

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. LOCKER,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

_____ /

No. 84070 Electronically Filed
Feb 18 2022 03:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

FAST TRACK RESPONSE

1. Name of party filing this Fast Track Response: The State of Nevada.
2. Name, address, and telephone number of attorney submitting this Fast Track Response: Kevin Naughton, Appellate Deputy. Washoe County District Attorney's Office, One South Sierra Street, Reno, Nevada 89501. (775) 328-3200.
3. Name, address, and phone number of appellate counsel if different from trial counsel: See Number 2 above.
4. Proceedings raising same issues: The Respondent is unaware of any appeals or original proceedings raising these same issues.
5. Statement of facts:

Because these cases resolved via plea negotiations, the following statement of facts is drawn primarily from the presentence investigation

report (“PSI”).¹ As the PSI is not included in an appendix, citations refer to the PSI’s own pagination.

On April 20, 2021, a Reno Police Department officer approached a vehicle that was parked partially in a travel lane. PSI p. 7. The vehicle was occupied by Appellant Michael J. Locker (“Locker”) and another co-offender. *Id.* The officer asked the occupants for identification. *Id.* Locker admitted that he had a cup of alcohol inside the vehicle. *Id.* Both occupants denied that they had any weapons in their possession. *Id.*

Locker exited the vehicle and stated that he had a firearm. PSI p. 8. The officer found a loaded 9mm handgun in Locker’s waistband. *Id.* Locker did not have a permit to carry a concealed weapon and he was arrested. *Id.* During a search of Locker’s person, the officer located 8.2 grams of presumptive positive heroin. *Id.* A consensual search of Locker’s backpack turned up 4.8 grams of presumptive positive psilocybin mushrooms, 0.6 grams of presumptive positive Alprazolam, and 0.5 grams of presumptive positive methamphetamine. *Id.*

Locker was arrested on a total of seven felonies: one count of Carry Conceal Weapon without Permit; four counts of Possession Schedule I, II

¹ The State has simultaneously filed a Motion to Transmit Presentence Investigation Report.

Controlled Substance less than 14 Grams; one count of Possession Schedule II-V Controlled Substance less than 28 grams; and one count of Own/Possess Gun by Prohibited Person. PSI p. 6. He was charged in an Amended Criminal Complaint filed on August 11, 2021, with one count of Carrying a Concealed Weapon, a category C felony, and one count of Possession of Less than Fourteen Grams of a Schedule I Controlled Substance, a Category E felony. Respondent's Appendix, pp. 1-2.

Locker entered into negotiations with the State whereby, in exchange for his plea of guilty to a single charge of Possess Schedule I or II Controlled Substance, Less Than 14 Grams, First or Second Offense, a category E felony in violation of NRS 453.336(2)(a), the parties would be free to argue for an appropriate sentence and the "State will not pursue any other criminal charges arising out of this transaction or occurrence." Joint Appendix ("JA") pp. 4-8. Locker was subsequently convicted and sentenced to a suspended term of 19 to 48 months imprisonment with several conditions, including that he serve 60 days in the Washoe County Jail and that he enter and successfully complete the Adult Drug Court program. JA 42-43.

6. Issues on appeal:

A. Did the district court err by sentencing Locker instead of deferring his sentence?

7. Legal argument:

- A. The court did not err by sentencing Locker and not deferring his sentence.

“Statutory interpretation is an issue of law subject to de novo review.” Hobbs v. State, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011) *citing* Firestone v. State, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004). “When interpreting a statute, this court must give its terms their plain meaning, considering its provisions as a whole so as to read them ‘in a way that would not render words or phrases superfluous or make a provision nugatory.’” Southern Nevada Homebuilders Ass’n v. Clark County, 121 Nev. 446, 449, 117 P.3d 171, 173 *quoting* Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990) (overruled on other grounds by Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000)). “Further, it is the duty of this court, when possible, to interpret provisions with a common statutory scheme ‘harmoniously with one another in accordance with the general purpose of those statutes’ and to avoid unreasonable or absurd results, thereby giving effect to the Legislature’s intent.” *Id* *quoting* Washington v. State, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001). “This court avoids statutory interpretation that renders language meaningless or superfluous and whenever possible will interpret a rule or statute in

harmony with other rules or statutes.” Williams v. State Dep’t of Corr., 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017) (cleaned up).

Locker contends that the district court erred by sentencing him instead of deferring judgment pursuant to NRS 453.336(2)(a). That statute provides, in relevant part, that “[f]or a first or second offense, if the controlled substance is listed in schedule I or II and the quantity possessed is less than 14 grams” a person “shall be punished for a category E felony as provided in NRS 193.130. In accordance with NRS 176.211, the court shall defer judgment upon the consent of the person.”

NRS 193.130(2)(e) sets forth the parameters for category E felonies. A category E felony is punishable by 1 to 4 years imprisonment and a court “shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate.” NRS 193.130(2)(e).

NRS 176.211 is the statute at issue in this case. There are two competing provisions of the statute at play here. NRS 176.211(1) reads:

Except as otherwise provided in this subsection, upon a plea of guilty, guilty but mentally ill or nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer judgment on the case to a specified future date and set forth specific terms and conditions for the defendant. The duration of the deferral period must not exceed the applicable period set forth in subsection 1 of NRS 176A.500 or the extension of the period

pursuant to subsection 2 of NRS 176A.500. *The court may not defer judgment pursuant to this subsection if the defendant has entered into a plea agreement with a prosecuting attorney unless the plea agreement allows the deferral.*

(emphasis added).

NRS 176.211(3)(a) provides that the court:

(a) Upon the consent of the defendant:

(1) Shall defer judgment for any defendant who has entered a plea of guilty, guilty but mentally ill or nolo contendere to a violation of paragraph (a) of subsection 2 of NRS 453.336; or

(2) May defer judgment for any defendant who is placed in a specialty court program. The court may extend any deferral period for not more than 12 months to allow for the completion of a specialty court program.

Locker contends that NRS 176.211(3)(a)(1) required the district court to defer judgment in his case because he pled guilty to a violation of NRS 453.336(2)(a). Locker's position fails to account for NRS 176.211(1). And NRS 453.336(2)(a) requires that a court act "[i]n accordance with NRS 176.211" as a whole, not just with subsection (3)(a)(1).

NRS 176.211(1) and (3)(a)(1) might initially appear to conflict with one another on their face. After all, subsection 1 provides that a district may not defer judgment for someone who has pled guilty pursuant to "a plea agreement with a prosecuting attorney unless the plea agreement allows the deferral" whereas subsection (3)(a)(1) requires a district court to

defer judgment “for any defendant who has entered a plea of guilty... to a violation of [NRS 453.336(2)(a)].” Locker suggests that subsection (3)(a)(1) required the district court to defer judgment in his case. However, such a reading would render the last sentence of subsection (1) meaningless, something that must be avoided if possible. Williams, *supra*.

The legislative history of NRS 176.211 is instructive in clearing up this apparent contradiction. NRS 176.211 was enacted by Assembly Bill 236 of the 80th Session of the Nevada Legislature. During a hearing before the Senate Judiciary Committee, Assemblyman Chuck Yeager explained that the intent of NRS 176.211(1) was to clarify that “the plea cannot be a result of negotiations with the district attorney” and that in order to obtain a deferral pursuant to NRS 176.211, “the person must plead guilty to every charge under the indictment.” Hearing on AB 236, Senate Committee on Judiciary, 80th Leg. (Nev., May 31, 2019). In other words, to obtain the benefit of a deferred judgment, a defendant must have pled guilty to every single charge otherwise, they would not automatically qualify for deferred judgment absent a specific agreement with the prosecutor.

Here, Locker entered into a plea agreement with the State, thus invoking that last sentence of NRS 176.211(1). Locker claims in his opening brief that “the charging documents did not contain a firearm allegation.”

That may be true of the Information filed before the District Court, but that Information was filed in furtherance of the plea negotiations in this case. Locker was, in fact, charged with a felony for Carrying a Concealed Weapon in a Criminal Complaint filed before the Reno Justice Court. JA 1-4. In exchange for Locker's plea to the possession of a controlled substance count, the State agreed not to pursue any other charges arising from his conduct in this case. JA 6. Thus, Locker entered into an agreement with a prosecuting attorney and the district court could only defer judgment if "the plea agreement allows the deferral." NRS 176.211(1). The Guilty Plea Memorandum in this case contains no such agreement and thus the district court was not required to defer Locker's judgment. This reading of the applicable laws gives meaning to all of the provisions of NRS 176.211 and is consistent with legislative intent.

8. Preservation of issues:

The Respondent concurs with Locker that he has appropriately preserved the issues raised in this fast track appeal by virtue of filing his election for treatment pursuant to NRS 176A.240.

DATED: February 18, 2022.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: Kevin Naughton
Appellate Deputy

VERIFICATION

1. I hereby certify that this fast track response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast track response has been prepared in a proportionally spaced typeface using Word 2013 in 14 Georgia font.

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it does not exceed 4,845 words or 462 lines. It contains 1,695 words.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track

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response is true and complete to the best of my knowledge, information and belief.

DATED: February 18, 2022.

Kevin Naughton
Appellate Deputy
Nevada Bar No. 12834
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on August 26, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty
Chief Deputy Public Defender

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA