

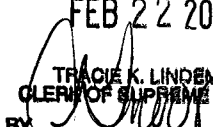
IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL EDWARD MILLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48794

**FILED**

FEB 22 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of violation of a lifetime supervision condition. Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge. The district court sentenced appellant Michael Edward Miller to a prison term of 12-36 months, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed 5 years.

On June 12, 2000, Miller was convicted, pursuant to a guilty plea, of one count of lewdness with a child under the age of 14 years and sentenced to serve a prison term of 24-62 months. Miller also received a special sentence of lifetime supervision to commence upon his discharge from parole. On September 2, 2004, the State filed a felony warrant and criminal complaint in the Eureka County Justice Court, alleging that, after his release, Miller violated the conditions imposed on him pursuant to the program of lifetime supervision by not reporting to his parole officer in February of 2004 or thereafter, and by reportedly relocating, without permission, to the Philippines (later confirmed). At the time the criminal complaint and warrant were filed, a violation of any of the conditions of

lifetime supervision was a category B felony.<sup>1</sup> Miller, however, was not taken into custody until 2006, and in the period leading up to his arrest, the Legislature amended NRS 213.1243 so that a “minor” violation of the conditions of lifetime supervision, such as Miller not reporting and relocating, was punishable as a misdemeanor.<sup>2</sup>

Miller contends that the district court erred by denying his pretrial petition for a writ of habeas corpus.<sup>3</sup> Specifically, Miller claims that the State failed to establish probable cause to believe that he (1) “was off of parole and actually on lifetime supervision,”<sup>4</sup> and (2) committed a category B felony, because violation of a lifetime supervision condition is a “continuing” offense, and at the time of his arrest, a minor violation of the conditions imposed pursuant to a program of lifetime supervision was punishable as a misdemeanor. We disagree with Miller’s contention.

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<sup>1</sup>See 1997 Nev. Stat., ch. 314, § 14(3), at 1189 (“A person who violates a condition imposed on him pursuant to the program of lifetime supervision is guilty of a category B felony.”) (formerly NRS 213.1243(3)). Amended once again by the Legislature in 2007, NRS 213.1243(8) reinstates category B felony punishment for violation of the lifetime supervision provision. See 2007 Nev. Stat., ch. 528, § 16(2), at 3264.

<sup>2</sup>See 2005 Nev. Stat., ch. 507, § 35(3)(a), at 2879 (“[a] person who commits a violation of a condition imposed on him pursuant to the program of lifetime supervision is guilty of [a misdemeanor] [i]f the violation constitutes a minor violation”).

<sup>3</sup>Miller expressly preserved his right to raise this issue on appeal. See NRS 174.035(3).

<sup>4</sup>See NRS 176.0931(2) (“The special sentence of lifetime supervision commences after any period of probation or any term of imprisonment and any period of release on parole.”).

The probable cause determination has two components: (1) that an offense has been committed; and (2) that the accused committed the offense.<sup>5</sup> Probable cause to support a criminal charge “may be based on slight, even ‘marginal’ evidence, because it does not involve a determination of the guilt or innocence of an accused.”<sup>6</sup> “To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense.”<sup>7</sup> “Although the [S]tate's burden at the preliminary examination is slight, it remains incumbent upon the [S]tate to produce some evidence that the offense charged was committed by the accused.”<sup>8</sup>

Based on our review of the record, we conclude that the State presented enough evidence to support a reasonable inference that Miller committed the crime of violation of a lifetime supervision condition. At the preliminary hearing, Officer Stuart Walker from the Division of Parole and Probation (P & P) testified that sometime in December of 2003, he met with Miller and discussed the conditions and rules of lifetime supervision. Officer Walker stated that in February of 2004, Miller failed to report as required, and after further investigation, Walker discovered that Miller had relocated to the Philippines, in violation of the conditions

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<sup>5</sup>NRS 171.206.

<sup>6</sup>Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (internal citations omitted).

<sup>7</sup>Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

<sup>8</sup>Woodall v. Sheriff, 95 Nev. 218, 220, 591 P.2d 1144, 1144-45 (1979).

of lifetime supervision. On cross-examination, the following exchange took place:

Q. And you stated you met with him in December of 2003. Was that right when he was released from prison?

A. No. Actually he had recently completed his term of parole or was about to complete his term of parole, which would begin the commencement of a term of lifetime supervision.

Q. Do you know whether his parole was completed?

A. Probably – actually, no, I don't. In that timeframe.

The State also provided evidence that at the time the warrant and criminal complaint were filed, a violation of the conditions imposed pursuant to a program of lifetime supervision was a category B felony. Based on the above, the justice court bound Miller over for trial in the district court, finding that the State provided the requisite “slim or marginal” evidence.

In denying Miller's pretrial habeas petition, the district court found that although Officer Walker “was not sure” if Miller completed his parole in December of 2003, “he did testify that [Miller] had or ‘was about to complete his term of parole,’” and therefore, the State presented sufficient evidence establishing probable cause to believe that Miller had commenced his term of lifetime supervision.<sup>9</sup> Additionally, the district

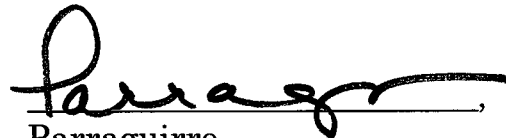
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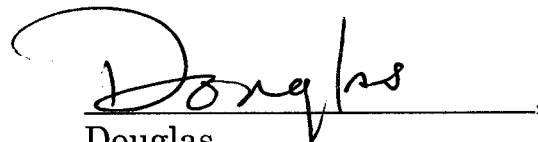
<sup>9</sup>The presentence investigation report prepared by P & P after the denial of his habeas petition states that Miller was honorably discharged from parole on December 23, 2003, and that his term of lifetime supervision began the next day.

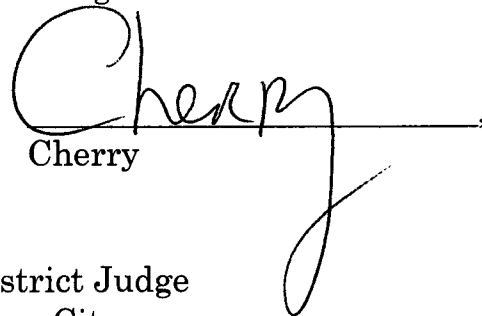
court found that because the criminal complaint was filed in 2004, the State properly charged Miller with a category B felony and that he “does not get the benefit of the statutory amendment” in 2005 lessening the punishment. We agree and conclude that the district court did not err in denying Miller’s pretrial petition for a writ of habeas corpus.

Therefore, having considered Miller’s contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
Parraguirre, J.

  
Douglas, J.

  
Cherry, J.

cc: Hon. Steve L. Dobrescu, District Judge  
State Public Defender/Carson City  
State Public Defender/Ely  
Attorney General Catherine Cortez Masto/Carson City  
Eureka County District Attorney  
Eureka County Clerk