IN THE SUPREME COURT OF THE STATE OF NEVADA

SERGIO AMEZCUA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE RONALD J. ISRAEL, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 59868

ORDER DENYING PETITION

In this original petition for a writ of mandamus or habeas corpus, petitioner Sergio Amezcua challenges an order of the district court denying a pretrial petition for a writ of mandamus. Amezcua claims that the district court erred in denying his petition because he is entitled to a jury trial on the offense of misdemeanor battery constituting domestic violence. We disagree.

Under Nevada law, first-offense domestic battery is a misdemeanor punishable by, inter alia, two days to six months in jail. See NRS 200.485. Where a defendant is charged with an offense for which the period of incarceration is six months or less, the crime is presumed to be a petty offense and a jury trial is constitutionally required only in rare and exceptional cases. See United States v. Nachtigal, 507 U.S. 1, 3-5 (1993); Blanton v. North Las Vegas, 489 U.S. 538, 541-43 (1989); Blanton v. North Las Vegas Mun. Ct., 103 Nev. 623, 634, 748 P.2d 494, 500 (1987). In those exceptional cases, a defendant must prove that statutory penalties in

addition to the maximum authorized period of incarceration "are so severe that they clearly reflect a legislative determination that the offense in question is a 'serious' one." Blanton, 489 U.S. at 543.

Amezcua claims that various collateral consequences of a conviction for domestic battery support his contention that it is a serious offense: (1) NRS 432B.157 and NRS 125C.230 create a rebuttable presumption that a perpetrator of domestic violence is unfit for sole or joint custody of his children; (2) a conviction would render a misdemeanant deportable under federal immigration law;[1] and (3) he would lose his right to possess a firearm under 18 U.S.C. § 922(g)(9).

While Amezcua states that his interest in raising his child and his right to bear arms are substantive and fundamental rights, he offers no convincing support for the proposition that the collateral consequences of a conviction—those imposed by courts other than the sentencing court or by other states or by the federal government—are relevant to determine whether the offense is "serious." Compare Foote v. U.S., 670 A.2d 366, 372 (D.C. 1996) ("Blanton's presumption that offenses carrying no more than six months incarceration are petty cannot, in our view, be effectively rebutted by reference to the potential remedies in hypothetical civil or administrative proceedings which have not been instituted."), and Smith v. U.S., 768 A.2d 577, 580 (D.C. 2001) (concluding that termination of employment following conviction was collateral and therefore could not elevate petty offense to serious one), with Richter v. Fairbanks, 903 F.2d

---

[1]Amezcua admits that he is an American citizen and we therefore conclude that he cannot complain of a possible penalty that he could never suffer.

1202, 1205 (8th Cir. 1990) (concluding that, although maximum jail term was six months for DUI conviction, offense was serious because statute also included possible 15-year driver's license revocation). Finally, we note that this court has previously rejected the proposition that collateral consequences of a conviction should be considered in determining its seriousness. See Blanton, 103 Nev. at 633-34, 748 P.2d at 500-01.

We therefore conclude that because Amezcua cannot overcome the presumption that the offense is petty, the district court properly denied his pretrial petition for a writ of mandamus.

Accordingly, we

ORDER the petition DENIED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Ronald J. Israel, District Judge
The Pariente Law Firm, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk