

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN V. HEARNE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No: 35290

FILED

MAR 21 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of eluding a police officer and one count of possession of a stolen motor vehicle. The district court sentenced appellant to 28 to 72 months for the eluding a police officer conviction and 24 to 60 months for the possession of a stolen vehicle conviction. The sentences are to run concurrently.

Appellant contends that the district court abused its discretion at sentencing by refusing to continue the hearing to allow appellant to participate in the Salvation Army's six-month inpatient drug program pursuant to NRS 458.300.¹ At sentencing appellant informed the district court that he had been accepted into the program and that he wished to continue

¹NRS 458.300 provides that, subject to certain conditions and exceptions, a drug addict or alcoholic who has been convicted of a crime may elect to be assigned by the court to a drug treatment program prior to sentencing.

sentencing in order to participate. The district court denied the request. We find no error in the district court's decision. First, no significant evidence was presented that appellant was a drug addict or alcoholic.² Accordingly, NRS 458.300 does not apply to appellant. Moreover, NRS 458.300(4) expressly excludes appellant from the purview of the statute because he concedes that he has four prior felony convictions: The offender may elect treatment unless "[t]he alcoholic or drug addict has a record of two or more convictions of a crime described in subsection 1 or 2, a similar crime in violation of the laws of another state, or of three or more convictions of any felony." (Emphasis added.) Appellant contends that the district court abused its discretion by not complying with the legislative intent of the NRS 458 program as reflected in NRS 167.0125.³ He claims admission to treatment would have helped "conserve scarce economic resources," one of the sentencing goals that the Advisory Commission is obliged to consider. See NRS 176.0125(3).

The State observes that the plain language of the statute expressly excludes an offender who has been convicted of three or more felonies. This court must not go beyond the

²We recognize that appellant was initially charged with being under the influence of a controlled substance, and that the charge was dismissed pursuant to the plea negotiations. This fact does not alter our conclusion regarding the evidence before the district court.

³NRS 176.0125 outlines the duties of the Nevada Advisory Commission on Sentencing.

plain language of the statute to determine its intent. Estate of Delmue v. Allstate Ins. Co., 113 Nev. 414, 417, 936 P.2d 326, 328 (1997); Cirac v. Lander County, 95 Nev. 723, 729, 602 P.2d 1012, 1015 (1979) ("[W]hen the language of a statute is plain, its intention must be deduced from such language, and the court has no right to go beyond it," quoting State ex rel. Hess v. Washoe County, 6 Nev. 104, 107 (1870)). Appellant is not eligible for treatment under the terms of NRS 458.300. The district court did not abuse its discretion.

Having considered appellant's contentions and having concluded they are without merit, we

ORDER this appeal dismissed.

Young J.
Young

Agosti J.
Agosti

Leavitt J.
Leavitt

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Washoe County District Attorney
Frederick R. Olmstead
Charles B. Woodman
Washoe County Clerk