

IN THE SUPREME COURT OF THE STATE OF NEVADA

IAN ANDRE HAGER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72613

**FILED**

OCT 04 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DIRECTING SUPPLEMENTAL BRIEFS*

A jury convicted appellant Ian Hager of violating NRS 202.360(2)(a), which makes it a felony for a person to possess a firearm “if the person [has] been adjudicated as mentally ill or has been committed to any mental health facility by a court of this State.” The conviction rests on evidence that, in 2013-14, Hager was assigned to, and successfully completed, the mental health court program Washoe County has established under NRS 176A.250 through NRS 176A.265. The State maintains that Hager was “adjudicated as mentally ill” when he was admitted to the program in 2013, making his possession of a firearm in 2016 a violation of NRS 202.360(2)(a). Hager disagrees and urges reversal based on insufficient evidence and error in the jury instructions.

The briefing in the case treats these issues in general terms. Additional briefing is needed on the following questions:

1. The instructions asked the jury to decide whether Hager’s referral to Washoe County’s mental health court program constituted an adjudication of mental illness for purposes of NRS 202.360(2)(a). Was this a question of law that should have been decided by the court? *See United States v. McLinn*, 896 F.3d 1152, 1156 (10th Cir. 2018).

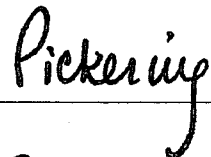
2. Is a defendant who pleads guilty, then participates in a specialty court diversion program under NRS 176A.250 through NRS 176A.265, thereby “adjudicated as mentally ill . . . by a court of this State” for purposes of NRS 202.360(2)(a)? NRS 202.360(2)(a) through (d) enumerate specific mental-health-related determinations that disqualify a person from possessing a firearm (commitment to a mental health facility, pleading or being found guilty but mentally ill, or being acquitted by reason of insanity). What does NRS 202.360(a) apply to if it does not apply to a mental health court diversion program under NRS 176A.250 through NRS 176A.265?
3. Hager successfully completed the diversion program in 2014 and the charges were dismissed without an adjudication of guilt. Under NRS 176A.260(4), “[d]ischarge and dismissal restores the defendant, in the contemplation of the law, to the status occupied before the arrest, indictment or information.” (NRS 174.033, NRS 176A.290(4), and NRS 453.3363 use similar language, which appears to have originated in section 414 of the 1990 Uniform Controlled Substances Act (USCA), 9 pt. V U.L.A. 837-38 (2007). *See also id.* at § 414 (amended 1994), 9 pt. IV at 788.) If admission to a mental health court diversion program constitutes an adjudication of mental illness that disarms an individual under NRS 202.360(2)(a), does dismissal and discharge upon successful completion of the program restore the individual to the status of a person who can thereafter

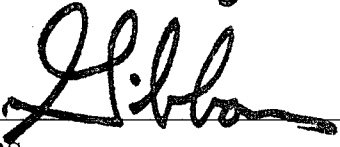
legally possess a firearm? *Cf. Cueller v. State*, 70 S.W.3d 815 (Tex. Crim. App. 2002).

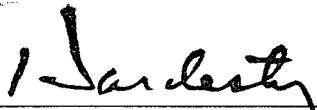
4. NRS 202.360 and the federal firearms' statute it mirrors, 18 U.S.C. § 922, rely on NCIC reporting and gun-sale disclosures. What significance should the court attach to the final sentence in NRS 176A.260(4) (after discharge and dismissal a "defendant may not be held thereafter under any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge that arrest, indictment, information or trial in response to an inquiry made of the defendant for any purpose") and NRS 176A.265 (providing for records to be sealed after a defendant is discharged from probation) in deciding whether participation in a program established pursuant to NRS 176A.250 through NRS 176A.265 triggers the prohibition stated in NRS 202.360(2)(a)? Can the State's interpretation of NRS 202.360(2)(a) be squared with NRS 179A.163, NRS 433A.310(3), and NRS 176A.400?

The supplemental briefs shall comply with the type-volume limitations in NRAP 32(a)(7)(A). Appellant's brief is due 15 days from the date of this order, with respondent's brief to follow 15 days from service of appellant's brief. No reply shall be filed. The parties may address, if

appropriate, any questions related to those stated above, including preserved error.

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney