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Aparicio v. Nevada, 137 Nev. Adv. Op. 62 (Oct. 7, 2021)

Kaleb Bailey

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Aparicio v. Nevada, 137 Nev. Adv. Op. 62 (Oct. 7, 2021)¹

Criminal Law: Definition of “Victim” in Article 1, Section 8A of the Nevada Constitution (Marsy’s Law) and NRS.176.015

SUMMARY

The definition of “victim” under Article 1, Section 8A of the Nevada Constitution (a.k.a. Marsy’s Law) and NRS 176.015 is “harmonious, if not identical.”² Though Section 8A may include individuals NRS 176.015 does not, and vice versa, neither include anyone and everyone impacted by a crime as the district court held below.

FACTS AND PROCEDURAL HISTORY

After a night of drinking, appellant, Henry Aparicio, rear-ended Christa and Damaso Puentes’s vehicle. At the time of impact, the Puentes’s vehicle was stopped, while Aparicio’s vehicle was going 100 miles per hour. Both Christa and Damaso died, while Aparicio lived.

The State charged Aparicio with two counts of DUI resulting in death, three counts of felony reckless driving, and one count of DUI resulting in substantial bodily harm. Aparicio pleaded guilty to the two counts of DUI resulting in death and to one count of felony reckless driving. The State agreed to recommend concurrent prison time on the reckless driving charge.

Shortly before sentencing, the State provided the district court with about 50 victim impact letters written by the deceased victims’ family, friends, and coworkers. Aparicio objected to 46 of the victim impact letters, arguing that the individuals who drafted them did not qualify as “victims” under NRS 176.015(5)(d). Aparicio also objected to various in-court witnesses’ statements during his sentencing hearing, arguing that their testimonies exceeded the bounds of victim impact information. Lastly, Aparicio presented mitigating evidence. The district court overruled all his objections and sentenced Aparicio to an aggregate prison term of 15 to 44 years. Aparicio timely appealed, challenging various aspects of his sentencing hearing. The Court of Appeals vacated the district court’s decision and remanded for resentencing, at which point the Supreme Court then granted review, thereby vacating the Court of Appeals’ decision.

DISCUSSION

Aparicio argued the district court abused its discretion when it overruled his objections to the improper consideration of impact letters written by nonvictims at his sentencing hearing and thus he should be entitled to a new sentencing hearing. The State argued that the district court properly considered the impact letters, as their authors were “victims” per NRS 176.015(5)(d) and Article 1, Section 8A(7) of the Nevada Constitution. The State further argued that even if the district court did err, such error was harmless per NRS 178.598. The Supreme Court agreed with Aparicio and thus vacated the sentence, remanding it for a new sentencing hearing before a different district court judge.

¹ By Kaleb Bailey.

² *Aparicio*, 137 Nev. Adv. Op. 62 at pg. 2.

The district court erred when it summarily overruled Aparicio's objection to 46 of the approximately 50 victim impact letters

Under both NRS 176.015(5)(d)'s definition of "victim" and Section 8A(7) of the Nevada Constitution's definition of "victim", it is recognized that a victim is the person[s] who is [or are] legally injured or harmed as a direct result of the defendant's criminal conduct (i.e., "the person[s] who was [or were] the target or object of the offense, or one who was directly and proximately harmed as a result of the criminal act"³) as well as certain close family members. However, neither of the definitions of "victim" include anyone or everyone who was affected by the crime.

Here, the district court decided to consider all 50 impact letters in Aparicio's sentencing hearing based on an erroneous interpretation of Section 8A(7) of the Nevada Constitution that "the Nevada Constitution broadly defines victim [as] anyone who's impacted by the crime."⁴ This interpretation is wrong and therefore when Aparicio objected, the district court should have determined how each author of the impact statements were "directly and proximately harmed."⁵

For clarification, letters written by nonvictims may still be considered under NRS 176.015(6) and the fact that the district court considered letters from nonvictims was not, in and of itself, a reversible error.⁶ The error was that the district court treated the objected-to nonvictim impact letters the same as victim impact letters and forewent determining whether the nonvictim letters were relevant or reliable.

In the future, when an objection to an impact statement is raised, a district court is required to examine each statement and determine, in the first instance, whether it is from a "victim" under Section 8A(7) of the Nevada Constitution or NRS 176.015(5)(d). If the statements are not from "victims," then a district court may still examine the statements, but only after a finding that they are reliable and relevant. Thus, the district court here erred because it failed to do this.

The district court's error was not harmless

The State's argument that, under NRS 178.598, this error did not affect the defendant's substantial rights and is therefore harmless is wrong. In mistakenly interpreting the law concerning who was a "victim," the district court considered letters from too many people who did not clearly meet the "victim" standard in its sentencing decision. Thus, its sentencing decision may have been based upon impalpable or highly suspect evidence. This uncertainty does not allow the conclusion that the error was harmless.

³ *Aparicio*, 137 Nev. Adv. Op. 62 at pg. 6.

⁴ *Id.*

⁵ NEV. CONST. art. 1, § 8A(7).

⁶ See *Wood v. State*, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995) (holding that NRS 176.015 "does not limit in any manner a sentencing court's existing discretion to receive other admissible evidence" from a nonvictim so long as the evidence is relevant and reliable).

CONCLUSION

Here, the district court erred by examining all the impact statement letters under the erroneous belief that they were from “victims.” It is not clear that the district court would have imposed the same sentence on Aparicio absent this error. As such, the court must vacate Aparicio’s sentence and remand the case for resentencing before a different district court judge.