

IN THE SUPREME COURT OF THE STATE OF NEVADA

HYRUM JOSEPH WEST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59973

FILED

DEC 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of sale of a controlled substance. Fifth Judicial District Court, Nye County; Lee A. Gates, Judge.

Appellant Hyrum Joseph West entered a conditional guilty plea reserving the right to challenge the denial of his pretrial motion to dismiss the information. See NRS 174.035(3). Although we review a district court's decision to grant or deny a motion to dismiss for abuse of discretion, Hill v. State, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008), we review constitutional challenges and questions of law de novo, Grey v. State, 124 Nev. 110, 117, 178 P.3d 154, 159 (2008); Bailey v. State, 120 Nev. 406, 407, 91 P.3d 596, 597 (2004).

West contends that the district court should have dismissed the information because the State's decision to prosecute this case violated the Double Jeopardy Clause. West argues that the criminal conduct alleged in this case (CR-6693) was part of the same course of conduct

alleged in a previously prosecuted case (CR-6429) and should have been prosecuted in that case. West further argues that splitting the prosecution of this course of conduct into two separate cases resulted in an unconstitutional piecemeal prosecution. We disagree.

The Double Jeopardy Clause protects “against a second prosecution for the same offense after conviction.” North Carolina v. Pearce, 395 U.S. 711, 717 (1969) (emphasis added), overruled on other grounds by Alabama v. Smith, 490 U.S. 794 (1989). Here, West was prosecuted for two different offenses: CR-6693 was based upon a two-count information alleging that on June 17, 2010, West sold a controlled substance within 1,000 feet of a park and trafficked more than 4 grams but less than 14 grams of methamphetamine, and CR-6429 was based upon a single-count information alleging that on July 10, 2010, West trafficked more than 28 grams of methamphetamine.

Because the prosecutions arose from two separate and distinct criminal transactions they did not implicate the Double Jeopardy Clause. See Blockburger v. United States, 284 U.S. 299, 302 (1932) (“Each of several successive sales constitutes a distinct offense, however closely they may follow each other.”). Furthermore, the joinder of these cases was not mandatory, see NRS 173.115 (joinder of offenses), and the State’s decision to prosecute the cases separately did not result in an unconstitutional piecemeal prosecution, see United States v. Garner, 529 F.2d 962, 971 (6th Cir. 1976) (observing that compulsory joinder is not a constitutional

requirement). Accordingly, we conclude that the district court did not abuse its discretion by denying West's motion to dismiss the information, and we

ORDER the judgment of conviction AFFIRMED.

Saitta, J.
Saitta

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Chief Judge, Fifth Judicial District Court
Hon. Lee A. Gates, Senior Judge
Harry R. Gensler
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk