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Tiffee v. Eighth Judicial Dist. Ct., 137 Nev. Adv. Op. 20 (May 6, 2021)

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SEALING CRIMINAL RECORDS: WITHDRAWN GUILTY PLEA

Summary

Craig Thomas Tiffee, the appellant, pleaded guilty to a felony and completed his probation. Under which the terms of the plea agreement allowed him to withdraw his guilty plea and enter a guilty plea to a gross misdemeanor. The district court denied his petition o seal his criminal record for the gross misdemeanor. The Court reversed and remanded the district court's denial of a sealing criminal records petition for reasons of (1) the district court relied on appellant's withdrawn guilty plea, (2) the district court misapplied the governing statutes, and (3) the State failed to rebut the presumption by showing evidence of activities after the underlying offense to demonstrate that the appellant is not rehabilitated.

FACTS AND PROCEDURAL HISTORY

Craig Tiffee lured an undercover detective who posed as a 15-year-old to meet him for sex. After getting arrested, Tiffee agreed with the State to plead guilty to "luring children or mentally ill persons with the use of technology with the intent to engage in sexual conduct," a felony under NRS 201.560(4)[2]. As a term of the plea agreement, Tiffee was allowed to withdraw his guilty plea and enter a guilty plea to "unlawful contact with a child," a gross misdemeanor under NRS 207.260(4)(a), upon successfully completing probation[3]. The State cooperated in this process.

Upon completing his probation, he filed to have his criminal records sealed. However, the State opposed and argued his felony conviction fell under NRS 179.245(6) and is precluded from getting sealed. After a hearing, the district court denied Tiffee's petition.

DISCUSSION

The Court reviewed the district court's decision for an abuse of discretion by committing a legal error. The questions to ask are whether the withdrawn guilty plea is implicated in Nevada's criminal record sealing statutes, the proper statute lists categories of crimes that the records are ineligible for sealing, and what evidence must the State provide to satisfy its burden to rebut the presumption of criminal record sealing under NRS 179.2445(1).[4]

A withdrawn guilty plea ceases to exist for all purposes and cannot justify the denial of a petition to seal criminal records after a subsequent guilty plea

Tiffee argues the district court erred by relying on his withdrawn guilty plea to deny his petition. The initial guilty plea falls under the sealing of a felony luring conviction preclusion of NRS 179.245(6).[5] The State suggests the withdrawn guilty plea should be evaluated for the purpose of deciding record sealing for the gravity of the crime.

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[1] By Yoosun Jun.
[2] NEV. REV. STAT. § 201.560(4) (2013).
[3] NEV. REV. STAT. § 207.260(4)(a) (2021).
[4] NEV. REV. STAT. § 179.2445(1) (2019).
[5] NEV. REV. STAT. § 179.245(6) (2017).

However, "when an accused withdraws his guilty plea the *status quo ante* must be restored."[6] When a guilty plea is withdrawn, it is the same as if the plea has never been entered. Therefore, the district court erred in relying on Tiffee's withdrawn guilty plea.

Gross misdemeanor unlawful contact with a child is not a crime for which record sealing is precluded under NRS 179.245(6)

NRS 179.245(8)(b) does not list gross misdemeanor unlawful contact with a child as a nonsealable sexual offense.[7] The district court incorrectly expanded the unlawful contact with a child conviction to "a crime perpetrated against a child," which the records for such crime are ineligible for sealing under NRS 179.245(6)(a).[8]

The Court reviewed de novo and concluded such interpretation was in error. NRS 179D.0357 defined "crime against a child" and lists specific offenses but does not include gross misdemeanor unlawful contact with a child.[9] The district court may not independently interpret a statute that is clear and unambiguous. "[H]ad the Legislature intended to preclude the sealing of criminal records relating to a particular offense, it would have expressly done so by including it in the list of conviction that a defendant may not petition to seal."[10]

Tiffee is entitled to the presumption in favor of sealing criminal records under NRS 179.2445(1)

Tiffee complied with the statutory requirements to seal his criminal record. Tiffee successfully completed his probation in 2012 and committed a gross misdemeanor by initiating unlawful contact with a child that same year. Tiffee then waited the two-year waiting period to seal records pertaining to his gross misdemeanor conviction, completed information needed for the process, and most importantly, no statutory exceptions to sealing eligibility applies. Therefore, he is entitled to a rebuttable presumption that his record should be sealed.

The State failed to rebut the presumption in favor of sealing criminal records under NRS 179.2445(1)

The State argues that Tiffee failed to demonstrate that he is rehabilitated, and the seriousness of the underlying offense should be accounted for. Those arguments do not satisfy the State's burden.

NRS 179.2445(1) clearly and unambiguously provides that the presumption in favor of sealing eligible criminal records favors the petitioner and not the State. It is the State's burden to rebut the presumption, not Tiffee's.

Additionally, even though NRS 179.2445(1) does not expressly state what evidence the State must provide, the criminal record sealing statutes exist within a standard statutory scheme and must be read in harmony with the overall purpose. That is, the public policy of Nevada favors giving second chances to offenders who are rehabilitated, and when a petitioner meets the governing statutes, the petitioner is presumed rehabilitated. To rebut, the State must

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[6] People v. Superior Court (Garcia), 182 Cal. Rptr. 426, 248 (Ct. App. 1982).
[7] NEV. REV. STAT. § 179.245(8)(b) (2017).
[8] NEV. REV. STAT. § 179.245(6)(a) (2017).
[9] NEV. REV. STAT. § 179D.0357 (2013).
[10] In re Aragon, 476 P.3d 465, 467 (2020).

show that despite complying with the statutory requirements, the petitioner is not rehabilitated with some affirmative proof.

Such evidence must be of subsequent activities after the underlying offense. The facts relating to Tiffee's underlying crime, as the State presented, do not demonstrate that Tiffee has not been rehabilitated for the purposes of sealing criminal records. Rehabilitation may happen only after the underlying offense and using the facts of the conviction as evidence cannot rebut the presumption.

Conclusion

A district court may not rely upon the petitioner's withdrawn guilty plea when evaluating whether to seal his criminal records. Also, it must follow what the Legislature clearly and unambiguously provided in the statutes when evaluating whether an offense is "a crime against a child" or "a sexual offense." Furthermore, if the statutory requirements are met, and a presumption in favor of sealing applies, the presumption can be rebutted only by evidence of lack of rehabilitation based on subsequent events. The district court failed on all parts. Accordingly, the Court reverse and remand with instructions to grant Tiffee's petition to seal his criminal records.