

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MARSTON STINCHFIELD, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49952

FILED

DEC 12 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of first-degree murder and one count of attempted murder. Third Judicial District Court, Lyon County; David A. Huff, Judge. Appellant John Marston Stinchfield, Jr. was sentenced to serve two consecutive terms of life in prison with the possibility of parole after 20 years for the two first-degree murder counts. He was sentenced to a consecutive term of 96 to 240 months in prison for attempted murder.

Stinchfield appealed his conviction and we affirmed.¹ Thereafter, Stinchfield filed a post-conviction petition for a writ of habeas corpus in the district court alleging several claims of ineffective assistance of counsel, including counsel's failure to object to the district court's release of the jury prior to sentencing. After the jury returned its guilty verdict, the district court released the jury instead of proceeding to sentencing by the trial jury as required by NRS 175.552(1)(a). Stinchfield

¹Stinchfield v. State, Docket No. 37227 (Order of Affirmance, December 12, 2001).

argued that the remedy for this violation was a new trial, not a new penalty hearing. The district court concluded that Stinchfield's counsel was ineffective for failing to object to the release of the jury and ordered a new penalty hearing before a new jury. The district court denied Stinchfield's remaining claims. Stinchfield appealed, and we affirmed.² We denied Stinchfield's motion for rehearing on March 7, 2005, and the remittitur issued on April 1, 2005. Stinchfield was then sentenced by a jury specifically empanelled to decide his penalty. He now appeals.

Stinchfield raises two issues on appeal. First, he argues that he is entitled to a new trial because he was not sentenced by the original trial jury as required by NRS 175.552(1)(a). Specifically, he contends that NRS 175.552(1)(a) requires that the penalty phase be conducted before the trial jury; therefore, he is entitled to a new trial so that the same jury is present during both the guilt and penalty phases.

This court has previously held that "[t]he failure to properly sentence does not render the trial and proceedings a nullity."³ "When an improper sentence is the sole basis of the complaint no vacation of conviction or adjudication is necessary since justice may be done by

²Stinchfield v. State, Docket No. 44130 (Order of Affirmance, January 20, 2001).

³State v. District Court, 85 Nev. 485, 488, 457 P.2d 217, 219 (1969); see also Thomas v. State, 120 Nev. 37, 83 P.3d 818 (2004); Evans v. State, 117 Nev. 609, 28 P.3d 498 (2001); Hollaway v. State, 116 Nev. 732, 6 P.3d 987 (2000) (In Thomas, Evans, and Hollaway, we remanded for a new penalty hearing because the error only occurred during the penalty phase and not the guilt phase of the trial).

correction of the sentence.”⁴ Although NRS 175.552(1)(a) provides that a separate penalty hearing must be conducted before the trial jury, Stinchfield has failed to point to any authority supporting his proposition that a new guilt phase proceeding is warranted when an error only affects the penalty phase. The district court correctly determined that the proper remedy was a new sentencing hearing before a newly empanelled jury. Counsel’s failure to object to the district court’s release of the jury did not affect the jury’s finding of guilt or render the trial proceedings a nullity. Accordingly, Stinchfield’s claim that he is entitled to a new trial lacks merit.

Second, Stinchfield argues that the district court violated double jeopardy principles by releasing the trial jury before it sentenced him. In particular, he contends that he was denied his right to have his trial completed by the particular tribunal summoned to sit in judgment of him. Stinchfield argues the district court’s release of the jury is similar to that of a district court declaring a mistrial during the guilt phase of a trial. He contends that there was no manifest necessity for the district court to have released the jury, especially since NRS 175.552(1)(a) requires that he be sentenced by the jury that determined his guilt.

The Double Jeopardy Clause has been interpreted to protect a criminal defendant from three main abuses—“a subsequent prosecution following a conviction on the charges, a subsequent prosecution following an acquittal, and multiple punishments for the same offense in a single

⁴District Court, 85 Nev. at 488, 457 P.2d at 219.

trial.”⁵ When the court declares a mistrial and the defendant is retried, he loses his “valued right to have his trial completed by a particular tribunal.”⁶ However, when a case is completed in front of a jury and then is appealed, a reversal on appeal does not preclude the State from re-trying a defendant. This court has held that retrial after reversal, except in cases where the reversal was for insufficient evidence, does not offend double jeopardy principles.⁷

Double jeopardy has been extended to penalty hearings in limited circumstances. For example, if a defendant has been acquitted of the death penalty he cannot then be re-sentenced to death on remand.⁸ Double jeopardy also prohibits a sentencing court from increasing a lawful sentence on a count after this court has vacated an unlawful sentence on another count.⁹

Stinchfield’s case does not fall within the three abuses that double jeopardy protects against. Stinchfield was not prosecuted again after a conviction or acquittal, and he was not punished twice for the same crime. In addition, the district court’s release of the trial jury prior to

⁵Garcia v. State, 121 Nev. 327, 342, 113 P.3d 836, 845 (2005), modified on other grounds by Mendoza v. State, 122 Nev. 267, 274, 130 P.3d 176, 180 (2006).

⁶U.S. v. DiFrancesco, 449 U.S. 117 (1980) (quoting Arizona v. Washington, 434 U.S. 497, 503 (1978)).

⁷State v. Purcell, 110 Nev. 1389, 1395, 887 P.2d 276, 279 (1994); State v. Walker, 109 Nev. 683, 686, 857 P.2d 1, 2-3 (1993).

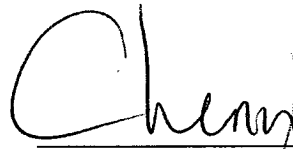
⁸Collier v. State, 103 Nev. 563, 565, 747 P.2d 225, 226 (1987).

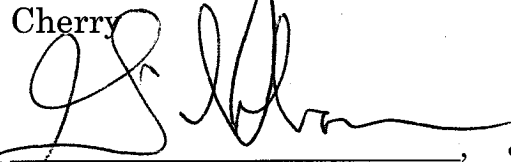
⁹Wilson v. State, 123 Nev. ___, ___, 170 P.3d 975, 979 (2007).


sentencing was not akin to a mistrial because the guilt phase of the trial was completed. Moreover, this case does not fall within the limited circumstances to which double jeopardy has been extended to the penalty phase. Stinchfield was not "acquitted" of a particular sentence, nor was he more harshly punished at the second penalty hearing after the sentence was vacated. Accordingly, the district court did not violate double jeopardy.

Having considered Stinchfield's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.

Cherry
 _____, J.

Gibbons
 _____, J.
Saitta

cc: Hon. David A. Huff, District Judge
Federal Public Defender/Las Vegas
Attorney General Catherine Cortez Masto/Carson City
Lyon County District Attorney
Lyon County Clerk