IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN THOMAS FALVEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76664-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

John Thomas Falvey appeals from a judgment of conviction, pursuant to a jury verdict, of failure of a tier 1 sex offender to complete annual registration. Fourth Judicial District Court, Elko County; William G. Rogers, Senior Judge.

First, Falvey claims the district court erred by denying his motion to dismiss the information. Falvey asserts the charge in Count 3 of the second amended criminal information did not satisfy the requirements of NRS 173.075 because it did not identify the basis for why Falvey was required to register as a sex offender. Specifically, Falvey asserts the State did not show that his California conviction for indecent exposure falls under the purview of the sex offender registration requirements of NRS Chapter 179D because the State did not identify the conduct he committed in California.

"[T]he information must be a plain, concise and definite written statement of the essential facts constituting the offense charged." NRS 173.075(1). "The sufficiency of an . . . information is to be determined by practical rather than technical considerations." *Laney v. State*, 86 Nev. 173, 178, 466 P.2d 666, 669 (1970) (quoting *Clay v. United States*, 326 F.2d 196,

198 (10th Cir. 1963). "[B]efore a conviction, the [information] standing alone must contain the elements of the offense intended to be charged and must be sufficient to apprise the accused of the nature of the offense so that he may adequately prepare a defense." *Id.* (quoting *Clay*, 326 F.2d 196, 198 (10th Cir. 1963)). "We review a district court's decision to grant or deny a motion to dismiss an [information] for abuse of discretion." *Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008).

Count 3 of the information charged Falvey with failure of a tier 1 sex offender to complete annual registration as defined by NRS 179D.480 and NRS 179D.550, and alleged that on or about October 16, 2015, Falvey, "a sex offender, unlawfully failed to complete his annual registration." We conclude this provided Falvey with sufficient notice of all of the elements of the criminal act charged in Count 3 in order to prepare his defense. Contrary to Falvey's assertions, it was not necessary for the State to identify the conduct underlying Falvey's prior indecent exposure conviction in order for him to be sufficiently apprised of the offense he was charged with. Accordingly, we conclude the district court did not abuse its discretion by denying Falvey's motion to dismiss the information.

Second, Falvey claims that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

At trial, a copy of Falvey's California conviction for indecent exposure, along with a copy of the complaint and the court minutes, were admitted and presented to the jury. These documents stated that on or

about June 2, 2001, Falvey "willfully, unlawfully, and lewdly expose[d] his person, and the private parts thereof, in a public place, and in a place where there were present other persons to be offended and annoyed thereby." The documents also stated that, as a result of his conviction, Falvey was required to register as a sex offender. The jury heard testimony that Falvey had previously registered as a sex offender in Elko County, Nevada, but he had not filed any registration forms between 2010 and October 16, 2015. On his prior registration form, Falvey provided a physical address for his location, as well as a P.O. Box address. On October 1, 2015, an annual verification form was mailed to Falvey at his P.O. Box address but it was returned as undeliverable. On October 16, 2015, an Elko County Sheriff's deputy went to the physical address listed on Falvey's prior sex offender registration form. Falvey was not present at that address, and the manager for the RV Park at that address testified that Falvey had not resided at that address since she began working there in July 2015.

The jury could have reasonably inferred from the evidence presented that Falvey was a sex offender who failed to complete his annual sex offender registration form. *See* NRS 179D.097(u), (v); NRS 179D.480(1)(a). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Finally, Falvey claims the district court erred at sentencing by ordering him to submit to lifetime supervision pursuant to NRS 176.0931. We agree. NRS 176.0931 requires a district court to include in sentencing a special sentence of lifetime supervision for persons convicted of certain enumerated offenses. A conviction under NRS 179D.480 for failure of a tier 1 sex offender to complete annual registration is not among the offenses

enumerated in NRS 176.0931. Accordingly, we conclude the district court erred by imposing a special sentence of lifetime supervision. Therefore, we reverse the imposition of the special sentence of lifetime supervision, and we remand for the district court to enter an amended judgment of conviction that removes the special sentence of lifetime supervision.

Having concluded Falvey is only entitled to the relief described herein, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. William G. Rogers, Senior Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk