

In the Matter of T.R. v. Nevada Div. of Child and Family Services, 80 P.3d 1276 (Nev. 2003).¹

CONSTITUTIONAL LAW – VOID FOR VAGUENESS DOCTRINE

Summary

T.R., a fourteen-year-old boy at the time of the incident, was charged with sodomy against a four-year-old boy, forcing the boy to orally copulate him, and orally copulating the boy. An evidentiary hearing was conducted by a district court hearing master who concluded that there was clear and convincing evidence T.R. sodomized the four-year-old boy, and that he forced the four-year-old boy to orally copulate him. The district court agreed with the hearing master, entered an order with the hearing master's findings, and dismissed the remaining charge.

T.R. moved for a rehearing based on inadmissible and unreliable hearsay statements, which the hearing master heard before rendering his decision.

The Juvenile Probation Department prepared an evaluation report concerning T.R. It recommended a correctional program, submission to statutory community notification requirements, and a hearing when T.R. turns twenty-one. The hearing will determine if T.R. has successfully rehabilitated himself, or if he still poses a threat to society and should be required to comply with adult sex offender registration and notification statutes. T.R. filed a motion to strike the recommendation that he comply with community notification standards.

T.R. received a rehearing on the adjudication. The district court upheld the hearing master's decision regarding the sodomy, but held that the State failed to prove the oral copulation beyond a reasonable doubt. The district court adopted the Juvenile Probation Department's report, and denied T.R.'s motion to strike mandatory compliance with community notification standards. T.R. appealed the district court's decision, challenging his adjudication for delinquency as not being supported by evidence of sexual assault, and challenging NRS 62.590 (ultimately imposing adult notification standards on juvenile sex offenders) as being unconstitutionally vague.

Issue and Disposition

Issue

Is the application of Nevada's adult sex offender registration and notification provisions under NRS 62.590², to an adjudicated juvenile sex offender upon reaching his twenty-first birthday unduly vague and thus constitutionally void?

Disposition

¹ By Ronda Heilig

² NRS 62.590 requires a juvenile sex offender to subject himself to a hearing upon reaching his twenty-first birthday. The hearing is to determine if the offender is "likely to pose a threat to the safety of others" and should be required to comply with the adult sex offender registration and notification statutes, or if the offender is rehabilitated "to the satisfaction of the court." In the matter of T.R. v. Nev. Div. of Child and Family Services, 80 P.3d 1276, 1280-1281 (Nev. 2003).

Yes. The court held that NRS 62.590 does not provide sufficient notice of what constitutes prohibited behavior or conduct, and additionally, it encourages arbitrary enforcement by not setting standards a court can use to measure a person's successful compliance.

Commentary

State of the Law Before *In the Matter of T.R.*

The United States Supreme Court previously held that “substantive due process demands definitive laws and includes the void for vagueness doctrine.”³ The Constitution does not want people guessing as to the meaning of laws or to their enforcement. Laws must be clear in purpose, requirements, and means of enforcement in order to be valid.⁴

In order to prevail in a constitutional challenge to an existing law, the complainant has the burden of showing the law to be “impermissibly vague in all of its applications.”⁵

Effect of *In the Matter of T.R.* on Current Law

This case involves a contested adjudication as well as a constitutional challenge to NRS 62.590. The Nevada Supreme Court applied a criminal standard of review (beyond a reasonable doubt) in a challenge involving sufficiency of evidence to support a conviction. The Court found that “considering the evidence in the light most favorable to the State. . . a rational fact finder could have found beyond a reasonable doubt that T.R. committed the offense of sexual assault.”⁶

The State of Nevada challenged T.R.'s motion as lacking ripeness. The Nevada Supreme Court stated that in determining ripeness, two factors need to be weighed: “the hardship to the parties of withholding judicial review, and the suitability of the issues for review.”⁷ Weighing these factors, the Nevada Supreme Court found delay in judicial review harmful to T.R. who is “unsure how the statute applies to his current and future life choices.”⁸ The Court also determined that the issue was suitable for review, and concluded that the case was ripe.

The challenge to NRS 62.590 alleged that there was no guidance or standards to be applied or evaluated in determining whether a person is rehabilitated to the “satisfaction of the court”⁹ or whether the person still poses a threat to society. Additionally, the statute allegedly encouraged arbitrary or discriminatory enforcement.

Applying existing precedent, the Nevada Supreme Court agreed with the challenger, finding that concepts involved in NRS 62.590 such as rehabilitation and recidivism are “tenuous and difficult to define.”¹⁰ With this difficulty, the statute failed to set guidance and standards as to what a juvenile offender should do to prevent subjection to the adult sex offender lifetime registration requirements. Without specific standards to measure rehabilitation, the evaluation of

³ *In the Matter of T.R.*, at 1280, *citing* *Kolender v. Lawson*, 461 U.S. 352, 357 (1983), and *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

⁴ *Id.* at 1280, *citing* *Connally v. General Const. Co.*, 269 U.S. 385 (1926).

⁵ *Id.* at 1280, *citing* *Hoffman Estates v. Flipside*, 455 U.S. 489 (1982).

⁶ *Id.* at 1279.

⁷ *Id.*

⁸ *Id.* at 1280. The Nevada Supreme Court was also concerned with the uncertainty of how the choices would influence a decision at the district court level when engaged in an NRS 62.590 hearing.

⁹ *Id.* at 1281.

¹⁰ *Id.*

the person's successful rehabilitation is subjective. The lack of direction may result in significant differences in application and outcome depending upon which judge hears the case, making it "subject to arbitrary and discriminatory application."¹¹ Further, there is no guidance on the type of hearing or who bears the burden of proof or even what standard should be applied.¹²

The Nevada Supreme Court affirmed the adjudication as a delinquent, and reversed the order requiring submission to an NRS 62.590 hearing, holding that "NRS 62.590 provides no guidance for the child to 'act accordingly' and authorizes or encourages arbitrary and discriminatory enforcement"¹³ and therefore is void for vagueness.

Conclusion

The Nevada Supreme Court found NRS 62.590 to be unconstitutionally vague and therefore void. A statute must have guidance and standards that a person of reasonable intelligence can use to determine what he must or must not do in order to comply. Further, there needs to be factors or standards for the court to use in weighing whether or not a person complies with rehabilitation requirements, or has failed. Without such standards, judges are likely to have such subjective and varied decisions as to result in arbitrary enforcement.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*