

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
JOHNNY BUSTAMANTE,
Respondent.

No. 39527

FILED

JUL 22 2002

ORDER OF REVERSAL AND REMAND

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

This is an appeal, pursuant to NRS 177.015(1)(b), from a district court order granting respondent Johnny Bustamante's motion to dismiss the indictments filed against him as barred by the statute of limitations.

The State contends that the district court erred in granting Bustamante's motion to dismiss because the statute of limitations was tolled by the filing of Rolland P. Weddell's criminal complaint in Carson City Justice Court. We agree.

NRS 171.085(2) codifies the statute of limitations for prosecution of criminal offenses, providing that an indictment for felonies "other than murder, theft, robbery, burglary, forgery, arson or sexual assault must be found, or an information or complaint filed, within 3 years after the commission of the offense." Emphasis added.

In the instant case, on September 25, 2000, Rolland Weddell filed a criminal complaint against Bustamante, alleging he had committed numerous offenses between October 14-17, 1997. We conclude that, pursuant to NRS 171.085(2), the filing of Weddell's criminal complaint

tolled the statute of limitations because it was filed within three years of the commission of the offenses. Our conclusion is in accord with the majority of jurisdictions that hold the filing of a valid complaint tolls the statute of limitations and, therefore, the subsequent return of an indictment for those offenses filed after the limitations period is not time barred.¹

Further, we reject Bustamante's contention that the complaint did not toll the statute of limitations because it was deficient in that it failed to provide probable cause. This court has held that a complaint need not show probable cause to give jurisdiction; rather, a complaint must only set forth the essential elements constituting the offense.² Here, Weddell's complaint alleged numerous criminal offenses were committed, specifying the date, individuals involved, location where the offenses occurred, and essential facts constituting the crimes. In light of the

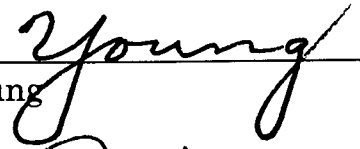
¹See State v. Martinez, 587 P.2d 438, 440 (N.M. Ct. App. 1978) ("Upon the filing of the indictment prior to dismissal of the complaint, the indictment was timely because the limitation period was tolled by the filing of the complaint."); Clark v. Meehl, 570 P.2d 1331 (Idaho 1977) (filing of citizen's complaint tolled the statute of limitations); see also Bonner v. State, 832 S.W.2d 134 (Tx. Ct. App. 1992); State v. Boyd, 543 S.E.2d 647 (W. Va. 2000). But see State v. Hemminger, 502 P.2d 791 (Kan. 1972), People v. Dalton, 283 N.W.2d 710 (Mich. Ct. App. 1979), and State v. Donoho, 210 N.W.2d 850 (Neb. 1973) (tolling only where complaint accompanied by issuance of warrant).


²Sanders v. Sheriff, 85 Nev. 179, 182, 451 P.2d 718, 720 (1969).

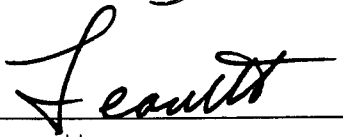
specific nature of the allegations in the complaint, we conclude that Weddell's complaint was not deficient.

Having concluded that Weddell's criminal complaint tolled the statute of limitations and, accordingly, that the district court erred in granting Bustamante's motion to dismiss the indictments, we

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


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Mark W. Gibbons, District Judge
Roeser & Roeser
Johnny Bustamante
Carson City Clerk