

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN PUGH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76538-COA

FILED

AUG 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

John Pugh appeals from a judgment of conviction, pursuant to a no-contest plea, of illegal use of a stun gun. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Pugh contends the district court exceeded its authority when, in addition to sentencing him to prison, it imposed an additional restriction that, “upon release from imprisonment, the Defendant is ordered permanently trespassed from Winnemucca, Nevada.” Preliminarily, the State argues Pugh’s claim is not ripe. The State’s argument is without merit. “A case is ripe for review when the degree to which the harm alleged by the party seeking review is sufficiently concrete, rather than remote or hypothetical, and yields a justiciable controversy.” *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 38 n.1, 175 P.3d 906, 907 n.1 (2008) (internal punctuation and quotation marks omitted). Here, the harm is sufficiently concrete and is not remote or hypothetical: Pugh is forevermore barred from entering Winnemucca. Pugh’s claim is thus ripe for review.

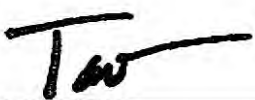
The district court has wide discretion in its sentencing decisions, but it is the Legislature that is empowered to determine the possible punishments. *Goudge v. State*, 128 Nev. 548, 554, 287 P.3d 301, 304 (2012). The Legislature has given the district court authority to impose

terms of imprisonment, fines, restitution, and/or administrative assessments. See NRS 176.033(1); NRS 176.105(1)(c); see also NRS 202.357(5)(a) (providing for a sentence of a minimum term of not less than 1 year and a maximum term of not more than 6 years and a potential fine of up to \$5,000 for illegal use of a stun gun). The Legislature has also given the district court some discretion to suspend a sentence and place an offender on probation. See NRS 176A.100(1). And if the district court does this, the Legislature has granted the district court the authority to then impose a condition prohibiting the offender from being in a certain geographic area. See NRS 176A.400(1)(c)(3).

However, the State does not identify any statute, and we are not aware of one, that authorizes the district court to permanently trespass an offender from part or all of the state once he has expired his sentence. Because the district court lacked any authority to do so, it abused its discretion by ordering Pugh permanently trespassed from Winnemucca. The offending provision must be stricken from Pugh's judgment of conviction. Accordingly, we

ORDER the judgment of conviction VACATED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹The State's argument that the Nevada Board of Parole Commissioners may have already prohibited Pugh from entering Winnemucca as a condition of parole is irrelevant to the issue here of whether *the district court* had the authority to permanently trespass Pugh.

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk