

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WILLIAM JONES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48563

FILED

NOV 09 2007

ORDER OF AFFIRMANCE

JAMETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Alvarado*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of carrying a concealed firearm and possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant John William Jones, Jr., to serve concurrent prison terms of 19-48 months and 28-72 months to run concurrently with the sentence imposed in district court case no. C211092.

Jones contends that the district court erred by refusing to instruct the jury on the affirmative defense of self-defense to the crime of being an ex-felon in possession of a firearm. Citing to a decision of a California appellate court for support,¹ Jones proffered the following rejected instruction:

¹People v. Hurtado, 54 Cal. Rptr. 2d 853 (Ct. App. 1996).

Momentary possession of a firearm defense extends to possession of a firearm by a felon offenses when the possession is for self defense, the defense of others, and for disposal of the firearm.

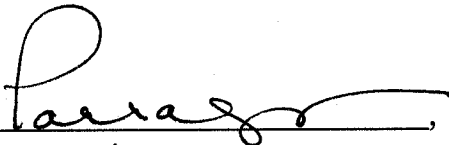
Jones claims that he was entitled to the above instruction because he came into possession of the weapon when he seized the handgun in question from his cousin, who was "under the influence of alcohol, marijuana, and PCP" and therefore a danger to himself and others. We disagree with Jones' contention.

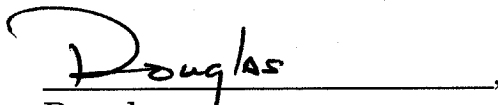
The Legislature has never created such a statutory exception to NRS 202.360(1), and this court has never recognized self-defense as a valid defense to the crime of being an ex-felon in possession of a firearm. By requesting the above instruction, Jones was asking the district court to unilaterally adopt California state law not previously recognized in Nevada, and we conclude that the district court did not err by rejecting the instruction.² Moreover, under the facts of the case, including the manner in which Jones was apprehended, we further conclude that even if we recognized the affirmative defense, that the district court's failure to provide the instruction was harmless beyond a reasonable doubt.

²See Lawson v. State, 91 Nev. 519, 539 P.2d 116 (1975) (holding that a conviction is not reversible when the district court refuses to provide an instruction which does not accurately state applicable law); see also State of Nevada v. District Court, 108 Nev. 1030, 1033, 842 P.2d 733, 735 (1992) (holding that jury instructions must correctly state the applicable law).

Therefore, having considered Jones' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.³

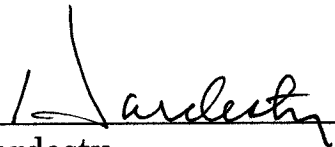

_____, J.
Parraguirre


_____, J.
Douglas

³Jones also claims that the district court erred by rejecting the following related instruction: "The burden of proving absence of justification or excuse for possession of firearm by an ex-felon resides with the State. Hill v. State, 98 Nev. 295 (1982)." We disagree and conclude that the district court did not err by rejecting this proposed instruction.

HARDESTY, J., concurring:

Although I would not recognize the affirmative defense of self-defense for ex-felon in possession of a firearm offenses, I am writing separately to state that I would recognize a necessity defense.⁴ In this case, however, I conclude that the district court's failure to provide the jury with such an instruction was harmless, and therefore, concur with the result reached by the majority.


_____, J.
Hardesty

cc: Eighth Judicial District Court Dept. 6, District Judge
Bret O. Whipple
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁴See generally People v. Pepper, 48 Cal. Rptr. 2d 877, 880 (Ct. App. 1996) (citing People v. Slack, 258 Cal. Rptr. 702, 704 (Ct. App. 1989)).