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Locker v. State of Nevada, 138 Nev. Adv. Op. 62 (Sep. 1, 2022)

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CRIMINAL LAW: COURTS MUST DEFER JUDGMENT FOR A FIRST OR SECOND
CONVICTION OF FELONY POSSESSION OF NARCOTICS

Summary

A first or second conviction for a category E felony possession of a schedule I or schedule II narcotic under fourteen grams² requires the district court to defer conviction when the defendant consents to a drug treatment plan under NRS 176.211(3)(a)(1). When that statute applies, the courts have no discretion; it must defer to a drug rehabilitation program if the defendant consents.

Background

Michael J. Locker was charged in August 2021 with carrying a concealed weapon, possession of less than fourteen grams of a schedule I controlled substance (cocaine), and possession of drug paraphernalia. Locker only pled guilty to the charge of possession of less than fourteen grams of a schedule I narcotic. In his guilty-plea memorandum, there was no language about judgment deferral, and the district court accepted his guilty plea.

Before his sentencing, Locker filed an election to undergo a treatment program with the court under NRS 176A.240, and he requested participation in an outpatient program at sentencing. But he remained silent throughout the rest of the case concerning judgment deferral. Although he had no prior felony convictions, the court considered the fact that he had a gun when he was arrested. It sentenced him to nineteen to forty-eight months in prison with a suspended sentence of eighteen-months probation. Locker filed an appeal.

Discussion

This is a statutory interpretation issue. Locker argues that NRS 176.211(3)(a)(1) contains the felony possession statute, and that it requires judgment deferral if the defendant consents and has no prior felony convictions.³ The court would have no discretion to apply or reject the deferral of judgment—it must defer judgment. Thus, if someone is convicted of felony possession of a schedule I or schedule II narcotic under fourteen grams, and there are no other felony convictions for the same incident, the court must defer the defendant if the defendant consents.

¹ By Michael Pappas.

² NEV. REV. STAT. § 453.336(2)(a) (2021).

³ Except for one prior felony possession of a schedule I or II narcotic under fourteen grams.

The state contends that the felony possession statute only references NRS 176.211 “as a whole” and not to the specific subsection of NRS 176.211(3)(a)(1). If so, then NRS 176.211(1) would apply, which establishes that: (1) the district court has discretion to implement judgment deferral, and (2) judgment deferral is precluded if the plea agreement fails to mention judgment deferral. Because Locker entered into a plea agreement that did not contain a judgment deferral provision, the state contends that the district court has discretion to refuse deferral and sentence accordingly.

The Supreme Court agrees with Locker and disagrees with the state. Using the logic of *Amado*,⁴ the Court holds that NRS 176.211(1) is for general application and applies to all laws not otherwise listed in the statute. But it does not apply to the felony possession statute for four reasons: (1) NRS 176.211(3)(a)(1) specifically lists the felony possession statute, (2) no language in NRS 176.211 or the felony possession statute limits the mandatory judgment deferral to those who plead guilty of all charges,⁵ (3) the language in NRS 176.211(1) that prevents a judgment deferral only applies if it is the controlling statute, and (4) NRS 176.211(1) explicitly states its language on discretionary judgment deferral only applies to NRS 176.211(1), and thus is not the controlling statute. Instead, NRS 176.211(3)(a)(1) specifically references the felony possession statute for judgment deferral. It states that the courts “[s]hall defer judgment for any defendant who has entered a plea of guilty” to “NRS 453.336.” And using the logic of *Goudge v. State*, the word “shall” “divests the district court of judicial discretion.”⁶

Conclusion

District courts must grant judgment deferral for a first or second conviction of a schedule I or schedule II controlled substance under NRS 453.336 if the defendant has no other felony conviction. Although NRS 176.211(1) applies to general convictions and gives courts discretion to apply judgment deferral, NRS 176.211(3)(a)(1), which specifically lists felony possession of a schedule I narcotic, strips the district court of its discretion and mandates judgment deferral if the defendant consents.

Thus when Mr. Locker pled guilty to only possession of a schedule I controlled substance under fourteen grams, and because he consented to a judgment deferral program, the court was required to defer his judgment. It erred in its sentence, and the Supreme Court vacated the judgment and remanded back to the district court for judgment deferral.

⁴ See *City of Henderson v. Amado*, 133 Nev. 257, 259, 396 P.3d 798, 800 (2017).

⁵ It only applies to those who plead guilty to all charges in the original charging document.

⁶ *Goudge v. State*, 128 Nev. 548, 553, 287 P.3d 301, 304 (2012).