Opinion Recalled Per Order filed on 6-23-2014. SY

129 Nev., Advance Opinion 91

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN CLAY,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE WILLIAM O. VOY, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 62770

FILED

NOV 27 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

Original petition for a writ of mandamus or prohibition challenging a juvenile court order unsealing and releasing petitioner's sealed juvenile court records.

Petition granted.

Patti, Sgro & Lewis and Anthony P. Sgro, Las Vegas; Christopher R. Oram, Las Vegas,
for Petitioner.

Catherine Cortez Masto, Attorney General, Carson City; Steven B. Wolfson, District Attorney, and Jonathan E. VanBoskerck, Chief Deputy District Attorney, Clark County,
for Real Party in Interest.

BEFORE GIBBONS, DOUGLAS and SAITTA, JJ.

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3/10/14: Corrected per letter to publishers. CT

13-35851

OPINION

By the Court, SAITTA, J.:

Petitioner Brian Clay stands charged with two counts of first-degree murder and associated offenses for which he faces the death penalty. He challenges a juvenile court order granting the State's motion to unseal and release his juvenile delinquency records to assist in the prosecution. We conclude that Nevada law does not allow the State to inspect a person's sealed juvenile records for use against the person in subsequent criminal proceedings. Accordingly, we conclude that the juvenile court manifestly abused its discretion by unsealing and releasing Clay's records.

FACTS AND PROCEDURAL HISTORY

The State accuses Clay of two brutal murders and related offenses. Relying upon NRS 62H.030 and NRS 62H.170(2)(c), the State filed a broad motion in the juvenile court seeking to unseal and release Clay's juvenile records to facilitate his prosecution.[1] The State asserted it would use the information gathered to issue subpoenas to persons who had relevant testimony. Clay opposed the motion, arguing that the State could not inspect his juvenile records in order to use them against him in a subsequent criminal prosecution. At a hearing on the motion, however, both parties retreated from the arguments made in the pleadings. The

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[1]The parties agree that Clay's juvenile records were sealed; however, the record before this court does not contain any documentation confirming this fact.

State agreed that the records would not be used in the guilt phase of the prosecution and Clay conceded that the records could be used in the penalty phase.[2] In support of Clay's concession, he and the juvenile court referred to an unspecified statute allowing the use of sealed juvenile records for sentencing purposes for persons up to age 25. Likely because the parties agreed with respect to the allowable uses of Clay's sealed records, argument at the hearing focused on when the records could be released—prior to the guilt phase or only after conviction.

The juvenile court made an oral ruling apparently resolving only the parties' timing arguments but then entered a written order broadly unsealing and releasing the records "for use in the prosecution" without mention of the timing argument or the parties' concessions. Despite this broad language, in light of the concessions made during the hearing, it appears the juvenile court's written order authorizes the unsealing and release of the records solely for use at the penalty phase of the prosecution. This petition for extraordinary relief followed.

DISCUSSION

Clay seeks a writ of mandamus or prohibition on the ground that the juvenile court erred by allowing the State to inspect his sealed juvenile records because NRS 62H.170(2)(c) does not allow the State to inspect sealed juvenile records for use against him in a subsequent

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[2]Subject to exceptions not applicable here, a separate penalty hearing is required in all cases where a defendant is found guilty or guilty but mentally ill of first-degree murder. NRS 175.552(1)-(2).

criminal proceeding. "We have original jurisdiction to issue writs of mandamus and prohibition." *Gonzalez v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 298 P.3d 448, 449 (2013); Nev. Const. art. 6, § 4. A writ of prohibition is available to halt proceedings occurring in excess of a court's jurisdiction. NRS 34.320. Because the juvenile court had jurisdiction to consider the State's motion to unseal and release Clay's juvenile delinquency records and Clay did not challenge the juvenile court's jurisdiction to proceed, prohibition is not an appropriate avenue for relief.

Clay's original petition is more appropriately addressed as seeking a writ of mandamus. A writ of mandamus may issue to compel the performance of an act that the law requires "as a duty resulting from an office, trust or station," NRS 34.160, or to control an arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). The ultimate decision whether to consider a petition for an extraordinary writ lies within this court's discretion. We will exercise this discretion "[w]here the circumstances establish urgency or strong necessity, or an important issue of law requires clarification and public policy is served by this court's exercise of its original jurisdiction." *Schuster v. Eighth Judicial Dist. Court*, 123 Nev. 187, 190, 160 P.3d 873, 875 (2007). This petition raises an important legal issue that needs clarification—whether the State may inspect a defendant's sealed juvenile records to assist with a subsequent criminal prosecution. Although Clay conceded below on the exact issue he now challenges in this court, we conclude that this concession was clearly wrong and the juvenile court manifestly abused its discretion by granting

the State's motion. Accordingly, we exercise our discretion to consider this petition.

Resolution of this petition requires us to interpret NRS 62H.170(2)(c) and (3). Statutory interpretation is a question of law subject to de novo review. *Goudge v. State*, 128 Nev. ___, ___, 287 P.3d 301, 303 (2012). We give statutes their plain meaning and examine them as a whole so as not to render any provisions nugatory. *Haney v. State*, 124 Nev. 408, 411-12, 185 P.3d 350, 353 (2008). If, however, the statutory language is ambiguous or does not address the issue presented we "look to the legislative history and construe the statute in a manner that is consistent with reason and public policy." *State v. Lucero*, 127 Nev. ___, ___, 249 P.3d 1226, 1228 (2011); *see also Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009). A statute is ambiguous when "it is subject to more than one reasonable interpretation." *Hobbs v. State*, 127 Nev. ___, ___, 251 P.3d 177, 179 (2011).

NRS 62H.170(3) does not authorize the juvenile court to unseal the records at issue in this case

Although Clay makes no argument relating to NRS 62H.170(3), we necessarily begin our analysis with this statute because it appears to have been the basis of Clay's concession that the State is authorized to inspect his sealed juvenile records for use against him in the penalty phase of the current prosecution. Immediately before Clay made his concession, he and the juvenile court referenced an unspecified statute purportedly allowing the use of sealed juvenile records for sentencing purposes for defendants up to age 25. Based on the State's answer to the petition, it appears the referenced statute was NRS 62H.170(3).

That statute allows a district court to inspect the sealed juvenile records of a person "who is less than 21 years of age and who is to be sentenced by the court in a criminal proceeding." NRS 62H.170(3). We conclude that reliance on this statute was misplaced for three reasons. First, Clay was 22 years old at the time the State requested to unseal his records. Second, because the death penalty must be imposed by a jury, *see* NRS 175.552(1), Clay was not "to be sentenced by [a] court," NRS 62H.170(3). Third, NRS 62H.170(3) authorizes a district court to inspect sealed records; it does not permit inspection by a district attorney.

The State argues that NRS 62H.170(3) allows for its inspection of Clay's sealed records because he was less than 21 years of age at the time of the offenses. This argument lacks merit. The plain language of the statute is not directed to the person's age at the time of the offense. And the phrase "is to be sentenced" indicates that a person must suffer a conviction before the district court may inspect his sealed juvenile records.

The State also contends that NRS 62H.170(3) allows it to inspect Clay's sealed records because the jury impaneled for the penalty phase in a death penalty case should have the same access to information as a district court during sentencing in a noncapital case. Regardless of the State's policy argument, we may not look beyond clear statutory text. The plain language of NRS 62H.170(3) allows inspection of a person's sealed juvenile records only by a district court and only if the person is to be sentenced by a court. Accordingly, we conclude Clay's concession that NRS 62H.170(3) allowed the State to use his sealed juvenile records against him in the penalty phase of the criminal proceedings was in error.

NRS 62H.170(2)(c) also does not authorize inspection of the sealed juvenile records in the circumstances presented

Another subsection in the statute, NRS 62H.170(2), addresses when the juvenile court may order the inspection of sealed juvenile records upon the request of certain individuals or agencies. The relevant provision is NRS 62H.170(2)(c), which states, in pertinent part, that "[a] district attorney or an attorney representing a defendant in a criminal action [may] petition[ ] the juvenile court to permit the inspection of [sealed] records to obtain information relating to the persons who were involved in the acts detailed in the records." The plain language of NRS 62H.170(2)(c) does not address whether the State may inspect a defendant's sealed juvenile records for the purpose of using them against the defendant in later criminal proceedings. And its meaning is unclear even when read in conjunction with the statute's other subsections. *See Clark Cnty. v. S. Nev. Health Dist.*, 128 Nev. ___, ___, 289 P.3d 212, 216 (2012) (indicating that when interpreting a statute, it must be examined as a whole). For example, because subsection 3 is the only subsection in NRS 62H.170 that expressly allows the use of a defendant's sealed juvenile records against him, it is reasonable to conclude that subsection 3 describes the *only* circumstances allowing such use. *See Sonia F. v. Eighth Judicial Dist. Court*, 125 Nev. 495, 499, 215 P.3d 705, 708 (2009) ("The mention of one thing implies the exclusion of another." (alteration and internal quotation marks omitted)). Conversely, because subsection 2 speaks to the inspection of juvenile records at the request of the juvenile, certain agencies, and the district attorney or an attorney representing a criminal defendant, whereas subsection 3 speaks to the district court's

inspection of juvenile records, it is also reasonable to conclude that each subsection allows the inspection of sealed records by different actors and under different circumstances. We therefore conclude that NRS 62H.170(2)(c) is ambiguous, and we turn to its legislative history to determine legislative intent.

NRS 62H.170(2)(c), formerly codified as NRS 62.275(7) and NRS 62.370(7), was enacted via Senate Bill 32 in 1971. The bill originally provided that a person may petition the court to allow the inspection of his or her own sealed juvenile records but that the court may not order any other inspection. S.B. 32, 56th Leg. (Nev. 1971). At one point during debate on the bill in the Senate Judiciary Committee, Senator Foley questioned whether law enforcement officials should be allowed to access the sealed records, Hearing on S.B. 32 Before the Senate Judiciary Comm., 56th Leg. (Nev., Feb. 9, 1971), but no such amendment was ever added. Instead, the language that eventually became NRS 62H.170(2)(c) was added after Senator Young suggested that the Legislature "should at least grant the right to inspect the records to a co-defendant or to another person involved if he was not covered by the order of expungement."[3] Hearing on S.B. 32 Before the Senate Judiciary Comm., 56th Leg. (Nev., Feb. 25, 1971). Grant Davis of the Legislative Counsel Bureau subsequently informed the committee that he would prepare an amendment "stating the record can be opened when a co-defendant is

[3]During debate on Senate Bill 32, legislators and speakers used the words "seal" and "expunge" interchangeably.

involved." Hearing on S.B. 32 Before the Senate Judiciary Comm., 56th Leg. (Nev., March 4, 1971). A new subsection was then added to the bill providing, "The court may, upon the application of a district attorney or an attorney representing a defendant in a criminal action, order an inspection of such records for the purpose of obtaining information relating to persons who were involved in the incident recorded." S.B. 32, 56th Leg. (Nev., 1971) (first reprint).

This history indicates that the legislative intent behind what is now NRS 62H.170(2)(c) was to allow inspection of a sealed record in subsequent proceedings or events relating to codefendants or other persons involved in the matter that is the subject of the sealed juvenile records. There is no indication that the Legislature intended the statute to allow a prosecutor to inspect a defendant's sealed juvenile records to obtain information that could later be used against him or her.

Although the statutory language has been altered slightly in the years since enactment, nothing in the legislative history indicates that any of these changes were designed to impart substantive change to the meaning of the statute. *See* 1981 Nev. Stat., ch. 770, § 7, at 2003 (changing the word "such" to "the"); 2001 Nev. Stat., ch. 285, § 3, at 1310 (changing phrase "for the purpose of obtaining" to "to obtain"); 2003 Nev. Stat., ch. 206, § 225, at 1092-93 (reorganizing statute and placing it in its current form). Accordingly, we conclude that NRS 62H.170(2)(c) does not permit a district attorney to inspect a defendant's sealed juvenile records to obtain information that will be used against him or her in a subsequent criminal proceeding. *Cf. Walker v. Eighth Judicial Dist. Court*, 120 Nev. 815, 821, 101 P.3d 787, 792 (2004) (holding that language in NRS

179.295(3), which is substantially similar to NRS 62H.170(2)(c), allowed the inspection of sealed records to obtain "information relating to codefendants or other persons who were involved in the case," but did not allow a district attorney to inspect "sealed records to obtain information that will be used against a defendant in a subsequent criminal proceeding").[4] This holding also precludes the State from inspecting a defendant's sealed juvenile records for the purpose of obtaining derivative information to be used against him or her.[5]

CONCLUSION

Neither NRS 62H.170(3) nor NRS 62H.170(2)(c) permit a district attorney to inspect a defendant's sealed juvenile records to obtain information that will be used against him or her in a subsequent proceeding. Accordingly, we conclude that the juvenile court manifestly

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[4]We acknowledge that *Walker* reached its decision based on a "plain reading" of NRS 179.295(3), 120 Nev. at 821, 101 P.3d at 792, whereas we have determined here that the similar language in NRS 62H.170(2)(c) is ambiguous. This disagreement is of no significance since we reach the same conclusion as to the meaning of the language. In any event, it is clear that the court's holding in *Walker* would not have changed even if it had viewed the language as being ambiguous and therefore turned to the legislative history. *Id.* ("[A] brief review of the legislative history supports our reading of the statute."). Notably, the two statutes share the same legislative history.

[5]Clay also alleges error because NRS 62H.030 does not permit the release of his records, even if unsealed. Because it does not appear that the juvenile court relied upon this statute in rendering its decision, we decline to address this contention. We note, however, that NRS 62H.030 does not address the inspection of sealed records.

abused its discretion by granting the State's motion to inspect Clay's sealed juvenile records. We therefore grant the petition for extraordinary relief and direct the clerk of this court to issue a writ of mandamus instructing the juvenile court to vacate its order unsealing and releasing Clay's juvenile delinquency records for use in his criminal prosecution and enter an order consistent with this opinion.[6]

_____, J.
Saitta

We concur:

_____, J.
Gibbons

_____, J.
Douglas

[6]We deny Clay's request to order the expungement of his juvenile records. We agree, however, that any of Clay's sealed juvenile records in the State's possession as the result of the juvenile court's order should be immediately destroyed, and order the State to do so within ten days from the date of this opinion.