IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM RILEY BASS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35630

FILED

MAY 10 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of fourteen. The district court sentenced appellant to seventy-two (72) to one hundred eighty (180) months in the Nevada State Prison.

Appellant contends the district court sentenced him to an unlawful sentence. Specifically, appellant asserts that the legislature impliedly repealed a July 16, 1997, sentencing amendment to NRS 201.230 by subsequently enacting two bills on July 17, 1997, that failed to incorporate the amended sentencing provisions of the prior enactment. Therefore, appellant asserts that the sentencing provision applicable to his crime provided for a lesser sentencing range than the one he received. We disagree.

Generally, "when statutes are in conflict, the one more recent in time controls over the provisions of an earlier enactment." Laird v. State of Nev. Pub. Emp. Ret. Bd., 98 Nev. 42, 45, 639 P.2d 1171, 1173 (1982). On July 16, 1997, Assembly Bill 280[1] amended NRS 201.230 so that lewdness with a child under the age of fourteen would be treated a class A felony punishable by life in prison with the possibility of parole after ten years. 1997 Nev. Stat., ch. 455, § 5, at 1722.[2] As a result, attempted lewdness with a child under the age of

[1]Hereafter "A.B." 280.

[2]We note appellant's crime occurred sometime between December 1998 and March 25, 1999. A.B. 280 provided that the increased sentencing provisions applied to all crimes occurring after October 1, 1997. 1997 Nev. Stat., ch. 455, § 9, at 1723.

fourteen would be treated a class B felony with a sentencing range of two (2) to twenty (20) years.[3] See NRS 193.330. On July 17, 1997, the next day, the legislature enacted Senate Bill 5 and Senate Bill 328,[4] which amended provisions of NRS 201.230 relating to the release and supervision of persons convicted of violating NRS 201.230. 1997 Nev. Stat., ch. 524, § 4, at 2502-03 (S.B. 5); 1997 Nev. Stat., ch. 641, § 19, at 3190-91 (S.B. 328). Unfortunately, both bills contained a "technical" error in that they contained sentencing provisions effective prior to the enactment of A.B. 280. On this basis, appellant argues S.B. 5 and S.B. 328 impliedly repealed the sentencing amendments of A.B. 280 and restored the prior sentencing parameters.

In order to ascertain the legislative intent, established rules of statutory construction allow this court to "examine the context and spirit of the statute in question, together with the subject matter and policy involved." Gallagher v. City of Las Vegas, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998). Additionally, the "interpretation should be in line with what reason and public policy would indicate the legislature intended." Id. at 599-600, 959 p.2d at 521.

The legislative history of A.B. 280 demonstrates a legislative intent, responsive to overriding public policy concerns, to amend the sentencing provisions of NRS 201.230 so that a conviction would be treated as a class A felony requiring a life sentence with the possibility of parole after ten (10) years. Hearing on A.B. 280 Before the Assembly Comm. Judiciary, 69th Leg. (Nev., May 22, 1997). The legislative history of S.B. 5 and S.B. 328 does not demonstrate a legislative intent to return the sentencing range to the one in existence prior to the enactment of A.B. 280. Rather, the legislative history of S.B. 5 and S.B. 328 demonstrates an intent to amend the statute

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[3]Prior to A.B. 280, lewdness with a child under the age of fourteen was a class B felony with a sentencing range of two (2) to ten (10) years in prison, and attempted lewdness was a class C felony with a sentencing range of one (1) to five (5) years.

[4]Hereafter "S.B." 5 and "S.B." 328.

relating to the release and supervision of persons convicted of violating NRS 201.230. Hearing on S.B. 5 Before the Senate Comm. of Judiciary, 69th Leg. (Nev., February 5, 1997); Hearing on S.B. 5 Before the Assembly Comm. on Judiciary, 69th Leg. (Nev., June 9, 1997); Hearing on S.B. 328 Before the Senate Comm. on Judiciary, 69th Leg. (Nev., May 19, 1997 and June 2, 1997). Moreover, the legislature corrected the apparent "technical" error created by S.B. 5 and S.B. 328 by enacting S.B. 453. 1999 Nev. Stat., ch. 105, § 49 at 471-72.[5] Further, the published version of NRS 201.230, as amended by A.B. 280, S.B. 5 and S.B. 328, contained the intended statutory language.

Therefore, we cannot conclude the legislature intended, by implication, to repeal the sentencing provisions of A.B. 280 by enacting S.B. 5 and S.B. 328. Accordingly, appellant's contention must fail. We therefore,

ORDER this appeal dismissed.

Young, J.

Agosti, J.

Leavitt, J.

cc: Hon. John P. Davis, District Judge
Attorney General
Nye County District Attorney
Robert E. Glennen, III
Nye County Clerk

[5]See also Sheriff v. Smith, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975) ("Where a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of what the [l]egislature intended by the first statute.")