

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA EX REL.
AARON D. FORD, ATTORNEY
GENERAL OF NEVADA, IN HIS
OFFICIAL CAPACITY,
Petitioner,
vs.
THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
ESMERALDA; AND THE HONORABLE
KIMBERLY A. WANKER, DISTRICT
JUDGE,
Respondents,
and
NICHOLAS C. DONDERO,
ESMERALDA COUNTY SHERIFF; AND
ESMERALDA COUNTY,
INTERVENOR,
Real Parties in Interest.

No. 88214

FILED

APR 01 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION FOR A WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order denying a motion for summary judgment.

Petitioner, the State, filed a complaint for a writ of quo warranto in district court against real party in interest Nicholas Dondero, seeking his removal as Esmeralda County Sheriff. In 2007, Dondero pleaded no contest to misdemeanor battery constituting domestic violence in justice court. That conviction was later sealed. Esmeralda County voters elected him sheriff in November 2022, and he took office in January 2023. As a peace officer in a county with less than 30,000 people, he was required

under NRS 248.005 to earn a certification on Peace Officer Standards and Training (POST) within one year of taking office or forfeit the office.

In 2023, the Legislature amended NRS 289.555, which limits who may serve as a peace officer. As amended, the statute prohibits a person from serving as a peace officer if they have been convicted of “[a] battery which constitutes domestic violence pursuant to NRS 200.485, regardless of whether such a conviction was expunged or sealed[.]” NRS 289.555(1)(b). The amendment became effective on October 1, 2023. *Id.* POST informed Dondero in August 2023 that he would not be eligible for certification because POST regulations in NAC Chapter 289 and NRS 289.555 as amended disqualified him from serving as a peace officer.

In October 2023, the State filed a complaint in district court for a writ of quo warranto seeking Dondero’s removal from office based on NRS 289.555, NRS 248.005, and POST regulations. It moved for summary judgment, attaching to the motion an uncertified copy of Dondero’s 2007 judgment of conviction for domestic violence. The district court held a hearing at which it invoked NRCP 56(f) in raising sua sponte several factual issues that it determined were material and disputed, thus precluding summary judgment. The district court ordered that Dondero remain in office as sheriff until further order of the court. The State now petitions this court for a writ of mandamus.¹

¹Dondero, who is represented by independent counsel, failed to file a timely answer to the writ petition, as directed, and this court denied his untimely motion for an extension of time to do so. The County, as intervenor below and through counsel, the Nye County District Attorney, timely filed an answer asserting various arguments in support of the district court’s order and Dondero’s retention of office, at least until after trial.

Writ of mandamus

“This court may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office or where discretion has been manifestly abused or exercised arbitrarily or capriciously.” *Scarbo v. Eighth Jud. Dist. Ct.*, 125 Nev. 118, 121, 206 P.3d 975, 977 (2009) (quoting *Redeker v. Eighth Jud. Dist. Ct.*, 122 Nev. 164, 167, 127 P.3d 520, 522 (2006)); see NRS 34.160. This court has previously equated a “manifest abuse of discretion” with “[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.” *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (alteration in original) (quoting *Steward v. McDonald*, 958 S.W.2d 297, 300 (Ark. 1997)). Under the circumstances here, where the State argues that the material facts are undisputed and that the district court erroneously interpreted and applied the governing law, we elect to consider the State’s petition. See *ANSE, Inc. v. Eighth Jud. Dist. Ct.*, 124 Nev. 862, 867, 192 P.3d 738, 742 (2008) (recognizing that while this court generally declines to consider petitions that challenge orders denying summary judgment motions, it has allowed exceptions when no factual dispute exists and “summary judgment is clearly required by a statute or rule, or an important issue of law requires clarification”).

Statutory interpretation

“Whether applying a statute in a particular instance constitutes retroactive operation is a question of law that we review de novo,” even in the writ-petition context. *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. 813, 820, 313 P.3d 849, 853 (2013). Substantive statutes are presumed to only operate prospectively, unless the drafters intended that the statute apply retroactively. *Id.* A statute does not operate retroactively merely

because it “draws upon past facts . . . or upsets expectations based in prior law.” *Id.* at 821, 313 P.3d at 854 (internal quotation marks and citation omitted). Instead, a statute applies retroactively when it “takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.” *Id.* (internal quotation marks omitted). A vested right in this context “is some interest in the property that has become fixed and established.” *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949).

The State contends that it seeks only prospective application of NRS 289.555 because, as of October 1, 2023, Dondero is unqualified to serve as a peace officer due to the past fact of his domestic violence conviction. The County answers that the State is in fact seeking retroactive application, which the Legislature did not intend. We need not address whether the Legislature intended NRS 289.555 to apply retroactively because in this case the State seeks prospective application of the statute to remove Dondero from office. The statute provides that “a person is not qualified to serve as a” peace officer if he or she “*has been convicted of*” a battery constituting domestic violence. NRS 289.555(1)(b) (emphasis added). Thus, the plain language of the statute specifically contemplates considering a peace officer candidate’s *past* convictions to determine whether the candidate is *presently* disqualified from serving as a peace officer. The Legislature did not include any cutoff for older convictions, and the hearing testimony of the bill’s sponsor supports that the amendment to the statute was intended to prevent individuals from serving as peace officers if their past conduct demonstrates they are unfit to serve. *See Hearing on SB 225*

Before Senate Comm. on Gov't Affairs, 82nd Leg., at 53-54 (Apr. 5, 2023) (testimony of Senator Dallas Harris).

To be sure, Dondero has no vested legal right that was impaired or taken away by the NRS 289.555 amendments because his continuing to hold the office of Esmeralda County Sheriff remained contingent on him obtaining POST certification within one year of assuming that office. NRS 248.005(3). NAC 289.290, which predates the amendments to NRS 289.555, underscores this point, providing that POST has cause to refuse certification to a peace officer candidate if they have been convicted of a misdemeanor crime of domestic violence, as defined in 18 U.S.C. § 921(a)(33). *See also* NAC 289.110(4) (providing that a “person may not be appointed to perform the duties of a peace officer” if they have “[a] documented history of physical violence”). Once POST became aware of Dondero’s sealed conviction for battery constituting domestic violence, it had grounds to refuse his certification. Though the County points to POST’s August 2023 letter notifying Dondero that he could not be certified, it fails to cite on-point authority supporting that Dondero’s vested rights were thereby impaired or taken away. *See Pub. Emps’ Benefits Program v. Las Vegas Metro. Police Dep’t*, 124 Nev. 138, 156, 179 P.3d 542, 554 (2008) (holding that an amendment to NRS 287.023 requiring government employers to subsidize the health insurance premiums of employees who retired before the statute’s effective date was not a retroactive application where the employers had no vested legal right to refrain from paying a subsidy to those retirees). Accordingly, Dondero lacks a vested legal interest, such that the County’s retroactivity argument fails on the undisputed facts on which the State’s complaint is grounded.

Writ of quo warranto

Under NRS 35.010(1), a “civil action may be brought in the name of the State” against someone who “unlawfully holds or exercises a public office” or “who does or suffers an act which, by the provisions of law, works a forfeiture of the office.” *See also* NRS 35.030-040 (providing that the attorney general may file a complaint for quo warranto relief). And if a defendant is found to be unlawfully holding or exercising an office, “judgment shall be rendered that such defendant be ousted and altogether excluded therefrom.” NRS 35.120(1).

Relying on NRCP 56(f), the district court denied the State’s motion for summary judgment. In particular, the district court determined that summary adjudication was inappropriate because (1) of “the complexities of the subject matter and the ramifications of dismissing the duly elected Sheriff of Esmeralda County without a full and complete briefing on significant legal issues of great public importance;” (2) POST took unilateral actions to prevent Dondero from being certified and thereby complying with NRS 248.005(3) without due process of law; and (3) the removal of Dondero from office before a trial would “be detrimental to the interests of Esmeralda County and its residents.” The State argues that it presented undisputed evidence via the uncertified copy of Dondero’s judgment of conviction for battery constituting domestic violence, proving that he is disqualified from serving as a peace officer under NRS 289.555 and therefore must be removed from his position as sheriff. And it points out that the district court failed to cite any law that allows it to deny summary judgment simply because a case presents complexities or raises issues of public importance.

We agree with the State that the purported complexities and issues identified by the district court do not foreclose summary judgment because they do not affect NRS 289.555 or NRS 248.005's application to Dondero or the State's petition for a writ of quo warranto. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) ("The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant."). The district court indicated that POST's August 2023 letter may have denied Dondero due process under NAC 289.290(4), which requires POST to "notify the officer by certified mail . . . of any pending revocation or suspension action and of the nature of the charges and the officer's right to appear and answer the charges." But under the regulation's plain text, the procedural protections described therein are triggered by "charges" in a pending revocation or suspension action—not a determination that a person is unqualified to obtain certification to serve as a peace officer in the first place.² Indeed, the record reflects that Dondero never applied for POST certification, either before or after receiving this letter, despite having the opportunity to do so.³ And the letter does not change the fact that the State

²The district court also questioned whether the sealing of Dondero's conviction may have restored his right to carry a firearm. This issue is immaterial because NRS 289.555(1) applies "regardless of whether the person has had his or her civil rights restored," and the statute makes no mention of a peace officer candidate's right to carry a firearm.

³On August 14, 2023, POST notified Dondero that he would not be eligible for certification as required by NRS 248.005. The POST certification programs run 10 to 17 weeks, depending on whether the candidate seeks a category I, II, or III certification. POST Academy, https://post.nv.gov/training/post_academy/ (last visited Feb. 19, 2025). Even if we credit the County's argument that the letter stopped Dondero

provided undisputed evidence of his sealed judgment of conviction for battery constituting domestic violence, which renders him unqualified to serve as a peace officer per NRS 289.555(1) and unable to receive POST certification to avoid the forfeiture of his office under NRS 248.005(3).

Though the County generally objects to the State using a sealed conviction to remove an elected county sheriff from office, NRS 289.555's plain text and legislative history leave no doubt that the legislature intended that sealed and expunged domestic violence convictions apply to disqualify peace officers. *See* NRS 289.555(1)(b) (disqualifying persons with domestic violence convictions from serving as peace officers "*regardless of whether such a conviction was expunged or sealed*") (emphasis added); *Hearing on SB 225 Before the Senate Comm. on Gov't Affairs*, 82nd Leg., at 53-54 (Apr. 5, 2023) (testimony of Senator Harris) ("[S]ometimes, it is possible for people to slip through that fence because the [domestic violence conviction] has been sealed. That hole will be closed in this bill."). The district court did not question the authenticity of the State's uncertified copy of the sealed judgment of conviction, and the County does not challenge its authenticity here. Moreover, there is no question that Dondero—as an elected county sheriff—is currently serving as a peace officer, *see* NAC 289.060; NRS 289.150(1), which means he unlawfully holds that office, *see* NRS 35.120(1). We therefore conclude that the district court manifestly abused its discretion in denying the State's motion for summary judgment

from applying for POST certification, he could not have completed the POST program before the amended NRS 289.555 took effect on October 1, 2023. And Dondero did not claim that he applied for POST certification before receiving the letter.

and refusing to issue a writ of quo warranto removing Dondero from his position as Esmeralda County Sheriff.⁴

Accordingly, we

ORDER the petition GRANTED and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order denying petitioner's motion for summary judgment and enter an order granting the motion and issuing the writ of quo warranto.⁵

Pickering, J.
Pickering

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Kimberly A. Wanker, District Judge
Attorney General/Carson City
Nye County District Attorney
Legal Resource Group
Esmeralda County Clerk

⁴We decline to consider the County's constitutional arguments made on behalf of Dondero, as the County lacks standing to assert his individual constitutional rights. See *Greene v. State*, 113 Nev. 157, 176, 931 P.2d 54, 66 (1997), *overruled in part on other grounds by Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000); *Beazer Homes Holding Corp. v. Eighth Jud. Dist. Ct.*, 128 Nev. 723, 731, 291 P.3d 128, 133 (2012). We have also carefully considered all of the County's arguments that are not specifically addressed herein and conclude they lack merit.

⁵In light of this disposition, we vacate the stay entered on July 22, 2024.