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Megan Cunningham

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In Re: Application for Change of Name (Lowry), 140 Nev. Adv. Op. 38 (June 6, 2024)¹

ANY INCARCERATED PERSON CAN PETITION TO CHANGE THEIR NAME, REGARDLESS OF WHAT OFFENSE THEY WERE CONVICTED OF, BECAUSE THE CRIMINAL RECORD FOLLOWS THEM WITH THEIR NEW NAME.

Summary

Any incarcerated person can change their name, even if they were convicted of an offense that precludes their record from being sealed. The name change statute unambiguously accounts for an applicant's criminal record. The criminal record follows them to their new name, so they cannot circumvent record-sealing requirements. The district court also reasoned that public policy precluded the petitioner from changing his name because he committed a sexual offense against a minor. The Court did not address the district court's public policy findings.

Background

Appellant Christopher Lowry was convicted of attempted lewdness with a minor and is currently serving his sentence. For religious reasons, he petitioned the court to change his name to Dominic Vito Giambatista Billini. The district court denied the petition because he committed a sexual offense against a minor and would never be able to seal his public record. The district court reasoned that record-sealing statutes preclude the name change, and it is contrary to public policy.

Discussion

The district court applied an incorrect legal standard to Lowry's petition

Appellant argues that it was an abuse of discretion for the district court to use the record-sealing statute instead of the name change statute. An abuse of discretion is reviewed *de novo*.² The district analyzed the legislative history of the name change statute before interpreting the plain language. The district court should not go beyond the plain meaning of a statute when it is facially clear.³ This was improper because the statute is unambiguous.

Incarcerated individuals may petition to change their names

The Court reviewed *de novo* whether a felon is generally prohibited from changing their name before they are able to ask to seal their records.⁴ This requires statutory analysis, which always with construing the plain meaning of the text.⁵

NRS 41.270–290 outlines the standards for a name change. “Any natural person, except an unemancipated minor, desiring to have his or her name changed may file a verified petition with the clerk of the district court of the district in which the person resides.”⁶ The statute does not exclude convicted felons. Courts presume any omission from a statute is intentional.⁷

¹ By Megan Cunningham.

² *In re Salazar*, 138 Nev., Adv. Op. 69, 518 P.3d 873, 874 (2022).

³ *Cf. Sonia F. v. Eighth Jud. Dist. Ct.*, 125 Nev. 495, 499, 215 P.3d 705, 707 (2009).

⁴ *Nev. Dep't of Corr. v. York Claim Servs., Inc.*, 131 Nev. 199, 203, 348 P.3d 1010, 1013 (2015).

⁵ *Sierra Nev. Adm'rs v. Negriev*, 128 Nev. 478, 481, 285 P.3d 1056, 1058 (2012).

⁶ NRS 41.270.

⁷ *Dep't of Tax'n v. Daimler Chrysler Servs. N. Am., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005).

The statute considers applicants' criminal records. They must disclose their criminal records and provide a set of finger prints with their petition.⁸ The Central Repository for Nevada Records keeps copies of the order and the fingerprints.⁹ The statute also directs district courts to consider applicants criminal records.¹⁰ The legislature did not intend to prohibit convicted felons from changing their names because the statute addresses how an applicant with a criminal record should proceed with their application.

A change of name does not circumvent the record sealing requirements

The district court noted that felons convicted of crimes against children could circumvent the record-sealing statute because they would be unable to seal their records.¹¹ It was particularly concerned with felons circumventing the waiting period. But the Court explained that the name-change statute addresses this problem.

The statute includes a provision that ensures the Central Repository for Nevada Records of Criminal History follows the inmate with his new name.¹² This does not automatically seal the record. The Court also noted that the record-sealing criteria is harder to satisfy than the name change criteria.¹³ It has a higher threshold and a better reward. People with sealed records reobtain their rights to serve on a jury, hold office, and vote, as if the offense never occurred.¹⁴

The Court supposed that the district analogized the two statutes because it requires the district to consider the applicant's criminal record.¹⁵ But the Court reads the statutes in harmony.¹⁶ Requiring the courts to consider the criminal record harmonizes the two statutes because of its logistical and substantive purposes.

Logistically, the court determines if the applicant has a criminal record prior to satisfying its "duty to 'transmit a certified copy of the order to the Central Repository for Nevada Records of Criminal History [.]'"¹⁷ Substantively, the court considers the record, accounts for relevant evidence, and decides whether "good reason exists" to grant the name change.¹⁸ The Court explicitly chose not to define good reason because that is within the district court's discretion.

Conclusion

Nevada's name change statute does not prohibit convicted felons from changing their name so long as they comply with the requirements of the statute. It was improper for the district court to consider the legislative history because the statute is unambiguous. It does not matter what offense an applicant committed. Any incarcerated person may petition to change their name.¹⁹

The Court reversed and remanded the district court's order.

⁸ NRS 41.270.

⁹ NRS 41.290(3).

¹⁰ NRS 41.290(1).

¹¹ NRS 179.245.

¹² NRS 41.290(3).

¹³ Compare NRS 41.290 with NRS 179.245.

¹⁴ NRS 179.285(1)(a).

¹⁵ NRS 41.290(1).

¹⁶ *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 827, 192 P.3d 730, 734 (2008) ("Whenever possible, we will interpret a statute in harmony with other rules and statutes.").

¹⁷ NRS 41.290(3).

¹⁸ NRS 41.290(1).

¹⁹ NRS 41.270.