

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 40149

FILED

JAN 28 2003

ORDER OF REVERSAL AND REMAND

LETITIA M. FLOCK
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is an appeal, pursuant to NRS 177.015(1)(b), from a district court order granting respondent Jamie 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 and 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 was not accompanied by an arrest warrant. This court has held that "the face of the complaint gives [a court] jurisdiction if it follows the statutory language and if it relates the essential facts constituting the offense charged."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 specific nature of the allegations in the complaint, we conclude that

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) (quoting Byrnes v. United States, 327 F.2d 825 (9th Cir. 1964)).

Weddell's complaint was not deficient merely because it was not accompanied by an arrest warrant.

Additionally, we note that for the first time on appeal, Bustamante argues that the indictment should be dismissed because: (1) the possession of a controlled substance counts alleged in the indictment are not substantially similar to the trafficking counts alleged in the complaint; and (2) the counts involving controlled substance cannot be proven beyond a reasonable doubt because no controlled substance was ever collected by law enforcement or presented to the grand jury. The issues raised by Bustamante, which challenge the sufficiency of the indictment, fall outside the scope of this appeal of the district court order granting Bustamante's motion to dismiss as barred by the statute of limitations. Moreover, Bustamante's arguments have been raised for the first time on appeal, and therefore, assuming they fall within the scope of this appeal, we decline to consider them.³ To the extent that Bustamante challenges the sufficiency of the indictment, we note that those arguments are more appropriately raised in a pretrial petition for a writ of habeas corpus.⁴


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

³See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991).

⁴See NRS 34.700.

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

 J.
Shearing

 J.
Leavitt

 J.
Becker

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cc: First Judicial District Court, Department 2
~~Hon. Mark W. Gibbons, District Judge~~
Roeser & Roeser
Kay Ellen Armstrong
Carson City Clerk