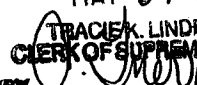


IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN NEFF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51413

FILED

MAY 07 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a judgment of conviction, entered pursuant to a conditional guilty plea, of one count of battery by a prisoner. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

On February 16, 2004, two correctional officers witnessed appellant John Neff attack another inmate in the prison dining hall with a six-inch weapon fashioned from an ink pen casing and a razor blade. According to an associate warden, “[the victim] suffered several wounds to his torso, neck, hand and leg. The most serious were a one inch cut across the front of his throat that did not involve the trachea, and deep cuts to the middle and ring fingers of his left hand. The cuts resulted in heavy bleeding.”

On April 3, 2007, the State filed a criminal complaint in the justice court, charging Neff with the crimes of attempted murder with the use of a deadly weapon, battery by a prisoner with the use of a deadly weapon, and possession or control of a dangerous weapon by a prisoner. Neff filed a motion to dismiss the charges on grounds that the statute of limitations had run. At the preliminary hearing, the justice court heard argument on Neff’s motion, ruled that the motion to dismiss was “denied

for the purpose of the preliminary hearing,” and bound Neff over for trial in the district court on all three counts.

On April 27, 2007, the State filed a criminal information in the district court. Neff filed a motion to dismiss the charges on grounds that the statute of limitations had run. The State filed an opposition and Neff filed a reply. The district court heard argument on Neff’s motion and announced that it would take the matter under submission and that it would enter a written order after reviewing the arguments, reading the pleadings, and doing its own research. Thereafter, the district court concluded that an exception to the statute of limitations for attempted murder applied. The district court observed that

[w]here the literal language of the statute allows for a five year extension of the statute of limitations where “a person authorized to act on behalf of such a victim, files with a law enforcement officer a written report concerning the offense,” this court feels that the [Nevada Department of Corrections] acted properly within their authority to file a report on behalf of the inmate victim and thereby extend the statute of limitations.

The district court denied the motion to dismiss as to the count of attempted murder, but granted the motion as to the counts of battery by a prisoner and possession of a dangerous weapon by a prisoner.

On December 17, 2007, Neff entered into a conditional guilty plea agreement with the State in which he agreed to plead guilty to one count of battery by a prisoner and reserved the right to appeal the adverse determination of his pretrial motion. See NRS 174.035(3). The district court conducted a plea canvass, accepted Neff’s conditional guilty plea, and sentenced Neff to serve a prison term of 28 to 72 months. This appeal followed.

Neff contends that the district court erred by denying his motion to dismiss all of the charges that were alleged in the criminal information. Neff claims that prosecution of the attempted murder count is barred by the statute of limitations¹ and that the exception to the statute of limitations does not apply. NRS 171.084(1) sets forth an exception to the statute of limitations for attempted murder. It states,

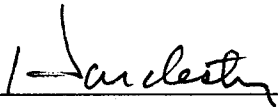
If, at any time during the period of limitation prescribed in NRS 171.085 and 171.095, a victim of kidnapping or attempted murder, or a person authorized to act on behalf of such a victim, files with a law enforcement officer a written report concerning the offense, the period of limitation prescribed in NRS 171.085 and 171.095 is extended for 5 years.

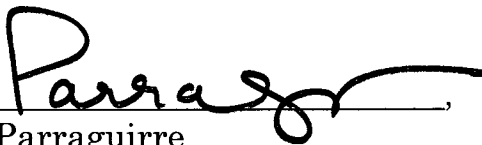
The district court found that “[c]onsistent with statutory law and prison regulations, the NDOC filed a report with a permissible law enforcement officer, the prosecutor, prior to the statute of limitations running.” However, the only “written report” provided by the parties in the record on appeal is an “affidavit in support of criminal complaint” that was signed by Associate Warden Adam Endel on April 2, 2007 – 46 days after the statute of limitations had run. Because the district court’s factual finding is not supported by substantial evidence, we conclude that the State failed to show by a preponderance of the evidence that the statute of limitations had not run or that the exception to the statute

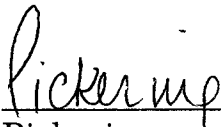
¹At the time of Neff’s alleged offense, NRS 171.085(2) provided that “an indictment for . . . [a]ny felony other than murder, theft, robbery, burglary, forgery, arson, sexual assault or a violation of NRS 90.570 must be found, or an information or complaint filed, within 3 years after the commission of the offense.” See 2003 Nev. Stat. Spec. Sess., ch. 10, § 4, at 273.

applied, Dozier v. State, 124 Nev. ___, ___, 178 P.3d 149, 152-53 (2008), and that Neff's conviction for battery by a prisoner was obtained in violation of the statute of limitations. Accordingly, we

ORDER the judgment of conviction REVERSED.


_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Pickering

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Ely
White Pine County Clerk