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State v. Fourth Judicial Dist. Court (Martinez), 137 Nev. Adv. Op. 4 (Feb. 25, 2021) (en banc)

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CRIMINAL LAW: THE RULE OF LENITY

Summary

Applying the rule of lenity, the Nevada Supreme Court found that a convicted felon in possession of more than one firearm at one time and place may only be charged with a single violation of the NRS 202.360(1)(b).

Background

Anthony Martinez was arrested after shooting at two individuals in West Wendover, Nevada. The police found five firearms at the scene and the State subsequently charged Martinez with five counts of violating NRS 202.360(1)(b)—Nevada’s statute prohibiting previously convicted felons from possessing firearms. Martinez then filed a motion to consolidate the five felon-in-possession counts into one count. The district court ruled in his favor and granted the motion to consolidate. The State then filed a pretrial petition for extraordinary writ relief challenging the district court’s interpretation of NRS 202.360(1)(b) as clear legal error.

Discussion

In this case, the Court dealt with the issue of units of prosecution. In other words, the Court had to determine whether the prosecution may charge a defendant with one violation per firearm, or alternatively, only charge a defendant with a single violation if multiple firearms were possessed simultaneously. Units of prosecution issues turn on statutory interpretation, and the Court listed the appropriate interpretive process in the opinion. First, the analysis begins with the text of the statute at hand. If the text of the statute is ambiguous, then the Court may use other tools of interpretation “including related statutes, relevant legislative history, and prior judicial interpretations of related or comparable statutes.” If reasonable doubt remains as to the correct interpretation of the statute after the Court applies these resources, the rule of lenity requires the Court to rule in favor of the defendant.

The State argued that the use of the singular, rather than plural, form of the word “firearm” in NRS 202.360(1)(b) denoted the Legislature’s intent to employ a per-firearm unit of prosecution. They also presented a public policy argument explaining that per-firearm prosecution would further the Legislature’s intent to prevent felons from possessing firearms. The Court ultimately found these arguments unconvincing because they did not solve the issues of ambiguity presented by the word “any.”

In reading the text of NRS 202.360(1)(b), the Court found three elements: (1) a status element (defendant must have been convicted of a felony), (2) a possession element, and (3) a firearm element. The issue in this case turned on the interpretation of the third element and the meaning of the words “any firearm.” The Court found that “any” could mean “(1) one; (2) one, some, or all regardless of quantity; (3) great unmeasured, or unlimited in amount; (4) one or more; and (5) all.”² Using these definitions the Court found it reasonable to interpret the statute

¹ By Sullivan Winesett.

² *Castaneda v. State*, 132 Nev. 434, 438, 373 P.3d 108, 111 (2016).

as supporting prosecution on a per-firearm basis as well as a simultaneous possession basis. With at least two reasonable readings available, the Court held that the statute was ambiguous on its face. With ambiguity established, the Court employed the rule of lenity to rule in favor of Martinez. Consequently, the prosecution may only charge him with a single violation of NRS 202.360(1)(b) rather than the five counts it had originally attempted to bring.

Next, the Court addressed the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1) (2018), which contained the same three elements set forth in NRS 202.360(1)(b) and bore a sufficient resemblance to warrant comparison by the Court. The United States circuit courts of appeals have ruled in unanimity on this issue and have found that a defendant may be charged with a single violation of the statute if the “possession of multiple firearms [are] simultaneous and undifferentiated.”³ In finding for Martinez, the Court brought Nevada’s interpretation of the units of prosecution for felon-in-possession crimes in line with the federal circuit courts.

Conclusion

The Nevada Supreme Court found that the district court did not commit a clear legal error when it found that Martinez could only be prosecuted for one violation of NRS 202.360(1)(b). Accordingly, the Court denied the State’s petition for relief. In doing so, the Court used the rule of lenity to interpret an ambiguous statute in favor of the defendant and aligned the interpretation of the Nevada felon-in-possession law with the circuit courts’ interpretation of the corresponding federal law.

³ United States v. Buchmeier, 255 F.3d 415, 422 (7th Cir. 2001).