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Washoe Cty. D.A.'s Office vs. Second Jud. Dist. Ct., 136 Nev. Adv. Op. 67 (Oct. 08, 2020)

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RECORD-SEALING: WRIT OF MANDAMUS, INHERENT AUTHORITY TO COMPEL

Summary

This is a consolidated challenge, consisting of three cases, by the Washoe County District Attorney's Office against the Second Judicial District Court's ability to compel the D.A.'s office to participate in a record-sealing proceeding if it chooses to neither stipulate nor oppose the petition to seal. The Nevada Supreme Court granted the Washoe County D.A.'s writ petitions and ruled that if the D.A.'s Office chooses not to participate in a proceeding, the district court does not have the ability to compel it to do so.

Background

NRS 179.245 instructs the district court to notify a variety of entities, including the D.A.'s office that prosecuted the plaintiff of the filing of a petition to seal criminal records and further allows the D.A.'s office to testify and present evidence at any hearing related to it.² In 2017, this statute was amended to clarify that district courts are not required to hold hearings on every such petition and enacted subsection 4 which allows the court to resolve the petition without a hearing if the D.A.'s office stipulates to sealing the records.³ If the D.A.'s office does not, then the hearing is required. NRS 179.2445 was also enacted, creating a rebuttable presumption in favor of sealing the records.⁴

In 2019, Edward Harsh, Thomas Stokley, and Thomas McCall filed petitions to seal their criminal records. The district court notified the Washoe County D.A. that they had been filed and then, when no response was made, issued an Order to Respond, stating that the D.A.'s office had to issue a response or opposition to the Petition to Seal Records. Upon receiving this Order, the D.A.'s office filed 3 writ petitions challenging the ability of the district court to compel them to participate in the record-sealing proceedings.

Discussion

Entertaining the writ petitions is warranted

The Court first discussed whether the writ of prohibition is proper. It decided that the Washoe County D.A. did not have an adequate remedy at law: if the D.A. was forced to participate in the record-sealing proceedings there would be no ability to redress the harm being inflicted.. The Court further found it important to entertain the writ because it believed that the question of whether a district court has the authority to compel a D.A.'s office to participate in a record sealing petition was an important legal issue in need of clarification.

¹ By Kelsey DeLozier.

² NEV. REV. STAT. § 179.245 (2020).

³ NEV. REV. STAT. § 179.245(4) (2020).

⁴ NEV. REV. STAT. § 179.2445 (2020).

The district court lacks authority to compel the Washoe County D.A. to participate in a record-sealing petition

The D.A.'s office focused on NRS 179.245(3) and (4), and the permissible language such as “may” located within those provisions, to support the argument that the D.A.'s office is not required to participate.⁵ The D.A.'s office also argued that staying out of the record-sealing process follows legislative intent to streamline that process.

The district court did not refute the D.A.'s interpretation, but instead claimed that it had the inherent authority to compel the D.A.'s office to participate under *State ex rel. Marshall v. Eighth Judicial District Court* where the Court determined that a district court had the inherent authority “to exercise reasonable control over a criminal proceeding.”⁶ The Court found that while the *State ex rel. Marshall* may have given the court this inherent authority in regards to criminal proceedings, a record-sealing petition is not a criminal proceeding, but a civil one under NRS 179.245(7).⁷ The Court also ruled that while the D.A.'s office must be notified about the filing of a petition, the petitioner is not required to serve the petition on the D.A. as would be necessary to make the D.A. a party to the proceedings. This further distinguishes the present case from *State ex rel. Marshall*, because the D.A. was a party in that case and, therefore, under the court's authority.⁸

The district court further argued that ordering the participation of the D.A.'s office was similar to issuing a writ of mandamus. However, the Court ruled that the writ must be for an act that the law enjoins as a duty, and because there is no duty for the Washoe County D.A. to participate in the record-sealing proceedings, it would not be applicable in this case.

Conclusion

The Court held that the district court cannot compel the District Attorney's office to participate in a record-sealing proceeding if the D.A. chooses to not do so. The D.A.'s consolidated petitions for a writ of mandamus, challenging the district court's orders commanding the Washoe County District Attorney's Office to participate in criminal record sealing proceedings, were granted.

⁵ NEV. REV. STAT. § 179.245(3) (2020); NEV. REV. STAT. § 179.245 (4) (2020).

⁶ *State ex rel. Marshall v. Eighth Jud. Dist. Ct.*, 396 P.2d 680, 682 (Nev. 1964).

⁷ NEV. REV. STAT. § 179.245(7) (2020).

⁸ *State ex rel. Marshall*, 396 P.2d at 681.