

## Scholarly Commons @ UNLV Law

---

Nevada Supreme Court Summaries

Law Journals

---

3-2021

### Hildt v. Dist. Ct., 137 Nev. Adv. Op. 12 (Mar. 25, 2021)

Madeleine Coles

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

---

#### Recommended Citation

Coles, Madeleine, "Hildt v. Dist. Ct., 137 Nev. Adv. Op. 12 (Mar. 25, 2021)" (2021). *Nevada Supreme Court Summaries*. 1398.

<https://scholars.law.unlv.edu/nvscs/1398>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [david.mcclure@unlv.edu](mailto:david.mcclure@unlv.edu).

## RETROACTIVITY: WHEN A CONVICTION IS FINAL

### **Summary**

In an opinion drafted by Justice Hardesty, the Court granted a petition for a writ of mandamus and instructed that the district court vacate an order denying appeal from a conviction of misdemeanor domestic battery. The Court found that its previous decision ruling that persons charged with misdemeanor domestic battery are entitled to a jury trial retroactively applied to this case.<sup>2</sup> Because, here, there was still time to file a petition for writ of certiorari with the United States Supreme Court, the Court concluded that the conviction was not final, and the prior ruling should be retroactively applied.

### **Background**

Roman Hildt was charged with misdemeanor domestic battery. Acknowledging that Nevada law did not recognize a right to a jury trial in misdemeanor domestic battery cases, Hildt filed a motion for a jury trial in the municipal court and requested that his case be stayed until the Nevada Supreme Court issued its decision in *Anderson*.<sup>3</sup> The municipal court denied the motion and subsequently convicted Hildt. Hildt appealed his conviction to the district court, but the district court denied his appeal and confirmed his conviction on August 21, 2019.

On September 12, 2019, the Nevada Supreme Court issued its opinion in *Anderson*, finding that a charge of misdemeanor domestic battery is a serious enough offense to warrant a right to a jury trial.<sup>4</sup> Hildt filed a petition for a writ of mandamus (or alternatively, a writ of habeas corpus) the very next day.

### **Discussion**

The Court first noted that it typically does not consider writ petitions requesting review of district court decisions in order to avoid undermining the district court's appellate jurisdiction.<sup>5</sup> However, the Court then found that because retroactively applying *Anderson* to Hildt's case created an issue of first impression regarding when misdemeanor convictions become final for the purposes of retroactivity (which was an issue of statewide concern that "if not addressed in the

---

<sup>1</sup> By Madeleine Coles.

<sup>2</sup> *Andersen v. Eighth Judicial District Court*, 135 Nev. 321, 324, 448 P.3d 1120, 1124 (2019).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *State v. Eighth Judicial Dist. Court (Hedland)*, 116 Nev. 127, 134, 994 P.2d 692, 696 (2000).

context of a writ petition would escape [the] [C]ourt’s review,”) it exercised its discretion to review the petition for a writ of mandamus.<sup>6</sup>

### *Retroactive Application of Anderson*

The Court then found that because its holding in *Anderson* announced a new rule of criminal procedure, it would retroactively apply to any case where the conviction of the person requesting application of the new rule was not yet final when the rule was announced.<sup>7</sup> Because a misdemeanor is not precluded from filing a petition for writ of certiorari to the Supreme Court, and because the time for Hildt to file such a petition had not yet expired when *Anderson* was decided, the Court concluded that Hildt’s conviction was not final and the rule in *Anderson* applied to his conviction.

### **Conclusion**

Having determined that Hildt’s conviction was not final and the *Anderson* rule thus retroactively applied to him, the Court granted the petition for writ of mandamus and instructed the district court to vacate its order denying Hildt’s appeal. Because the Court granted the writ of mandamus, it denied Hildt’s request for habeas relief.

---

<sup>6</sup> *Amezcuca v. Eighth Judicial Dist. Court*, 130 Nev. 45, 48, 319 P.3d 602, 603-04 (2014), *overruled in part by Andersen*, 135 Nev. at 323–24, 448 P.3d at 1123–24.

<sup>7</sup> *Colwell v. State*, 118 Nev. 807, 820–21, 59 P.3d 463, 472 (2002).