IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN SCOTT HIGGINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37137

FILED
DEC 13 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting the State's petition for a writ of certiorari, or in the alternative, a writ of mandamus.

On August 16, 2000, appellant Shawn Scott Higgins was convicted in justice court, pursuant to a bench trial, of misdemeanor driving under the influence of alcohol and sentenced to serve 48 hours in jail or 96 hours on house arrest and ordered to pay $675.00 in fees and fines. Judge Jack Schroeder pronounced Higgins' sentence from the bench and the clerk entered the judgment on the docket sheet, affixing Judge Schroeder's facsimile signature.

The next day, the judge filed an order announcing that he wished to reconsider his prior decision and rulings and ordered counsel to file points and authorities addressing all motions previously made by Higgins. On August 18, 2000, however, a misdemeanor judgment of conviction was inadvertently filed that memorialized the sentence previously imposed by Judge Schroeder. On August 22, 2000, Higgins filed a notice of appeal from the "Judgment entered at the trial in this action on August 16, 2000" in the Second Judicial District Court.

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Thereafter, on September 12, 2000, Judge Schroeder filed an order, reversing both his oral ruling of August 16, 2000, and his written judgment of August 18, 2000, and finding Higgins not guilty of driving under the influence of alcohol. The court's order found that it should have granted Higgins' motion to suppress because law enforcement officers "did not observe any behavior which would form a basis to articulate a reasonable suspicion that Higgins was driving under the influence." The order further found that there was inadequate proof presented at trial that Higgins was driving the vehicle. The justice court therefore reversed its own prior judgment, reasoning that it had "an obligation to ensure a fair trial for the defendant, to not make a mistake of law and to make sure there is no miscarriage of justice."

Believing that the justice court had no authority to reverse its own final judgment, the State filed a petition for a writ of certiorari, or in the alternative, a writ of mandamus in the district court. Without conducting a hearing, the district court granted the State's petition, finding "that the Justice Court did not have the power to sua sponte vacate its own judgment in this criminal proceeding." Therefore, the district court issued a writ directing the justice court to reinstate the judgment of conviction. The instant appeal from the district court's order followed.

Higgins first contends that the district court erred in concluding that the justice court had no jurisdiction to reconsider its ruling. Specifically, Higgins argues that NRS 176.515 and 175.381 authorize a trial court to vacate a judgment and direct the entry of a new verdict. We conclude that those statutes are inapplicable to the present case.

NRS 176.515 sets forth the trial court's authority to rule upon a motion for a new trial. Here, Higgins did not file a motion for a new trial, nor does it appear that the justice court expressly granted a new trial. Therefore NRS 176.515 is not implicated. NRS 175.381 sets forth

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the trial court's authority to set aside a conviction after a jury has rendered its verdict. Here, because Higgins' guilt was decided pursuant to a bench trial without a jury, NRS 175.381 is likewise inapplicable.

Higgins next contends that the justice court had authority to reconsider its ruling because it was not a final judgment.[1] We disagree. NRS 176.105 provides that a judgment of conviction in a criminal action must include the plea, the verdict or finding, the adjudication and sentence, credit for time served, if any, and must be signed by the judge and entered by the clerk. Once a judgment of conviction is signed by the judge and entered by the clerk, it is a final judgment.[2] Here, the docket entry on August 16, 2000, complied in all respects with NRS 176.105 and was a final judgment. That entry included Judge Schroeder's determination of guilt, as well as the sentence he imposed, which was entered by the justice court clerk into the docket and stamped with Judge Schroeder's facsimile signature.[3]

Because the August 16, 2000 docket entry was a final judgment of conviction, the justice court lacked jurisdiction to sua sponte vacate its own judgment of guilt and enter a judgment of not guilty. The justice court may not act unless a statute grants it the power to do so.[4] No statute or case law grants a justice court the power to sua sponte vacate

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[1]We also reject Higgins' contentions that the district court abused its discretion in granting the State's petition without first conducting a hearing, and violated his right to due process in reinstating his conviction in this matter after the justice court found that it was unsupported by sufficient evidence.

[2]See Bradley v. State, 109 Nev. 1090, 864 P.2d 1272 (1993).

[3]See NRS 4.185 (authorizing the use of facsimile signatures); NRS 4.230(1)(i) (requiring entry of judgment of the court into docket).

[4]See Nev. Const. art. 6, § 8; State of Nevada v. Justice Court, 112 Nev. 803, 805-06, 919 P.2d 401, 402 (1996).

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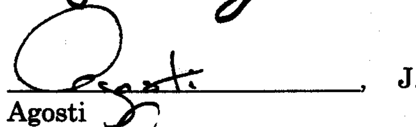
its own judgment in a criminal proceeding.[5] Accordingly, we conclude that the district court did not err in granting the State's petition for an extraordinary writ because the justice court exceeded its jurisdiction in sua sponte vacating its own final judgment.

Having considered Higgins' contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

_____________________________, J.
Young



_____________________________, J.
Agosti

_____________________________, J.
Leavitt

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County District Attorney
John B. Routsis
Washoe County Clerk

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[5]See 51 C.J.S. Justices of the Peace § 113, at 235 (1967) ("In the absence of statutory authority, a justice [court] may not set aside or vacate a legally rendered and docketed judgment on his own motion or at his own caprice . . . even though he has concluded after investigation that he should not have rendered the judgment in the first instance."); cf. State v. Stoesser, 183 A.2d 824 (Del. Super. Ct. 1962); Bulkley v. Klein, 23 Cal. Rptr. 855 (Ct. App. 1962).

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