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Summary of Savage v. Dist. Ct., 125 Nev. Adv. Op. 2

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Recommended Citation

Katz, Moorea, "Summary of Savage v. Dist. Ct., 125 Nev. Adv. Op. 2" (2009). *Nevada Supreme Court Summaries*. 384.

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***Savage v. Dist. Ct.*, 125 Nev. Adv. Op. 2 (January 29, 2009)**

CRIMINAL LAW- SENTENCING AND PROBATION¹

Summary

Consolidated petitions for writs of mandamus that challenged district court failures to consider applications pursuant to NRS 484.37941 on their merits.

Disposition/Outcome

Petitions granted.

Factual and Procedural History

This opinion consolidated two criminal defendants' petitions for writs of mandamus. Both defendants were charged with their third DUI offense and both applied to enter treatment in lieu of prison under NRS 484.37941.²

In *Savage v. District Court*, Docket No. 50445, the state charged Savage with his third DUI. Savage made a plea agreement and attempted to plead guilty, simultaneously applying for a treatment program under NRS 484.37941. The district court rejected his plea, explaining that there was no treatment program available in his county because the Division of Parole and Probation (DOPP) would not oversee a program, and the district court similarly was unable to implement such a program. The court postponed sentencing and encouraged Savage's attorney to consult with his client.

In *Hernandez v. District Court*, Docket No. 51333, Hernandez plead guilty to a third-offense DUI and applied for treatment under NRS 484.37941. The district court stated it was unable to oversee a treatment program and that it believed that NRS 484.37941 was an unfunded mandate. Consequently, the court denied the motion for treatment.

Both Savage and Hernandez filed petitions for writs of mandamus, requesting the Court to order the district courts to consider the merits of their treatment applications.

Discussion

The Court first considered whether writs of mandamus were appropriate remedies in the two cases and then turned to the three questions presented by the petitions: (1) whether NRS 484.37941 requires courts to consider the merits of treatment applications, (2) whether NRS 484.37941 requires counties without treatment programs to create those programs (3) whether district courts exceed their jurisdiction by ordering the DOPP to supervise offenders in treatment,

¹ By Moorea Katz

² NEV. REV. STAT. § 484.37941 (2007) allows persons charged with their third DUI offense to request that the court order them into an alcoholism treatment program in lieu of prison. If a court grants a treatment application, it then must put the offender on probation and suspend sentencing until completion of the program, or until the court deems that treatment is not benefiting the offender. If the offender successfully completes treatment, the offender only receives a misdemeanor conviction whereas a third-time DUI offense otherwise receives a felony conviction.

and (4) whether by requiring district courts to administer treatment programs, NRS 484.37941 violates the separation-of-powers doctrine.

Writ Relief is appropriate

The Court reasoned that Hernandez's guilty plea was intrinsically intertwined with his opportunity to enter treatment, and that in this limited circumstance he should not be prevented from challenging the district court's denial of his motion before proceeding to trial. The Court rejected the State's argument that because Savage had not entered a guilty plea, writ relief was inappropriate. The Court reasoned that the sole reason Savage had not entered his plea was that the court would not consider his treatment application. The Court also reasoned that for both cases writ relief was appropriate because the petitions raised important questions of law that required clarification.

NRS 484.37941 requires courts to consider the merits of treatment applications

The Court concluded that under both the plain language and the legislative history of NRS 484.37941, the statute requires district courts to consider the merits of offenders' treatment applications.

NRS 484.37941 provides that third-time DUI offenders, at the time they enter their pleas, may apply to enter alcoholism treatment programs. The statute further provides that if the State opposes a motion for treatment, the court shall hold a hearing on the motion. The Court concluded that because the statute mandates that a court hold a hearing on a disputed application, and must "decide the matter" when the applications are not opposed, the statute requires courts to consider applications on their merits, and determine whether a particular offender is a good candidate for treatment.

The Court also found that the legislative history of NRS 484.37941 supports this holding. The Court referred to Senate Committee Hearing minutes illustrating committee members' concern that lack of treatment facilities in rural counties would prevent offenders in those counties from obtaining treatment.³ Therefore, the Court reasoned, district courts are required to consider motions for treatment and the decision whether to consider them is not in their discretion. The Court concluded that the district courts erred in basing their decision to not consider the treatment applications on the lack of treatment programs in their counties.

NRS 484.37941 does not require rural counties to create treatment programs

The Court next considered whether NRS 484.37941, by allowing offenders to apply for treatment, effectively requires rural counties that lack such programs to create them. The Court concluded that nothing in the plain language of the statute suggests that rural counties are required to create treatment programs. The Court also reasoned that the statute does not require district courts to create these programs because the statute simply provides that courts must oversee treatment, and this requirement is not equivalent to mandating district courts create the programs. Furthermore, NRS 484.37941(5) requires district courts to administer treatment programs pursuant to two other statutory sections, neither of which mandate that courts create

³ Hearing on S.B. 277 Before the Senate Comm. on the Judiciary, 74th Leg. (Nev., April 3, 2007); Hearing on S.B. 277 Before the Senate Comm. on the Judiciary, 74th Leg. (Nev., April 10, 2007).

treatment programs if they are unavailable.⁴

District courts have jurisdiction to order the DOPP to supervise offenders approved for treatment.

The Court reasoned that because NRS 484.37941 requires district courts to place offenders on probation without entering a judgment if they approve those offenders' treatment applications, the statute also bestows upon the courts the jurisdiction to order the DOPP to supervise those offenders placed in treatment. The Court reviewed other statutory provisions allowing district courts to place offenders on probation and found that NRS 484.37941 was no different from those. Importantly, the Court held that NRS 176A.400(4) requires district courts that put offenders on probation to order the DOPP to supervise those offenders. For these reasons, the Court held that the district courts erred in holding they lacked the jurisdiction to order the DOPP to supervise offenders approved for treatment.

NRS 484.37941 does not violate the separation-of-powers doctrine.

The Court addressed the district courts' conclusions that by requiring courts to administer treatment programs, NRS 484.37941 violates the separation of powers doctrine because this responsibility is typically reserved to the DOPP. The Court found that the statute requires district courts only to "administer the program of treatment" whereas the DOPP still must supervise those offenders in treatment. Therefore, according to the Court, the statute does not merge judicial power with executive power, but rather, the two powers overlap, which is permissible under the Nevada Constitution.

Conclusion

The Court granted both petitions for writs of mandamus, holding that NRS 484.37941 requires courts to consider third-time DUI offenders' applications for treatment on their merits, but that the statute does not require counties lacking treatment programs, nor district courts in those counties, to implement these programs if they do not already exist. Additionally, the Court held that NRS 484.37941, when taken with other statutory provisions, bestows upon courts the jurisdiction to order the DOPP to supervise offenders approved for treatment. Lastly, the Court held that courts' administration of treatment programs does not violate the separation-of-powers doctrine. Therefore, the Court ordered the district courts to consider Savage's and Hernandez's treatment applications on their merits.

⁴ NEV. REV. STAT. § 458.320 (2007) (requiring courts to order treatment facilities to conduct examinations of offenders and allowing the courts to determine whether to order treatment and to impose conditions upon probations if necessary); NEV. REV. STAT. § 458.330 (2007) (allowing courts to defer sentencing pending treatment and outlining procedures for courts that find an offender is not benefiting from treatment).