

SUPREME COURT OF NEVADA

Sang Man Shin v. State of Nevada, Department of Public Safety

206 P.3d 91 (Nev. 2009) · No. 47995 · Decided March 26, 2009

SUMMARY

The Supreme Court of Nevada held that a pardon restores civil rights and removes most legal consequences of a conviction but does not erase the historical fact of the conviction or create a right to expunge the criminal record. The court concluded that NRS 179.245(5), which prohibits sealing records relating to convictions for crimes against children or sexual offenses, does not improperly abridge the Pardons Board's constitutional power. The court affirmed the district court's order unsealing Sang Man Shin's criminal record.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Saitta, J.; Hardesty, C.J.; Parraguirre, J.; Douglas, J.; Cherry, J.; Gibbons, J.
JURISDICTION	Nevada
DECIDED	March 26, 2009
DOCKET	47995
DISPOSITION	affirmed
PROCEDURAL POSTURE	Shin appealed from a district court order setting aside an earlier order sealing his criminal record and ordering the record unsealed.
STANDARD OF REVIEW	The court reviewed de novo the district court's legal conclusions, including statutory constitutionality and statutory interpretation, and reviewed the decision to unseal the record for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Sang Man Shin v. State of Nevada, Department of Public Safety

TOPICS

- post-conviction relief
- constitutional law
- statutory interpretation
- separation of powers
- remedies

PRACTICE AREAS

- constitutional law
- criminal procedure
- post-conviction relief
- statutory interpretation
- remedies

QUESTIONS PRESENTED

1. Whether a pardon granted under Article 5, Section 14 of the Nevada Constitution erases the historical fact of a criminal conviction or creates a civil right to expunge or seal the related criminal record.
2. Whether NRS 179.245(5), which bars sealing records relating to convictions for crimes against children or sexual offenses, unconstitutionally abridges the Pardons Board's constitutional power.
3. Whether the district court abused its discretion by setting aside the prior order sealing Shin's criminal record and ordering the record unsealed.

HOLDINGS

1. A pardon forgives the offense, restores civil rights, and removes most legal consequences of a conviction, but it does not erase the historical fact that the conviction occurred, confer innocence, or itself require expunction or sealing of the criminal record.
2. NRS 179.245(5) does not unconstitutionally abridge the Pardons Board's power under Article 5, Section 14 of the Nevada Constitution.
3. The district court did not abuse its discretion by setting aside the prior sealing order and unsealing Shin's criminal record.

KEY QUOTATIONS

“While the pardoning power's reach is expansive, it does not extend to removing the historical fact that a conviction occurred, and it cannot bequeath innocence.” (206 P.3d at 91)

“Because we conclude that the effect of the pardon does not erase the historical fact of the conviction, we hold that there is nothing in the Nevada Constitution that creates a civil right to an expunction of the record of a criminal conviction.” (206 P.3d at 98)

FACTUAL BACKGROUND

In 1987, law enforcement arrested Sang Man Shin for attempted lewdness with a minor, and Shin pleaded guilty. The district court imposed a two-year prison sentence, suspended it, and placed Shin on probation, which he successfully completed. After maintaining a clean record for approximately fifteen years, Shin received a pardon in 2002 restoring his civil rights except the right to possess firearms. In 2006, he obtained an order sealing his record, but the Department of Public Safety successfully challenged the order because the conviction was a sexual offense involving a child.

PROCEDURAL HISTORY

Shin pleaded guilty in 1987 to attempted lewdness with a minor and successfully completed probation. After receiving a pardon in 2002, he petitioned in 2006 to seal his criminal record, and the district court granted the petition with the Clark County District Attorney's stipulation. The Department of Public Safety moved to set the order aside under NRS 179.245(5), which bars sealing records relating to convictions for crimes against children or sexual offenses. The district court agreed and unsealed the record; the Nevada Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Ex parte Garland, 71 U.S. 333, 380-81 (1866)
- State of Nevada v. Foley, 15 Nev. 64, 67, 69, 74 (1880)
- Pinana v. State, 76 Nev. 274, 281-83, 352 P.2d 824, 828-29 (1960)
- United States v. Wilson, 32 U.S. 150, 159-61 (1833)
- Osborn v. United States, 91 U.S. 474, 477 (1875)
- Carlisle v. United States, 83 U.S. 147, 153 (1873)
- Angle v. Chicago, St. Paul, Minneapolis & Omaha Railway Co., 151 U.S. 1, 19 (1894)
- Carlesi v. New York, 233 U.S. 51, 59 (1914)
- Burdick v. United States, 236 U.S. 79, 90-91 (1915)
- Biddle v. Perovich, 274 U.S. 480, 486, 488 (1927)
- Groseclose v. Plummer, 106 F.2d 311, 313 (9th Cir. 1939)
- Bjerkkan v. United States, 529 F.2d 125, 128 n. 2 (7th Cir. 1975)
- United States v. Noonan, 906 F.2d 952, 958, 960 (3d Cir. 1990)
- In re North, 62 F.3d 1434, 1437 (D.C. Cir. 1994)
- People v. Brophy, 287 N.Y. 132, 38 N.E.2d 468, 470 (1941)
- In re Abrams, 689 A.2d 6, 7, 10-11, 18-19 (D.C. 1997)
- R.J.L. v. State, 887 So. 2d 1268, 1270-81 (Fla. 2004)
- Commonwealth v. Cain, 345 Pa. 581, 28 A.2d 897, 899 (1942)
- Douglas Disposal, Inc. v. Wee Haul, LLC, 123 Nev. ___, 170 P.3d 508, 512 (2007)
- Walker v. Dist. Ct., 120 Nev. 815, 819, 101 P.3d 787, 790 (2004)
- Sheriff v. Vlasak, 111 Nev. 59, 61-62, 888 P.2d 441, 443 (1995)
- Wilmeth v. State, 96 Nev. 403, 405, 610 P.2d 735, 737 (1980)
- Cramer v. Peavy, 116 Nev. 575, 582, 3 P.3d 665, 670 (2000)