

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
DAVID CASPER,
Respondent.

No. 54649

FILED

MAR 11 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent David Casper's motion to dismiss. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

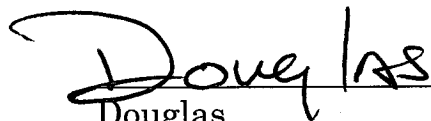
The State contends that the district court erred when it granted Casper's motion to dismiss count I of the criminal information. We review a district court's decision to grant or deny a motion to dismiss a criminal count for abuse of discretion. See Hill v. State, 124 Nev. ___, ___, 188 P.3d 51, 54 (2008). Count I stated that Casper attempted to escape from prison "by cutting his light fixture, making access to the roof, and storing food and other items to facilitate his escape." The district court determined that count I did not state a public offense because the acts alleged constituted mere preparation and not a direct act that would end in the consummation of an escape. The district court's determination is consistent with Nevada law, see Moffett v. State, 96 Nev. 822, 824, 618 P.2d 1223, 1224 (1980) ("preparation for a crime consists in devising or arranging the means or measures necessary for the commission of the offense; the attempt is the direct movement towards the commission after the preparations are made" (internal quotation marks omitted)). We

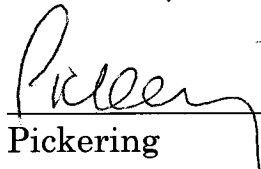
conclude that the State has not demonstrated that the district court abused its discretion by granting Casper's motion. And we decline to render an advisory opinion as to whether the State can recharge count I pursuant to NRS 174.085(1), see Applebaum v. Applebaum, 97 Nev. 11, 621 P.2d 1110 (1981).

Having considered the State's contentions and concluded that it is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Steve L. Dobrescu, District Judge
Attorney General/Carson City
Attorney General/Ely
State Public Defender/Carson City
State Public Defender/Ely
White Pine County Clerk