IN THE SUPREME COURT OF THE STATE OF NEVADA

EARL DERRELL NORTHRUP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42526

FILED

APR 18 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony DUI. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

The defendant, Earl Derrell Northrup, was charged by the Humboldt County District Attorney on May 23, 2002, with one count of felony driving under the influence under NRS 484.379 and NRS 484.3792(1)(c). Northrup had two prior drunk driving convictions within the previous seven years. The district court denied his request to receive treatment or probation because NRS 484.3792(c)(1) imposes a one-year minimum imprisonment for a third DUI offense within seven years, and NRS 484.3792(3)[1] prevents probation or plea bargaining for a lesser charge. Northrup then pleaded guilty and was ordered to submit to a DNA test.

The district court denied Northrup's habeas corpus challenge to NRS 484.3792(3) because Northrup did not have standing to assert a constitutional claim. We agree.

[1]NRS 484.3792(3) was amended by the Legislature in 2005 and is now NRS 484.3792(4).

Standing to challenge the constitutionality of a statute requires injury in fact, causation, and redressability.[2] However, Northrup has no injury because he does not have a right to plea bargain or to a reduced sentence.[3] As the United States Supreme Court held in Weatherford v. Bursey, "there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial. It is a novel argument that constitutional rights are infringed by trying the defendant rather than accepting his plea of guilty."[4] Similarly, it is also a novel argument that defendant's constitutional rights are infringed by sentencing him to the punishment prescribed by law rather than to a reduced sentence. Therefore, we conclude that Northrup's claim is without merit and he does not have standing to assert constitutional claims.

Even if Northrup had standing, his separation of powers argument fails because the Legislature sets criminal penalties in Nevada.[5] Thus, the Legislature is not invading the domain of the executive or the judiciary by specifying mandatory minimum sentences or prohibiting plea bargaining or probation during the mandatory minimum sentence.

Northrup argues that:

---

[2]Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992); Kirkpatrick v. Dist. Ct., 118 Nev. 233, 241, 43 P.3d 998, 1004 (2002).

[3]Weatherford v. Bursey, 429 U.S. 545, 560-61 (1977); see also State v. Delk, 734 P.2d 612, 614-15 (Ariz. Ct. App. 1987); Gooden v. State, 711 P.2d 405, 409-10 (Wyo. 1985).

[4]429 U.S. at 561.

[5]Villanueva v. State, 117 Nev. 664, 668, 27 P.3d 443, 446 (2001).

> By enacting a statutory scheme which sets a range of potential sentences, the legislature has created a sphere of discretionary power which is inherently judicial in nature. NRS 484.379(1)(c). Deciding on a sentence is a judicial function, yet the additional provisions of NRS 484.3792(3) so narrowly restrict the exercise of the court's discretion that they effectively negate it.

According to this reasoning, the Legislature could not enact one criminal punishment scheme and then later change it, because it vested the judiciary with some "inherent" judicial power. The Legislature does not limit itself in this manner by enacting statutes. Therefore, we conclude that NRS 484.3792(3) does not violate separation of powers.[6]

Northrup also argues on appeal that NRS 176.0913, the DNA testing statute, is unconstitutional. He argues that our holding in Gaines v. State[7] should be overturned because it is undermined by United States v. Miles.[8] However, the Ninth Circuit reversed Miles[9] and has recognized the validity of Rise v. State of Oregon,[10] which provided the basis of our reasoning in Gains. Therefore, as our reasoning is still valid, we decline to

---

[6]We have also considered Northrup's other constitutional arguments regarding NRS 484.3792(3), including that it violates due process, equal protection, and is vague, and we find them to be without merit.

[7]116 Nev. 359, 998 P.2d 166 (2000).

[8]228 F. Supp. 2d 1130 (E.D. Cal. 2002), rev'd and remanded, 130 F.App'x 108 (9th Cir. 2005).

[9]U.S. v. Miles, 130 F.App'x 108 (9th Cir. 2005).

[10]59 F.3d 1556 (9th Cir. 1995), cited with approval in U.S. v. Kincade, 379 F.3d 813, 831-32 (9th Cir. 2004), cert. denied, ___ U.S. ___, 125 S. Ct. 1638 (2005).

revisit our decision in Gains, and we continue to hold that NRS 176.0913 is constitutional.

Finally, Northrup argues that the district court committed a clerical error in granting him credit for only one day served rather than four days served. The district court's order gave him credit for one day in its order, but the district court gave him four days credit during the sentencing hearing. From the record on appeal, we are unable to determine whether the district court purposely reduced Northrup's credit for time served, whether this was an error, or whether it was a clerical mistake, which can be corrected under NRS 176.565. Therefore, we remand this case to the district court for clarification of the amount of Northrup's credit for time served. Accordingly, we

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

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Richard Wagner, District Judge
State Public Defender/Carson City
State Public Defender/Winnemucca
Attorney General George Chanos/Carson City
Humboldt County District Attorney
Humboldt County Clerk