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In re B.J.W.-A., 139 Nev. Adv. Op. 1 (Jan. 12, 2023)

Mackenzie Sullivan

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CRIMINAL LAW: UNDER NRS 201.230 AND NRS 62B.390, JUVENILE COURTS HAVE THE DISCRETION TO CERTIFY MINORS WHO COMMIT LEWD ACTS FOR CRIMINAL PROCEEDINGS AS ADULTS.

Summary

The Supreme Court of Nevada addressed the exception to the category A felony designation for lewdness with a child under NRS 201.230, and considered whether the juvenile court abused its discretion in certifying the appellant to stand trial as an adult. B.J. appealed the juvenile court decision to not accept jurisdiction and to certify B.J. as an adult for criminal proceedings. The Court found that the Legislature did not create a mandatory rule in NRS 201.230(5) requiring that all minors charged with lewdness with a child be adjudicated only in juvenile court. The Court also concluded that the juvenile court has jurisdiction over B.J. under 201.230(1), but under NRS 62B.390(1)(a), the juvenile court had discretion to certify B.J. for criminal proceedings as an adult because he was charged with offenses that would have been a felony had he been an adult.² The Court affirmed the juvenile court's decision.

Facts and Procedural History

Appellant B.J. was charged with five counts of lewdness with a child under the age of fourteen on September 1, 2021. The alleged abuse occurred over an approximately seven-year time frame, before, and potentially after, B.J. turned eighteen. The State then filed a certification petition asking the juvenile court to transfer the case to criminal court. The juvenile court found that the nature and seriousness of the charged offenses were heinous and egregious, and that B.J.'s age provided insufficient time to provide him with rehabilitative services before the court lost jurisdiction. Additionally, because B.J. was eighteen when one or more of the offenses were allegedly committed, the court found that all offenses should be tried together in the same court. Thus, the court certified B.J. for criminal proceedings as an adult.

B.J. appealed and filed a motion in juvenile court under the exceptional circumstances clause in NRS 62B.390(3)(b), requesting his case be transferred back to juvenile court. Following the filing of B.J.'s motion, the State added additional counts for other acts of lewdness and moved to certify B.J. as an adult in relation to the additional charges. The juvenile court denied B.J.'s motion to accept jurisdiction and granted the State's motion to certify B.J. for criminal proceedings on the additional charges. B.J. appealed.

Discussion

The issue before the Court was whether juvenile courts have the discretion to certify minors who commit lewd acts for criminal proceedings as adults under NRS 201.230 and NRS 62B.390.

NRS 62B.330 allows juvenile court to certify a child for criminal proceedings as an adult. Under NRS 62B.330(1), the juvenile court has exclusive jurisdiction over a child alleged to have

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² NEV. REV. STAT. 201.230 (2015); NEV. REV. STAT. 62B.390 (2021).

committed a delinquent act.³ However, NRS 62B.390(1)(a) allows the juvenile court to certify a child for criminal proceedings as an adult if the child is charged with an offense that would have been a felony if committed by an adult and was fourteen years of age or older at the time of the defense.

The legislative history of NRS 201.230 shows the necessity of the category A felony exception. In 2015, the Legislature made two significant changes to NRS 201.230 that created separate categories to the lewdness with a child criminal statute that created separate categories based on the age of the perpetrator and the age of the victim. NRS 201.230(a) was amended to specify that a person is guilty of lewdness with a child when the person is 18 years old or older and the child is under the age of 16.⁴ The Legislature also added subsection 1(b) to create a separate subsection for minors by providing that a person under the age of 18 can also be guilty of lewdness with a child but only if the person commits the act on a child under the age of 14.⁵ Finally, the Legislature included an exception to NRS 201.230(2) under NRS 201.230(5), providing that a person who is under the age of 18 years and who commits lewdness with a child under the age of 14 years commits a delinquent act.⁶

In interpreting the statute, the Court looked to the legislative history from the amendments, finding that legislators did not wish to criminalize immature, adolescent behavior. Further, the legislative history indicated that no legislators moved to remove as an option the juvenile court's discretion to certify the minor for adult proceedings. The Court found the inclusion of the exception under NRS 201.230(5) to be necessary for not automatically subjecting minors who commit lewdness with a child to mandatory felony prosecution in adult court.

NRS 201.230(5) does not deprive juvenile courts of the ability to certify minor defendants as adults when it is warranted by the circumstances. The Court found that the amendments made by the Legislature in 2015 did not include changes to the juvenile court's jurisdiction under NRS 62B.330. The Legislature recognized that a person under the age of eighteen who commits a lewd act on a child under the age of fourteen is subject to the juvenile court's jurisdiction, but did not place a limitation on the court's discretion. Thus, the Court held that the Legislature did not limit the juvenile court's discretion to certify a juvenile defendant as an adult once the person is subject to the juvenile court's jurisdiction.

Additionally, the Court held that NRS 201.230(5) is not a mandatory rule requiring that all minors charged with lewdness with a child be adjudicated only in juvenile court. The Legislature did not include mandatory language such as "must always be treated as," "can only be treated as," or "shall be treated as." Thus, the Court could not construe the statute as limiting the juvenile court's discretion to certify a minor charged with lewdness with a child as an adult.

The nature and severity of appellant's alleged conduct warrants certifying and trying the perpetrator as an adult. The Court found that the appellant's alleged conduct of repeated and habitual sexual and physical abuse over the course of years falls outside the type of adolescent behavior the Legislature did not wish to criminalize.⁷ Therefore, the Court held that the juvenile court did not abuse its discretion by certifying the appellant as an adult.

³ NEV. REV. STAT. 62B.390 (2021).

⁴ NEV. REV. STAT. 201.230 (2015).

⁵ *Id.*

⁶ *Id.*

⁷ *See In re Seven Minors*, 99 Nev. 427, 434-35, 664 P.2d 947, 952 (1983) (setting forth criteria for the juvenile court to consider in evaluating whether to transfer a juvenile to district court).

Conclusion

The Court holds that juvenile courts have the discretion to certify minors who commit lewd acts for criminal proceedings as adults under NRS 201.230 and NRS 62B.390. The Court affirms the juvenile court's decision to certify the appellant as an adult.

Dissent

Justice Pickering dissented, asserting that NRS 201.230 can reasonably be read to make lewdness with a child, by a child, a delinquent act not amenable to adult court certification under the exception in subsection 5 of the statute. The dissent finds that the statute is subject to two competing interpretations and thus ambiguous. Additionally, the dissent argues that the Court is statutorily mandated to construe juvenile laws to protect the child's interests, therefore resolving the ambiguity in appellant's favor. Further, the dissent states that it is plainly legally impossible for an adult to violate NRS 201.230(b) because an adult will never be under the age of eighteen years.

Addressing the exception in NRS 201.230(5), the dissent rejects the majority's statement that minor who commit lewdness with a child would be automatically subject to a mandatory felony prosecution in adult court without the subsection, as absent NRS 201.230(5) a violation of NRS 201.230(1)(b) would still be a delinquent act. The dissent contends that, similar to NRS 202.300(1), the phrase "a child who violates this subsection commits a delinquent act" is actually a restraint on the juvenile court's discretion.⁸ Additionally, the dissent argues that the legislative history shows that legislators were concerned about children under the age of sixteen having their adolescent actions criminalized, thus giving sense to why NRS 201.230(5) protects children from certification rather than making them vulnerable to it.

The dissent thus finds that the ambiguous language of the statute and mutual support for both sides by the legislative history merits application of the rule of lenity in appellant's favor.

⁸ NEV. REV. STAT. 202.300(1) (2019).