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Zane Michael Floyd v. The State of Nevada Department of Corrections; and James Dzurenda, Director, Nevada Dept. of Corrections, 139 Nev. Adv. Op. 37 (Sept. 28, 2023)¹

NRS 176.335 AND THE U.S. CONSTITUTION'S PROHIBITION ON CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT PROVIDE THE DIRECTOR SUITABLE STANDARDS TO DETERMINE THE PROCESS BY WHICH TO ADMINISTER A LETHAL INJECTION.

Summary

The Nevada Supreme Court affirmed the district court's order dismissing Floyd's complaint which challenged the Legislature's delegation of authority to the Director of the Nevada Department of Corrections in NRS 176.355. The Court held that the Legislature's delegation of authority to the Director was not unconstitutional because NRS 176.355 provides suitable standards to determine the process by which to administer a lethal injection. The Court also reasoned that NRS 176.355 must be read in context with NRS 200.030, because it authorizes the death penalty and outlines the specific crimes which the imposition of execution is the appropriate punishment. The Court further noted that, the Eighth Amendment prohibiting cruel and unusual punishment, in conjunction with NRS 176.355 and NRS 200.030 provide sufficient standards to guide the Director in exercising the authority delegated to him in NRS 176.355.

Background

Plaintiff, Zane Michael Floyd, was sentenced to death after a jury convicted him of killing four people in 1999. Floyd unsuccessfully spent the following two decades challenging his conviction and death sentence. In April of 2021, after Floyd's continued and failed attempts to challenge his conviction and death sentences, the Clark County District Attorney started the process of obtaining an order of execution and warrant to carry out Floyd's death sentence.

In response, Floyd filed an action against the Director of the Nevada Department of Corrections, arguing that NRS 176.355 violated the separation of powers doctrine in the Constitution, and therefore could not be enforced. Floyd was essentially seeking a declaration that NRS 176.355 unconstitutionally delegated to the Director the legislative authority to decide how a lethal injection is to be administered. More specifically, Floyd argued that the statute simply outlines the requirement of an execution to be imposed by a lethal injection, but improperly leaves the types, doses and sequences of drugs to be administered up to the discretion of the Director.

The Director filed a motion to dismiss on the grounds that NRS 176.355 along with the Eighth Amendment's prohibition on cruel and unusual punishment provided a suitable standard for the director to decide how to administer a lethal injection. The district court agreed with the Director's argument and granted the motion to dismiss. Floyd subsequently appealed the judgement.

Discussion

NRS 176.355 does not violate the separation of powers clause in the Nevada Constitution

The Nevada Constitution divides the powers of state government into "three separate departments" which we know as the legislative, executive, and judicial departments. The language specifically states as follows "no persons charged with the exercise of powers

¹ By Laura L. Lomeli.

belonging to one of those departments shall exercise any functions, appertaining to either of the others."² The primary issue before the Court in this case is whether NRS 176.355 and its delegation of authority to the Director, violates the separation of powers provision of the Nevada Constitution. The Court held that it did not, noting that the Legislature provided sufficient standards for the Director to carry out the authority vested in him by NRS 176.355.

The Legislature has provided suitable standards and safeguards to exercise the authority delegated in NRS 176.355

The Court addressed the delegation of powers issue by applying the “suitable standard” rule. The Nevada Supreme Court held that so long as legislation provides the agency with "suitable standards," meaning those that are "sufficient to guide the agency with respect to the purpose of the law and the power authorized," the Legislature has not delegated its lawmaking authority.³

Floyd argued that NRS 176.355 did not meet the “suitable standards” requirement because it only set forth the requirement of an execution to be carried out by lethal injection and gave the Director complete discretion to determine the types, dosages, and sequencing of drugs to be used in the execution. Floyd’s position on the matter was that "a statute that does nothing more than state a means of execution does not provide suitable and sufficient standards." Floyd recognized that the statute provided the Director consult with the Chief Medical Officer but argued that it did not suffice because the Chief Medical Officer could refuse to consult on the matter, ultimately giving the Director unfettered discretion. The Court ultimately rejected this argument as unpersuasive and implausible. The opinion also noted that the role of Chief Medical Officer in itself is regulated and requires certain qualifications to be in that position.⁴

In applying the “suitable standard” rule to the instant matter, the Court found that the Legislature had not delegated its lawmaking authority in NRS 176.355 because it in fact did provide a “suitable standard” for the Director to follow. The Court reasoned, that although it gives the Director authority to select the drug to be administered, it is not an unfettered authority because it requires the Director to consult with the Chief Medical Officer first.⁵ The Court recognized that the agency official was better positioned to decide the best practices, because they could account for changes in policies and resources, which would be unrealistic to expect from the Nevada Legislature which only convenes for 120 days every other year.⁶

Although the Court contends that the language of NRS 176.355 provides suitable standards to guide the Director in exercising the authority delegated to him, they note that NRS 176.355 must be read in conjunction with NRS 200.030 and the Eighth Amendment which inarguably together provide a suitable standard and safeguard for the director to carry out the delegated authority. The reasoning behind this being that NRS 200.030 authorizes the imposition of the death penalty and outlines the crimes where execution would be appropriate, and the Eighth Amendment prohibits cruel and unusual punishment. Thus, these two pieces of legislation in conjunction with NRS 176.355 provide a “suitable standard” and do not give the Director unfettered discretion in determining the method of administering a lethal injection.

² NEV. CONST. ART. 3, § 1.

³ *Sheriff v. Luqman*, 101 Nev. 149, 697 P.2d 107 (Nev. 1985).

⁴ NEV. REV. STAT 439.085

⁵ NEV. REV. STAT 176.355(2)(b)

⁶ NEV. CONST. ART. 4, § 2

Conclusion

The Nevada Supreme Court affirmed the lower court's decision dismissing the plaintiff's complaint. The Court held that the Nevada Legislature did not offend the separation of powers doctrine when enacting NRS 176.355. Although the separation of powers doctrine prohibits the Legislature from delegating its lawmaking authority to the Director of the Nevada Department of Corrections, they may still delegate certain authority to agencies to carry out a function so long as they have provided a "suitable standard". Here the Court contends that the reading of NRS 176.355 in conjunction with NRS 200.030 and the Eighth Amendment, provide the Director with a "suitable standard" and do not give the Director unfettered discretion in determining the method in which a lethal injection is to be administered. They reason that the statute in question requiring the Director to consult with the Chief Medical Officer and NRS 200.030 which outlines the crimes where execution is appropriate and the Eighth Amendment which prohibits cruel and unusual punishment together provide enough guidance so as to prevent the Director from having the unilateral authority to determine the appropriate way exercise the authority delegated to them by the Legislature.