IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW HALL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35458

FILED

NOV 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for a writ of mandamus and/or prohibition to compel a jury trial for a misdemeanor domestic battery charge. Appellant Andrew Hall was charged with a first offense of domestic battery against his girlfriend. Hall requested a jury trial because, if convicted, he contended that he would lose his federal and state constitutional rights to bear arms as a result of the Brady Handgun Violence Prevention Act (Brady Act). The municipal court denied his request. Hall then petitioned the district court for a writ of mandamus and/or prohibition. The district court denied Hall's petition. Hall then filed this appeal. We affirm the judgment of the district court.

Under Nevada law, first-offense domestic battery is a misdemeanor punishable by: (1) two days to six months in jail; (2) forty-eight to one hundred twenty hours of community service; (3) a fine of $200.00 to $1,000.00; (4) counseling for one and one-half hours per week for six to twelve months; (5) payment of an administrative fee; and (6) possible enrollment in a substance abuse treatment program.[1]

We conclude that a first-offense domestic battery conviction is a petty offense in this jurisdiction. The United States Supreme Court has held that an offense that carries a sentence of imprisonment of six months or less is, for purposes of the Sixth Amendment, presumed to be petty.[2]

[1]NRS 200.485; Carson City Municipal Code § 8.44.020 (1997 Supp. 5/1998).

[2]Blanton v. North Las Vegas, 489 U.S. 538, 543 (1989).

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The constitutional right to a jury trial does not attach to petty offenses.[3] A jury trial may be required if the defendant can demonstrate that any additional statutory penalties are so severe so as to reflect a legislative determination that the offense in question is serious.[4]

The Brady Act makes it unlawful for any person convicted of a misdemeanor in any court for domestic violence to possess a firearm or ammunition.[5] Hall argues that the passage of the Brady Act and the consequences that flow therefrom convert domestic battery into a serious offense triggering the Sixth Amendment right to a jury trial. We disagree. The consequences of the Brady Act do not derive from state law and are, therefore, collateral. We have previously held that collateral consequences are not taken into consideration in determining whether or not a right to a jury trial exists.[6]

Hall also argues that the consequences of the Brady Act constitute a deprivation of liberty, under either the United States Constitution or the Nevada Constitution, such that a jury trial is required. We disagree. We have previously held that the Second Amendment right to bear arms is a collective right, not an individual right.[7] Loss of the right to bear arms does not, therefore, constitute a deprivation of personal liberty under the United States Constitution that can be used to trigger an individual's Sixth Amendment right to a jury trial.[8] Furthermore, even

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[3]Id. at 541.

[4]Id. at 542-43.

[5]18 U.S.C. § 922(g)(9) (1994 & Supp. V 1999).

[6]Blanton v. North Las Vegas Mun. Ct., 103 Nev. 623, 633, 748 P.2d 494, 500 (1987); see also State ex rel. McDougall v. Strohson, 945 P.2d 1251, 1256 (Ariz. 1997).

[7]Harris v. State, 83 Nev. 404, 406, 432 P.2d 929, 930 (1967) (citations omitted).

[8]Hall urges us to follow U.S. v. Emerson, where the federal district court for the Northern District of Texas concluded that the Second Amendment confers an individual right to bear arms. 46 F. Supp. 2d. 598, 598-610 (N.D. Tex. 1999). We decline. Although the United States Court of Appeals for the Fifth Circuit recently affirmed Emerson, United States v. Emerson, No. 99-10331, 2001 WL 1230757, at #13 (5th Cir. Oct. 16,

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if, as Hall alleges, the Nevada Constitution confers the right to bear arms to private individuals,[9] this provision is trumped, per the Supremacy Clause, by conflicting federal law.[10] The Supremacy Clause of the United States Constitution provides that federal law "shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[11] Any state law that conflicts with federal law is without effect.[12] For this reason, the United States Court of Appeals for the Sixth Circuit, evaluating a similar provision of the Kentucky constitution, has determined, and we agree, that the Brady Act does not violate an individual's state constitutional right to bear arms.[13]

. . . continued

2001), no other courts have followed the holding in Emerson and many have expressly rejected it. See, e.g., U.S. v. Hancock, 231 F.3d 557, 565 (9th Cir. 2000), cert. denied, 121 S. Ct. 1641 (2001); U.S. v. Napier, 233 F.3d 394, 403 (6th Cir. 2000); Gillespie v. City of Indianapolis, 185 F.3d 693, 710 (7th Cir. 1999), cert. denied, 528 U.S. 1116 (2000); U.S. v. Wright, 117 F.3d 1265, 1271-74 (11th Cir. 1997), vacated in part on other grounds 133 F.3d 1412 (1998); Hickman v. Block, 81 F.3d 98, 100-01 (9th Cir. 1996); Love v. Pepersack, 47 F.3d 120, 123-24 (4th Cir. 1995); United States v. Oakes, 564 F.2d 384, 387 (10th Cir. 1977); United States v. Warin, 530 F.2d 103, 106 (6th Cir. 1976); United States v. Swinton, 521 F.2d 1255, 1259 (10th Cir. 1975); United States v. Johnson, 497 F.2d 548, 550 (4th Cir. 1974); United States v. Day, 476 F.2d 562, 568 (6th Cir. 1973); Cody v. United States, 460 F.2d 34, 37 (8th Cir. 1972); Stevens v. United States, 440 F.2d 144, 149 (6th Cir. 1971); U.S. v. Henson, 55 F. Supp. 2d 528, 529 (S.D.W.Va. 1999); Hamilton v. Accu-tek, 935 F. Supp. 1307, 1318 (E.D.N.Y. 1996); Fresno Rifle and Pistol Club, Inc. v. Van de Kamp, 746 F. Supp. 1415, 1419 (E.D. Cal. 1990), aff'd, 965 F.2d 723 (9th Cir. 1992); United States v. Kozerski, 518 F. Supp. 1082, 1090 (D.N.H. 1981), aff'd 740 F.2d 952 (1st Cir. 1984).

[9]The Nevada Constitution Article I, Section 11(1), grants the right to bear arms to "[e]very citizen," whereas the Federal constitution refers to "the people." U.S. Const. amend. II.

[10]Napier, 233 F.3d at 404.

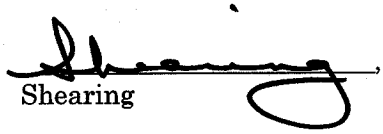
[11]U.S. Const. art. VI.

[12]Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992) (discussing McCulloch v. State of Maryland, 17 U.S. (4 Wheat.) 316 (1819).

[13]Napier, 233 F.3d at 404.

Having reviewed Hall's contentions and concluded that they lack merit, we

ORDER the district court's denial of the writ petition AFFIRMED.



_____, J.
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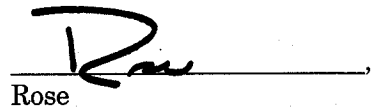

_____, J.
Rose

_____, J.
Becker

cc: Hon. William A. Maddox, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk