IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN RAY BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58782

FILED

JUL 26 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of drawing and passing a check without sufficient funds in the drawee bank with the intent to defraud. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant Martin Ray Brown obtained a line of credit from the Bellagio Hotel and Casino based on his M&I Bank account. However, Brown later closed his bank account without informing the Bellagio and then acquired a $25,000 marker from the casino. The marker was dated, made payable to the Bellagio, signed by Brown, and named M&I Bank as the drawee bank. Brown did not pay off the marker, it was presented to M&I Bank for payment, and M&I Bank refused payment because Brown's account no longer existed. The Bellagio referred the matter to the Clark County District Attorney's Office after its efforts to contact Brown failed.

A jury found Brown guilty of passing a bad check with the intent to defraud. The district court ordered Brown to pay restitution as part of his sentence. On appeal, Brown contends that NRS 205.130 (the bad check statute) is unconstitutional as applied because it violates the Supremacy, Due Process, and Equal Protection Clauses of the U.S. Constitution and the federal right to declare bankruptcy. We review the

constitutionality of a statute de novo. Nelson v. State, 123 Nev. 534, 540, 170 P.3d 517, 522 (2007). Statutes are presumed to be valid and the challenger bears the burden of demonstrating their unconstitutionality. Id.

Supremacy Clause

Brown argues that the federal bankruptcy code is the supreme law of the land and the State violated this law by criminally prosecuting him after his debts had been discharged in bankruptcy. Under the Supremacy Clause, if state law conflicts with federal law, the federal law preempts the otherwise permissible state law. U.S. Const. art. VI, cl. 2; Nanopierce Tech. v. Depository Trust, 123 Nev. 362, 370, 168 P.3d 73, 79 (2007). The State's criminal prosecution of Brown for violating NRS 205.130 did not conflict with the Bankruptcy Code because the Code plainly states that the filing of a bankruptcy petition "does not operate as a stay . . . of the commencement or continuation of a criminal action or proceeding against the debtor," 11 U.S.C. § 362(b)(1), and this exception applies equally to discharge injunctions, see In re Nash, 464 B.R. 874, 885 (B.A.P. 9th Cir. 2012); In re Fidler, 442 B.R. 763, 767 & n.3 (Bankr. D. Nev. 2010). Accordingly, Brown has not demonstrated that criminal prosecutions for NRS 205.130 offenses violate the Supremacy Clause.

Due process

Brown argues that NRS 205.130 is unconstitutionally vague because an average person could not determine its enforceability in light of a bankruptcy discharge. "Vagueness may invalidate a criminal law for either of two independent reasons: (1) if it fails to provide a person of ordinary intelligence fair notice of what is prohibited; or (2) if it is so standardless that it authorizes or encourages seriously discriminatory

enforcement." State v. Castaneda, 126 Nev. ___, ___, 245 P.3d 550, 553 (2010) (internal citation and quotation marks omitted). We conclude that NRS 205.130 provides fair notice that drawing and passing bad checks constitutes criminal conduct, the language of NRS 205.130 does not promote discriminatory enforcement, and the mere fact that a defendant's bad-check debts may later be discharged in a bankruptcy proceeding does not render NRS 205.130 unenforceable. See generally 11 U.S.C. § 362(b)(1); Nguyen v. State, 116 Nev. 1171, 1174-76, 14 P.3d 515, 517-18 (2000) (construing NRS 205.130). Accordingly, Brown has not demonstrated that NRS 205.130 is unconstitutionally vague in violation of the Due Process Clause.

Equal protection

Brown asserts that the State prosecutes people who obtain credit from casinos but not people who obtain credit from other business establishments and that this distinction interferes with his fundamental right to be free of unreasonable search, seizure, and prosecution. We presume that the State's prosecutorial decisions do not violate the Equal Protection Clause. United States v. Armstrong, 517 U.S. 456, 464 (1996). To overcome this presumption a defendant "must demonstrate that the [State's] prosecutorial policy had a discriminatory effect and that it was motivated by a discriminatory purpose." Id. at 465 (internal quotation marks omitted); see also Salaiscooper v. Dist. Ct., 117 Nev. 892, 902-03, 34 P.3d 509, 516-17 (2001); Nguyen, 116 Nev. at 1177-78, 14 P.3d at 519-20. We conclude that Brown has not demonstrated that the State selectively prosecuted bad-check cases based on the drawer's credit source nor shown why the State would pursue such a course of action. See Salaiscooper, 117 Nev. at 903, 34 P.3d at 517 (discussing how "discriminatory effect" and

"discriminatory purpose" may be proven). Accordingly, Brown has not demonstrated that NRS 205.130 was applied in a manner that violated his equal protection rights.

Bankruptcy discharge

Brown argues that the State's criminal prosecution constituted improper debt collection for the Bellagio and was barred by the bankruptcy discharge. However, the Bankruptcy Code's automatic stay provision does not stay "the commencement or continuation of a criminal action or proceeding against the debtor," 11 U.S.C. § 362(b)(1), and "it does not provide any exception for prosecutorial purpose or bad faith," In re Gruntz, 202 F.3d 1074, 1085 (9th Cir. 2000); see also Fidler, 442 B.R. at 767 ("The discharge affects the debt not the debtor. Bankruptcy may make a debt uncollectible but will not void it ab initio, and thus the circumstances leading to and concerning the debt remain susceptible to prosecution."). Furthermore, the Bankruptcy Code "preserves from discharge any condition a state criminal court imposes as part of a criminal sentence"—including restitution. Kelly v. Robinson, 479 U.S. 36, 50, 53 (1986). Accordingly, we conclude that Brown's argument is without merit.

Having considered Brown's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Hon. David B. Barker, District Judge
Mueller Hinds & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk