

SUPREME COURT OF NEVADA

Albert David Gallegos v. The State of Nevada

123 Nev. 289 (Nev. 2007) · No. No. 44782 · Decided August 2, 2007

SUMMARY

The Nevada Supreme Court held that NRS 202.360(1)(b), which prohibited firearm possession by a person who is a “fugitive from justice,” was unconstitutionally vague. The court concluded that the statute failed to provide adequate notice of prohibited conduct and lacked standards to prevent arbitrary and discriminatory enforcement. The court reversed Albert David Gallegos’s conviction.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Gibbons, J.; Maupin, J.; Hardesty, J.; Douglas, J.; Cherry, J.; Parraguirre, J.
JURISDICTION	Nevada
DECIDED	August 2, 2007
DOCKET	No. 44782
DISPOSITION	reversed
PROCEDURAL POSTURE	Gallegos appealed his jury conviction for unlawful possession of a firearm under NRS 202.360(1)(b), arguing that the statute was unconstitutionally vague because it did not define "fugitive from justice."
STANDARD OF REVIEW	De novo review of the constitutionality of a statute.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Nevada; precedential.
PARTIES	Albert David Gallegos v. The State of Nevada

TOPICS

void for vagueness

due process

fourteenth amendment

criminal procedure

statutory interpretation

PRACTICE AREAS

constitutional law

criminal law

criminal procedure

firearms regulation

statutory interpretation

QUESTIONS PRESENTED

1. Whether NRS 202.360(1)(b), which prohibits firearm possession by a person who is "a fugitive from justice," is unconstitutionally vague for failing to provide adequate notice of the prohibited conduct.
2. Whether NRS 202.360(1)(b) is unconstitutionally vague because it lacks standards sufficient to prevent arbitrary and discriminatory enforcement.

HOLDINGS

1. NRS 202.360(1)(b) is unconstitutionally vague under the first prong of the vagueness test because the Nevada Legislature did not define "fugitive from justice," and the phrase lacks a well-established and ordinarily understood meaning sufficient to tell ordinary citizens what conduct is prohibited.
2. NRS 202.360(1)(b) is unconstitutionally vague under the second prong of the vagueness test because it provides no clear standards to guide law enforcement officers, prosecutors, courts, or juries in determining who is a "fugitive from justice" subject to the firearm prohibition.
3. Because NRS 202.360(1)(b) is unconstitutionally vague and violates the Fourteenth Amendment's Due Process Clause, Gallegos's judgment of conviction must be reversed.

KEY QUOTATIONS

"A statute is unconstitutionally vague and subject to facial attack if it (1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." (163 P.3d at 459)

"Because it fails to answer these questions, NRS 202.360(1)(b) causes ordinary citizens to have to guess at its meaning and fails to give notice of the law so they can conform their conduct to its requirements." (163 P.3d at 460)

"Without a clear definition of the term 'fugitive from justice,' NRS 202.360(1)(b) impermissibly encourages, authorizes, or at least fails to prevent its own arbitrary and discriminatory enforcement." (163 P.3d at 461)

FACTUAL BACKGROUND

Police arrested Gallegos at his Clark County home in 2004 and found a firearm. The State based the unlawful-possession charge on a 1998 California warrant issued after Gallegos failed to appear for sentencing following a nolo contendere plea to felony charges. Gallegos testified that he believed his California obligations had been resolved and that he left California without knowing he needed to return for sentencing.

PROCEDURAL HISTORY

The State charged Gallegos after police found a firearm in his Clark County home and relied on a California felony warrant issued after he failed to appear for sentencing. The district court denied Gallegos's pretrial and renewed constitutional motions to dismiss, instructed the jury using the federal definition of "fugitive from justice," and entered a conviction. The court sentenced him to one to six years in prison, suspended execution of

the sentence, and placed him on probation for an indeterminate period not exceeding three years. The Nevada Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Silvar v. District Court, 122 Nev. 289, 129 P.3d 682 (2006)
- Sheriff v. Martin, 99 Nev. 336, 662 P.2d 634 (1983)
- United States v. Harriss, 347 U.S. 612, 617 (1954)
- City of Las Vegas v. District Court, 118 Nev. 859, 59 P.3d 477 (2002)
- Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975)
- Lane v. Allstate Insurance Co., 114 Nev. 1176, 969 P.2d 938 (1998)
- Roberts v. Reilly, 116 U.S. 80, 6 S. Ct. 291, 29 L. Ed. 544 (1885)
- Drew v. Thaw, 235 U.S. 432, 35 S. Ct. 137, 59 L. Ed. 302 (1914)
- Ex parte Lorraine, 16 Nev. 63 (1881)
- Castriotta v. State, 111 Nev. 67, 888 P.2d 927 (1995)
- Robinson v. Leypoldt, 74 Nev. 58, 322 P.2d 304 (1958)
- Kolender v. Lawson, 461 U.S. 352, 103 S. Ct. 1855 (1983)