

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

No. 37076

Appellant,

vs.

WILLIAM THURMAN WALTERS,
DANIEL HUSE PRAY, AND JAMES
JAY HANLEY,

Respondents.

FILED

DEC 06 2001

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

ORDER OF AFFIRMANCE

The State appeals from the district court's order granting pretrial writs of habeas corpus to respondents William Walters, Daniel Pray and James Hanley. The district court granted the writs, finding that the indictment against respondents was based largely on prejudicial and irrelevant evidence concerning bookmaking and organized crime offered by a police detective.

The State appeals, arguing that the district court applied an erroneous legal standard in dismissing an indictment supported by probable cause. "If a decision below is correct, it will not be disturbed on appeal even though the lower court relied upon wrong reasons."¹ An indictment supported by probable cause must be dismissed when the defendant establishes that errors in the grand jury proceeding substantially prejudiced his rights.² A defendant shows substantial prejudice by establishing a reasonable probability that the outcome would have been different absent the prosecutor's misconduct.³

The district court found that "slight or marginal" probable cause supported the indictment. We agree with this characterization. The State's admissible evidence merely showed that respondents' business had

¹Hotel Riviera, Inc. v. Torres, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981).

²See Lay v. State, 110 Nev. 1189, 1198, 886 P.2d 448, 454 (1994); Sheriff v. Keeney, 106 Nev. 213, 216, 791 P.2d 55, 57 (1990).

³See Lay, 110 Nev. at 1198, 886 P.2d at 454.

considerable contact with an alleged bookmaker in New York, and that respondents frequently transferred large sums of money in casino accounts. While such circumstantial evidence allows an inference of money laundering in connection with illegal gambling, the State's evidence against respondents is marginal.

The district court also found that the State introduced extensive irrelevant and prejudicial evidence concerning bookmaking and organized crime. The State concedes that this evidence was inadmissible, but argues that it was not substantially prejudicial. We disagree. The transcript of the grand jury proceeding reveals multiple questions by grand jurors indicating belief that respondents were charged with bookmaking as part of an organized crime conspiracy. Although the prosecutor did at some points admonish the grand jurors that respondents were only charged with money laundering, the prosecutor did nothing to curtail the flood of immaterial testimony concerning organized crime families.

Taking into consideration the marginal character of the State's probable cause evidence in conjunction with the large volume of inadmissible evidence, which did in fact confuse some grand jurors, we conclude that respondents have established a reasonable probability that the grand jury would not have indicted absent the inadmissible evidence. Accordingly, the district court's factual findings, well supported by the record, lead to the inevitable conclusion that respondents have satisfied the substantial prejudice standard. Therefore, the district court did not err in granting the writs.

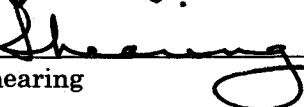
The State also argues that the writ petitions of respondents Pray and Hanley were not cognizable by the district court due to lack of verification. Under NRS 34.370(1)⁴ a petitioner or his counsel must verify a petition for writ of habeas corpus. Respondent Pray's attorney signed a verification on his behalf. This verification states that the attorney "verifies" Pray's petition and, thus, satisfies the statutory requirement. NRS 34.370(1) does not require that the petitioner or attorney swear an oath before a notary public.

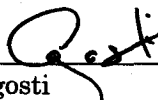
⁴NRS 34.370(1) provides, in part: "A petition for a writ of habeas corpus must be verified by the petitioner or his counsel."

Respondent Hanley initially submitted his petition without verification. The district court allowed Hanley to file an untimely addendum, which simply added the verification. A district court has discretion to allow an untimely habeas corpus petition upon showing of good cause.⁵ Here, the State was fully aware of the grounds on which Hanley sought habeas corpus relief when he filed his initial incomplete petition. The untimely filing merely cured a technical defect. Under such circumstances, we find no abuse of discretion in allowing the untimely petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶



_____, J.
Young


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Mark W. Gibbons, District Judge
Moran & Associates
Attorney General/Reno
JoNell Thomas
Wright Judd & Winckler
Clark County Clerk

⁵See NRS 34.700(3).

⁶The Honorable A. William Maupin, Chief Justice, voluntarily recused himself from the consideration of this case and took no part in its disposition.