considering evidence of sealed records when ruling on a petition to seal other records because NRS 179.295(4) expressly allows it.

³ NEV. REV. STAT. 179.295(4).