IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM BENNETT BRYAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51579

FILED

FEB 26 2009

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a motion to seal a criminal record. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On May 17, 1991, the district court convicted appellant William Bennett Bryan, pursuant to a guilty plea, of one count of lewdness with a minor. The district court sentenced Bryan to a prison term of three years, suspended execution of the sentence, and placed Bryan on probation for a period not to exceed five years. On May 13, 1996, Bryan was honorably discharged from probation.

At the time of Bryan's conviction, and while he was on probation, NRS 179.245(1) provided that "[a] person who has been convicted of . . . [a]ny felony may, after 15 years from the date of his conviction or, if he is imprisoned, from the date of his release from actual custody . . . petition the court in which the conviction was obtained for the sealing of all records relating to the conviction." 1983 Nev. Stat., ch. 426, § 32, at 1088.

In 1997, the Legislature amended NRS 179.245 by adding subparagraph (4), which provided that "[a] person may not petition the court to seal records relating to a conviction of a crime against a child or a sexual offense," and subparagraph (5), which defined the terms "[c]rime

against a child" and "[s]exual offense." 1997 Nev. Stat., ch. 451, § 89, at 1673-74.

On January 22, 2008, Bryan filed a motion to seal his criminal records in the district court in which he argued that the Legislature did not intend for the 1997 amendments to NRS 179.245 to apply retroactively. The State opposed the motion, Bryan filed a reply, the district court heard argument, and the district court denied the motion. This appeal followed.

First, Bryan contends that amendments made to NRS 179.245, and particularly those made in 1997, were intended to be applied prospectively. Bryan claims that there is no evidence that the Legislature intended the 1997 amendments to apply retroactively. In support of his contention, Bryan notes that the 1997 amendments to NRS 179.245 also amended NRS 179.301 by allowing a record sealed pursuant to NRS 179.245 to be inspected. Bryan asserts that "by allowing this inspection, it cannot be said that the Legislature intended the sealing to be applied retroactively." See 1997 Nev. Stat., ch. 451, § 90, at 1674. Bryan also alleges that he was not informed of the provisions of NRS 179.245 in his probation papers as is required by NRS 176A.850(3)(f).

"There is a general presumption in favor of prospective application of statutes unless the legislature clearly manifests a contrary intent or unless the intent of the legislature cannot otherwise be satisfied." McKellar v. McKellar, 110 Nev. 200, 203, 871 P.2d 296, 298 (1994). However, within constitutional limits, the Legislature is free to enact laws with retroactive effect. INS v. St. Cyr, 533 U.S. 289, 316 (2001). "A statute has retroactive effect when it takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new

duty, or attaches a new disability, in respect to transactions or considerations already past." Id. at 321 (internal quotation marks and citations omitted); see also Miller v. Florida, 482 U.S. 423, 430 (1987) ("A law is retroactive if it changes the legal consequences of acts completed before its effective date." (internal quotation marks and citation omitted)). "A statute may not be applied retroactively, however, absent a clear indication from [the Legislature] that it intended such a result." St. Cyr, 533 U.S. at 316.

Here, the 1997 amendatory provisions to NRS 179.245 were part of a comprehensive statutory scheme enacted to establish a statewide registry of sex offenders and offenders convicted of certain crimes against children. 1997 Nev. Stat., ch. 451, §§ 1-104, at 1644-1703. This legislation (1) defined a "sex offender" as a person who has been convicted of a sexual offense after July 1, 1956; (2) defined "sexual offense" to include "lewdness with a child pursuant to NRS 201.230;" (3) required "each sex offender who, after July 1, 1956, is or has been convicted of a sexual offense [to] register with a local law enforcement agency;" (4) subjected sexual offenders who were convicted before July 1, 1997, and were either incarcerated or confined or on some sort of supervised released on July 1, 1997, to the community notification amendments; (5) specifically identified the amendatory provisions that did not apply to offenses committed before July 1, 1997; and (6) specifically identified the amendatory provisions that did not apply to sex offenders whose duty to register was terminated by a court order prior to July 1, 1997. 1997 Nev. Stat., ch. 451, §§ 47, 48, 52, 62, 63, 99, 100, 101 at 1654, 1657, 1661, 1701-02. The provisions in this statutory scheme are clear and can only sustain the interpretation that the Legislature intended the amendatory provisions of NRS 179.245 to

apply retroactively. See St. Cyr, 533 U.S. at 316-17. Moreover, we note that this statutory scheme went into effect before Bryan's right to petition the district court to seal his criminal records vested. Accordingly, we conclude that the district court did not err by denying Bryan's motion.

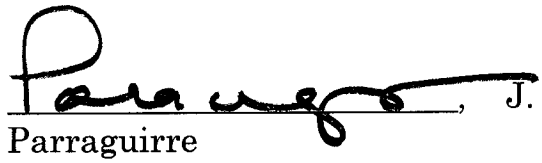
Second, Bryan contends that the retroactive application of the 1997 amendments to NRS 179.245 constitutes ex post facto legislation. Bryan claims that the application of the current version of NRS 179.245 is sufficiently punitive to render it ex post facto because the statutory right to seal records was available at the time of his conviction, he relied upon the right when deciding whether to plead guilty, and the right is a direct consequence of his guilty plea.

The constitutional prohibition on ex post facto legislation "is aimed at laws that 'retroactively alter the definition of crimes or increase the punishment for criminal acts.'" Miller v. Warden, 112 Nev. 930, 933, 921 P.2d 882, 883 (1996) (quoting Collins v. Youngblood, 497 U.S. 37, 43 (1990)). Statutory changes are procedural, and cannot be ex post facto laws, if they do not make previously innocent acts criminal, aggravate the crime previously committed, provide greater punishment, or change the proof necessary to convict. Dobbert v. Florida, 432 U.S. 282, 293 (1977).

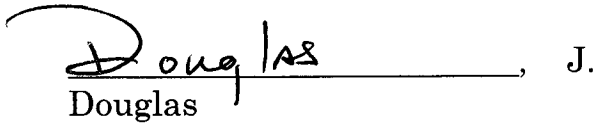
Here, a petition to seal criminal records is a civil matter. See generally Matter of Application of Duong, 118 Nev. 920, 921-22, 59 P.3d 1210, 1211 (2002). NRS 179.245 provides eligible persons with a means of sealing their criminal records and therefore it is designed to benefit rather than punish convicted offenders. Accordingly, we concluded that the retroactive application of the 1997 amendments to NRS 179.245 does not constitute ex post facto legislation.

Having considered Bryan's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Parraguirre



_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Jennifer Togliatti, District Judge
Law Offices of Tony Liker
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk