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Hannah Bleak

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Kabew v. The Eight Judicial Dist. Ct, 140 Nev. Adv. Op. 20 (Mar. 28, 2024)¹

THE NEVADA SUPREME COURT HELD THAT A DISTRICT COURT DOES NOT HAVE DISCRETION TO DENY A MOTION TO SET ASIDE THE JUDGEMENT OF CONVICTION SO LONG AS THE STATUTORY REQUIREMENTS OF NRS 176A.240(6)(a) ARE MET.

Summary

The statutory provisions in NRS 176A.240(6)(a) are mandatory. So long as the provisions are met, a district court must set aside the judgement of conviction.

Background

Petitioner, Christopher Kabew, was charged with stalking and attempted burglary. In exchange for the state dismissing two other cases, Kabew plead guilty to attempted residential burglary. The district court entered a judgement of conviction, imposed a suspended sentence, and put Kabew on probation for a period not to exceed 24 months. One of Kabew's special conditions of probation was to enroll in and complete the drug court program, which he did. This was Kabew's first felony conviction.

After successfully completing the drug court program, Kabew requested that the case be dismissed under NRS 176A.240(6)(a). The statute provides that upon a defendant's "fulfillment of the terms and conditions"² of drug court, the district court "[s]hall discharge the defendant and dismiss the proceeding or set aside the judgment of conviction."³ The Court will do this unless the defendant has a prior felony conviction or previously failed to complete a specialty court program.

The district court declined to dismiss but allowed both sides to brief the issue. Kabew filed his motion arguing that the word "shall" required the court to set aside the judgement of conviction. The State argued that making NRS 176A.240(6)(a) mandatory was unconstitutional because it usurped the district court's discretion in setting aside convictions and that it went against the spirit of the guilty plea agreement.

The district court denied the motion and honorably discharged Kabew from probation.

Discussion

We elect to entertain the petition

A writ of mandamus is used to compel someone to act in accordance with a law or duty that is imposed because of an office they hold or to rectify a manifest or arbitrary or capricious exercise of discretion.⁴ A writ is only issued when there is not a plain, speedy, or adequate remedy at law.⁵

Here, the Court entertained the mandamus because Kabew does not have an adequate remedy at law and the interpretation of this statute requires clarification and guidance for lower courts.

The district court improperly denied the motion to set aside the judgement of conviction

¹ By Hannah Bleak.

² NRS 176.240(6)(a).

³ *Id.*

⁴ NRS 34.160; Round Hill Gen. Improvement Dist. v. Newman, 97 Nev. 601, 603-04 (1981).

⁵ NRS 34.170.

Questions of statutory construction are reviewed de novo. If the plain language of the statute is clear and unambiguous, the Court gives effect to the clear meaning and enforces it as written.⁶

NRS 176A.240(6)(a) imposes a duty to act and affords district courts no discretion

The Court begins by explaining the rules of statutory construction. “Shall” imposes a duty to act and is generally construed as mandatory.⁷ NRS 176A.240(6) explains two outcomes after a defendant successfully completes a substance abuse program. First, if the defendant has no prior felony convictions and has not previously failed the specialty court, the district court shall dismiss the proceeding or set aside the judgement of conviction. Second, if the defendant has previously been convicted of a felony or failed a specialty court, the district court may dismiss the proceeding or set aside the conviction. The Court concluded that using different words clearly shows a legislative intent to remove the district court’s discretion.

The Court relied on case law to thwart the State’s argument that making the provision mandatory was an unconstitutional usurping of the judge’s discretion to set aside a judgement of conviction. The Court has previously concluded that “reading the statute as mandatory does not encroach upon the judicial function” and a district court “must comply” with a Legislative mandate.⁸ Thus, where a defendant has met the requirements under NRS 176A.240(6)(a), the district court must set aside the judgement of conviction.

Kabew is entitled to have the judgement of conviction set aside pursuant to NRS 176A.240(6)(a)

Next, the Court looks at the facts specific to Kabew’s case. Neither party argued that Kabew failed to meet the statutory requirements. Instead, the State argued interpreting the statute as mandatory would violate the spirit of Kabew’s guilty plea agreement because it did not contemplate the statute. After noting that the statute was in effect when Kabew’s guilty plea agreement was signed, the Court dismissed the argument. Further, NRS 176A.240(7) explains that the dismissed conviction can still be used for enhancement purposes if the person reoffends. Thus, because NRS 176A.240(6)(a) is mandatory, the court failed to perform their duty required by law.

Conclusion

NRS 176A.240(6)(a) removes judicial discretion if the defendant satisfies the statutory requirements. Therefore, because Kabew fulfilled those requirements, the district court failed to perform a duty required by law. The Court grants the petition and directs the clerk of the court to issue a writ of mandamus directing the district court to enter an order setting aside the judgement of conviction.

⁶ Hobbs v. State, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011).

⁷ Thomas v. State, 88 Nev. 382, 384, 498 P.2d 1314, 1315 (1972).

⁸ Goudge v. State, 128 Nev. 552, 554, 287 P.3d 301, 304.