

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LEE BURNS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37878

FILED

JUL 11 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court denying appellant's motion to reduce an excessive fine pursuant to NRS 176.085.

On September 1, 1995, the district court convicted appellant, pursuant to a guilty plea, of carrying a concealed weapon and trafficking in a controlled substance. The district court sentenced appellant to serve concurrent terms of one year and ten years in the Nevada State Prison, and assessed a fine of \$100,000. No direct appeal was taken.

On March 27, 2001, appellant filed a proper person motion to reduce an excessive fine pursuant to NRS 176.085 in the district court. On April 20, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that he was indigent and in arrears in child support payments, and requested that the imposed fine of \$100,000 be reduced to \$10,000.

The district court improperly and summarily denied appellant's motion based on the ground that the district court did not have jurisdiction to reduce the imposed fine. NRS 176.085 provides that the district court may exercise its discretion to reduce an imposed fine.¹ Specifically, NRS 176.085 provides that if the court determines that the fine is "excessive in relation to the financial resources of the defendant," the court may "reduce the fine accordingly." In the instant case, in making its determination of whether the fine imposed is excessive in relation to the financial resources of the appellant, the court may wish to consider appellant's claims that he is indigent and is in arrears in his child support payments. We reverse the order denying the motion and remand

¹NRS 176.085 reads:

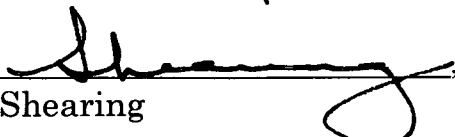
Whenever, after a fine and administrative assessment have been imposed but before they have been discharged by payment or confinement, it is made to appear to the judge or justice imposing the fine or administrative assessment or his successor:

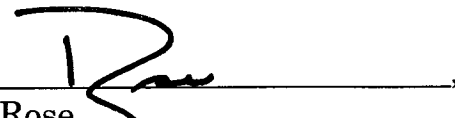
1. That the fine or administrative assessment is excessive in relation to the financial resources of the defendant, the judge or justice or his successor may reduce the fine accordingly.


2. That the discharge of the fine or administrative assessment is not within the defendant's present financial ability to pay, the judge or justice or his successor may direct that the fine be paid in installments.

this matter to the district court to determine whether the imposed fine is excessive in relation to the financial resources of the appellant.

Accordingly, we ORDER the judgment of the district court REVERSED AND REMAND this mater to the district court for proceedings consistent with this order.²


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General/Carson City
Clark County District Attorney
Robert Lee Burns
Clark County Clerk

²We conclude that appellant is entitled only to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.