

IN THE SUPREME COURT OF THE STATE OF NEVADA

MONICA ANN COLLINS A/K/A  
MONICA ANN HUNT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 34544

**FILED**

MAR 14 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL IN PART AND REMANDING IN PART

This is an appeal from a district court order granting, in part, the State's petition for a writ of certiorari.

On June 22, 1998, the State charged appellant Monica Ann Collins with misdemeanor domestic battery for allegedly hitting and scratching her roommate, Richard Jacks. During Collins' justice court trial for domestic battery, Jacks refused to testify invoking his Fifth Amendment right against self-incrimination. Jacks claimed his testimony could subject him to criminal liability for misdemeanor driving while under the influence (DUI),<sup>1</sup> domestic battery, and filing a false report.

The State objected to Jacks' invocation of his right against self-incrimination and requested that the justice court compel Jacks to testify. The justice court denied the State's request, and allowed Jacks to invoke his privilege against self-incrimination. The State then requested a stay of the proceedings so that it could seek a writ of mandamus in

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<sup>1</sup>At the time of Collins' trial, there were pending misdemeanor charges filed against Jacks for allegedly driving under the influence one hour after Collins purportedly battered him.

district court. The justice court granted the State's request, and stayed the proceedings so that the State could seek an extraordinary writ.

On November 24, 1998, the State filed a petition for a writ of mandamus or certiorari in district court, requesting the district court to order the justice court to compel Jacks to testify. On June 17, 1999, the district court granted the petition, in part, and issued a writ directing the justice court to compel Jacks to testify with respect to the domestic battery. The district court further provided, however, that Jacks could invoke his privilege against self-incrimination with regard to questions that would affect the charges pending against him for driving under the influence of alcohol.

On July 21, 1999, Collins filed the instant appeal, contending that the district court erroneously issued the writ. We conclude that the passage of time has rendered the issues presented in this appeal moot.

In briefing this appeal, counsel made repeated requests for extensions of time, which were granted by this court. Counsel did not complete briefing of the issues presented in this matter until June 25, 2001, approximately three years after Collins' trial began. Because of that delay, this appeal no longer presents this court with an actual controversy that can be decided by a judgment that can be carried into effect.<sup>2</sup> The passage of time has vitiated any concerns Jacks had about self-incrimination in testifying at Collins' trial because that testimony will no

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<sup>2</sup>See NCAA v. University of Nevada, 97 Nev. 56, 624 P.2d 10 (1981) (court's duty is to decide actual controversies by a judgment that can be carried into effect, not to give opinions on moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue).

longer subject Jacks to criminal liability for any acts he allegedly committed in 1998 of DUI, domestic battery, or of filing a false report.<sup>3</sup> More specifically, on September 23, 1998, Jacks resolved the DUI charges pending against him by pleading guilty to reckless driving. Further, Jacks is not subject to criminal liability for any alleged acts committed in 1998 of filing a false report or domestic battery because the statute of limitations has run on those charges.<sup>4</sup> Because Jacks' testimony about acts committed in 1998 will no longer subject him to future criminal prosecution for DUI, filing a false report, and domestic battery, we conclude that Jacks may no longer invoke his Fifth Amendment right against self-incrimination at Collins' trial.

Having so concluded, we dismiss this appeal as moot. In light of our conclusion that Jacks can no longer be subjected to criminal liability, however, we remand this matter to the district court with instructions for the district court to vacate that portion of its writ permitting Jacks to exercise his Fifth Amendment right against self-

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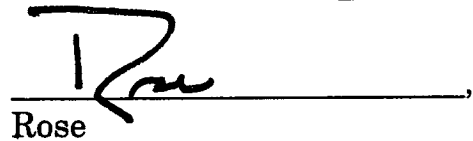
<sup>3</sup>See Jones v. State, 108 Nev. 651, 657, 837 P.2d 1349, 1352 (1992) (stating that “[w]itnesses in criminal prosecutions have a Fifth Amendment right to refuse to answer questions when their answers might subject them to future prosecution”).

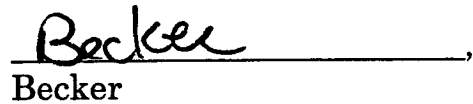
<sup>4</sup>See NRS 171.090(2) (providing that, generally, misdemeanor charges must be filed within one year after the commission of the offense); see also NRS 171.085(2) (providing that most felonies, including perjury in the preparation of written false statement, must be filed within three years from the commission of the offense). Even assuming that the statute of limitations was tolled for charges arising from the alleged false report, according to the order of the district court granting the State's writ petition, the State represented to the district court that “it [would] not file charges against Jacks for filing a false report, should that become of concern.”

incrimination with regard to the DUI allegations. Based on the foregoing,  
we

ORDER this appeal dismissed, and we REMAND this matter  
to the district court for proceedings consistent with this order.<sup>5</sup>

  
Shearing, J.

  
Rose, J.

  
Becker, J.

cc: Hon. Steven R. Kosach, District Judge  
Martin H. Wiener  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>5</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument  
is not warranted in this appeal.