

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEO CHARLES STEVENS,

No. 34651

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus.

On January 11, 1999, the district court convicted appellant, pursuant to a guilty plea, of unauthorized signing of a credit card transaction document. The district court sentenced appellant to serve 6 years in prison, to be served consecutively to appellant's sentence on a federal conviction. The district court also gave appellant credit for 86 days of presentence incarceration.

On May 14, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 4, 1999, the district court denied appellant's petition. This appeal followed.¹

In his petition, appellant claimed that he was entitled to credit for time that he served in Arizona prior to

¹We note that appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court on August 31, 1999. That petition was filed in the district court after the notice of appeal in this case and is not the subject of this appeal.

sentencing in this case and that his conviction violated the Double Jeopardy Clause and NRS 178.391, NRS 193.280 and NRS 193.280 because he had previously been convicted of the same offense in federal court. Our review of the record on appeal reveals that the district court did not err in rejecting these claims.

First, we conclude that appellant was not entitled to credit for time served in Arizona prior to sentencing in this case. NRS 176.055(1) specifically provides that a defendant is entitled to credit for time served before conviction, "unless his confinement was pursuant to a judgment of conviction for another offense." Here, appellant was incarcerated in Arizona for an offense he committed in that jurisdiction prior to sentencing in this case. Accordingly, he is not entitled to credit toward his Nevada sentence for time served pursuant to his Arizona conviction. Moreover, we conclude that the fact that the Arizona court purported to run the Arizona sentence concurrent to any Nevada sentence is not dispositive as appellant had not yet been sentenced in this case at the time of his Arizona conviction.

Second, we conclude that appellant's conviction does not violate the Double Jeopardy Clause of the United States and Nevada constitutions and is not precluded by NRS 178.391,² NRS 193.280³ or NRS 193.290.⁴ The United States Supreme Court

²NRS 178.391 provides: "No person can be subject to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted."

³NRS 193.280 provides:

Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another State or country, under such circumstances that the courts of this State had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits,

continued on next page . . .

has explained that under the dual sovereignty doctrine, "two identical offenses are not the 'same offence' within the meaning of the Double Jeopardy Clause if they are prosecuted by different sovereigns."⁵ Because the State of Nevada and the Federal Government are separate sovereigns,⁶ appellant's conviction does not violate the Double Jeopardy Clause of the United States Constitution. Moreover, although the federal presentence report refers to offenses committed in Nevada (as well as California), the list of credit card numbers that were the subject of the federal conviction does not include the same credit card number listed in the charging document for the instant case. It therefore appears that the federal conviction did not involve the same offense as the instant conviction. Accordingly, appellant's conviction does not violate the Nevada Constitution or NRS 178.391. We further conclude that NRS 193.280 and NRS 193.290 are not applicable here because the instant case does not involve an offense committed in another State or country over which Nevada had concurrent jurisdiction or an offense for which appellant was previously convicted by a court in another Nevada county.

. . . continued

upon a criminal prosecution under the laws of such State or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense.

⁴NRS 193.290 provides:

Whenever, upon the trial of any person for a crime, it shall appear that the defendant has already been acquitted or convicted upon the merits, of the same crime, in a court having jurisdiction of such offense in another county of this State, such former acquittal or conviction is a sufficient defense.

⁵Heath v. Alabama, 474 U.S. 82, 92 (1985).

⁶Id. at 89.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young, J.
Young
Leavitt, J.
Leavitt
Becker, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Leo Charles Stevens
Clark County Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEO CHARLES STEVENS,

No. 34651

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 12 2001

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus.

On January 11, 1999, the district court convicted appellant, pursuant to a guilty plea, of unauthorized signing of a credit card transaction document. The district court sentenced appellant to serve 6 years in prison, to be served consecutively to appellant's sentence on a federal conviction. The district court also gave appellant credit for 86 days of presentence incarceration.

On May 14, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 4, 1999, the district court denied appellant's petition. This appeal followed.¹

In his petition, appellant claimed that he was entitled to credit for time that he served in Arizona prior to

¹We note that appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court on August 31, 1999. That petition was filed in the district court after the notice of appeal in this case and is not the subject of this appeal.

sentencing in this case and that his conviction violated the Double Jeopardy Clause and NRS 178.391, NRS 193.280 and NRS 193.280 because he had previously been convicted of the same offense in federal court. Our review of the record on appeal reveals that the district court did not err in rejecting these claims.

First, we conclude that appellant was not entitled to credit for time served in Arizona prior to sentencing in this case. NRS 176.055(1) specifically provides that a defendant is entitled to credit for time served before conviction, "unless his confinement was pursuant to a judgment of conviction for another offense." Here, appellant was incarcerated in Arizona for an offense he committed in that jurisdiction prior to sentencing in this case. Accordingly, he is not entitled to credit toward his Nevada sentence for time served pursuant to his Arizona conviction. Moreover, we conclude that the fact that the Arizona court purported to run the Arizona sentence concurrent to any Nevada sentence is not dispositive as appellant had not yet been sentenced in this case at the time of his Arizona conviction.

Second, we conclude that appellant's conviction does not violate the Double Jeopardy Clause of the United States and Nevada constitutions and is not precluded by NRS 178.391,² NRS 193.280³ or NRS 193.290.⁴ The United States Supreme Court

²NRS 178.391 provides: "No person can be subject to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted."

³NRS 193.280 provides:

Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another State or country, under such circumstances that the courts of this State had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits,

continued on next page . . .

has explained that under the dual sovereignty doctrine, "two identical offenses are not the 'same offence' within the meaning of the Double Jeopardy Clause if they are prosecuted by different sovereigns."⁵ Because the State of Nevada and the Federal Government are separate sovereigns,⁶ appellant's conviction does not violate the Double Jeopardy Clause of the United States Constitution. Moreover, although the federal presentence report refers to offenses committed in Nevada (as well as California), the list of credit card numbers that were the subject of the federal conviction does not include the same credit card number listed in the charging document for the instant case. It therefore appears that the federal conviction did not involve the same offense as the instant conviction. Accordingly, appellant's conviction does not violate the Nevada Constitution or NRS 178.391. We further conclude that NRS 193.280 and NRS 193.290 are not applicable here because the instant case does not involve an offense committed in another State or country over which Nevada had concurrent jurisdiction or an offense for which appellant was previously convicted by a court in another Nevada county.

. . . continued

upon a criminal prosecution under the laws of such State or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense.

⁴NRS 193.290 provides:

Whenever, upon the trial of any person for a crime, it shall appear that the defendant has already been acquitted or convicted upon the merits, of the same crime, in a court having jurisdiction of such offense in another county of this State, such former acquittal or conviction is a sufficient defense.

⁵Heath v. Alabama, 474 U.S. 82, 92 (1985).

⁶Id. at 89.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young, J.
Young
Leavitt, J.
Leavitt
Becker, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Leo Charles Stevens
Clark County Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).