SHARATH CHANDRA, ADMINISTRATOR, NEVADA REAL ESTATE DIVISION, APPELLANT, *v.* MELANI SCHULTE; AND WILLIAM R. SCHULTE, RESPONDENTS.

No. 75477

December 26, 2019 454 P.3d 740

Appeal from district court orders directing payment from the Real Estate Education, Research and Recovery Fund. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

Reversed.

[Rehearing denied February 14, 2020]

[En banc reconsideration denied March 23, 2020]

Aaron D. Ford, Attorney General, *David J. Pope*, Chief Deputy Attorney General, and *Donald J. Bordelove*, Deputy Attorney General, Carson City, for Appellant.

Law Office of Amberlea Davis and *Amberlea S. Davis*, Las Vegas, for Respondent Melani Schulte.

William R. Schulte, in Pro Se.

Before the Supreme Court, HARDESTY, STIGLICH and SILVER, JJ.

OPINION

By the Court, STIGLICH, J.:

The Nevada Real Estate Education, Research and Recovery Fund (the Fund) compensates victims of real estate fraud whose judgment against a fraudulent real estate licensee is uncollectable. In this appeal, the Administrator of the Nevada Real Estate Division challenges nine orders directing payment from the Fund, one to Melani Schulte individually and eight to various LLCs in her control. The orders stem from Melani's then-husband William Schulte's fraudulent management of properties, all but one of which were jointly owned by the Schultes. Because Melani and William were married at the time of the fraud, we conclude that the spousal exception to Fund recovery in NRS 645.844(4)(a) prohibits Melani's individual recovery and the district court erred in granting her an award from the Fund. Further, because transactions involving one's own properties do not require a real estate license, the district court erred in granting awards to the eight LLCs under NRS 645.844(1). Accordingly, we reverse the nine district court orders directing payment from the Fund.

BACKGROUND

Respondents William and Melani Schulte jointly owned numerous properties during their marriage. William, who at the time was a real estate licensee, managed these properties, among others, while working for his and Melani's real estate management business. In 2013, the Nevada Real Estate Commission found that William committed real estate misconduct by defrauding both third-party clients and also fraudulently managing his and Melani's jointly owned properties. Melani was uninvolved in the misconduct.

Also in 2013, the district court granted a divorce between William and Melani. In the divorce decree, the district court awarded numerous properties that William fraudulently managed to Melani. These properties are currently held by distinct LLCs with Melani as the successor in interest.

As part of the divorce proceeding, the district court granted 21 individual judgments against William resulting from his real estate misconduct. One judgment was in favor of Melani for a payment she made to a third-party client to satisfy an outstanding judgment due to William's fraud. Twenty judgments were in favor of Melani's distinct LLCs. These judgments compensated the LLCs for William's failure to remit rent and security deposits while managing the LLC's properties that, at the time, he and Melani jointly owned.

After failing to collect on the judgments from William, Melani filed nine verified petitions for orders directing payment from the Fund, one requesting payment to Melani as an individual and eight to her LLCs. Appellant Sharath Chandra, as the Administrator of the Nevada Real Estate Division, opposed these petitions. The district court granted the petitions in nine nearly identical orders. Chandra appealed.[1]

DISCUSSION

The Fund is a special revenue fund that aids victims of real estate fraud whose judgments against real estate licensees have proven to be uncollectable.[2] *See* NRS 645.842; *Colello v. Adm'r of Real Estate Div. of State of Nev.*, 100 Nev. 344, 347, 683 P.2d 15, 16 (1984). In this appeal, we consider whether the district court properly granted

[1]Melani challenges Chandra's standing to bring this action. "Standing is a question of law reviewed de novo." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). NRS 645.845(1) specifically provides that "[w]henever the court proceeds upon a [Fund recovery] petition as provided in NRS 645.844, the Administrator may answer and defend any such action against the Fund on behalf of the Fund." *See also Chandra v. Melani*, Docket No. 75477 (Order Dismissing Appeal in Part, November 30, 2018) (holding that Chandra may appeal from orders directing payment from the Fund). We hold that Chandra, as the Administrator, has standing.

[2]Every licensed real estate broker, broker-salesperson, and salesperson pays a fee to finance the Fund. *See* NRS 645.843.

Melani's petitions for recovery from the Fund under NRS 645.844 for both herself individually and for the eight LLCs under her control. In doing so, we must determine whether the spousal exception to recovery under NRS 645.844(4)(a) applies to Melani, who was married to William at the time of his misconduct but was no longer married at the time she sought recovery from the Fund. We also consider whether NRS 645.844(1) allows recovery from the Fund for properties that were co-owned by William at the time of his misconduct.

The spousal exception prohibits Melani's recovery

Chandra argues that Melani may not recover from the Fund because the spousal exception to recovery applied at the time of the fraud, when Melani was still married to William. NRS 645.844 requires a petitioner seeking payment from the Fund to satisfy numerous requirements, including that "[u]pon the hearing on the petition, the petitioner must show that . . . [t]he petitioner is not the spouse of the debtor."[3] NRS 645.844(4)(a). In this case, the district court found that the spousal exception did not apply because Melani was not married to William *at the time* she filed her action for Fund recovery. We conclude that the district court erred.

Conclusions of law, including the interpretation and construction of statutes, are reviewed de novo. *Dewey v. Redev. Agency of Reno*, 119 Nev. 87, 93-94, 64 P.3d 1070, 1075 (2003). Where a statute is clear and unambiguous, this court gives effect to the ordinary meaning of the plain language of the text without turning to other rules of construction. *Cromer v. Wilson*, 126 Nev. 106, 109, 225 P.3d 788, 790 (2010). Conversely, when a statute is ambiguous, this court construes the statute by looking at the Legislature's intent and conforming the construction to public policy. *Great Basin Water Network v. State Eng'r*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010). A statute is ambiguous if it "is capable of being understood in two or more senses by reasonably informed persons" or is "one that otherwise does not speak to the issue before the court." *Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007) (internal quotation marks omitted).

We determine that NRS 645.844(4)(a) is ambiguous as to timing. When reading the introductory clause of NRS 645.844(4) and NRS 645.844(4)(a) together, a reasonably informed person may understand the point of time a petitioner must show she is not the spouse of the debtor to be "[u]pon the hearing on the petition." Alternatively, an equally reasonably informed person may conclude that at the hearing, the petitioner must show she was not the spouse of the

[3]The "debtor" refers to the fraudulent actor, in this case William, who failed to satisfy an outstanding judgment in favor of the petitioner. *See* NRS 645.844.

debtor at an unspecified time because NRS 645.844(4)(a) is silent as to timing. *See, e.g.*, *Pub. Emps.' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 154, 179 P.3d 542, 553 (2008) (reasoning that a statute's use of the present tense is neutral and expresses no intent as to timing); *see also Coal. for Clean Air v. S. Cal. Edison Co.*, 971 F.2d 219, 224-25 (9th Cir. 1992). Therefore, NRS 645.844(4) is capable of being understood in two or more senses. Moreover, NRS 645.844(4)(a) does not speak to the issue of when the spousal exception applies at all. Under either theory, NRS 645.844(4)(a) is ambiguous.

When construing an ambiguous statute, we often look to analogous statutory provisions. *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000). Our statutes governing the Fund are similar to California's statutes establishing its real estate fund. *Compare* NRS 645.841-.8494, *with* Cal. Bus. & Prof. Code §§ 10470-10481 (West 2008). In fact, the Legislature modeled the Fund after California's fund. *See* Hearing on S.B. 328 Before the Assembly Judiciary Comm., 54th Leg. (Nev., April 4, 1967). In construing NRS 645.844(4)(a), we consider California's interpretation of its nearly identical spousal exception. *See* Cal. Bus. & Prof. Code § 10471(c)(7)(A).

In *Powers v. Fox*, 158 Cal. Rptr. 92, 95 (Ct. App. 1979), the California Court of Appeal reasoned that the "theory of the statute setting up the [Real Estate Recovery Fund] is that a citizen has relied, to his damage, on the implied representation, inherent in the fact of licensure, that the licensee is honest and dependable." In contrast, "[t]he obvious reason for the [spousal] exception . . . is that, where the victim and the fraudulent actor are married, the reliance is more likely based on the marital relationship with the trust therein involved than on the [real estate] license." *Id.* The court in *Powers* therefore held that the petitioner could not recover for her husband's misconduct that occurred during their marriage. *Id.*

We find the California Court of Appeal's reasoning persuasive. The theory of the Fund is not to aid those who mistakenly trusted a dishonest spouse, but to compensate victims who relied on real estate licensure to filter out dishonest real estate professionals. *See* NRS 645.844; *Colello*, 100 Nev. at 347, 683 P.2d at 16. NRS 645.844(4)(a) is a blanket prohibition on spousal recovery that helps ensure the Fund only awards victims who selected and relied upon a licensee because of the fact of licensure. We conclude that only one interpretation of NRS 645.844(4)(a) adequately comports with this purpose: the petitioner may not be the spouse of the debtor *at the time of the fraud*.

While we confirmed in *Colello* that the Fund's statutory scheme should be "liberally construed in order to effectuate the benefits intended to be obtained," we also reaffirmed that "[w]here alternative interpretations of a statute are possible, the one producing a rea-

sonable result should be favored." 100 Nev. at 347, 683 P.2d at 17. For example, in *Administrator of Real Estate Education, Research & Recovery Fund v. Buhecker*, 113 Nev. 1147, 1149-51, 945 P.2d 954, 955-56 (1997), we refused to liberally construe the meaning of "judgment" in NRS 645.844(1) and allow a married couple to use their joint judgment against a real estate licensee in order to recover separate awards from the Fund when doing so would be inconsistent with the intent of the Fund.

Construing the spousal exception to apply at the time of the hearing on the petition does not effectuate the intended purpose of the Fund. We are not unsympathetic to Melani, who likely expected William to work for their real estate management business with integrity not because he held a real estate license, but because of the trust underlying their marital relationship. Allowing Melani to recover, however, would not conform to the spousal exception's purpose of ensuring the Fund only compensates victims who relied on the real estate licensing scheme. Rather than satisfy the aims of the Fund in this context, it would simply increase the community property of a marital unit in order to satisfy a divorce award. Moreover, applying the spousal exception at the time of filing or upon the hearing as Melani urges could lead to absurd results regarding the timing of a claim, enable couples acting fraudulently in concert to recover, and deprive other Nevadans who actually relied on licensure from recovering when they are defrauded.[4]

Therefore, we hold that the spousal exception applies at the time of the fraud, not at the filing of the petition or upon the hearing. Because Melani was married to William when he committed the fraud, she may not recover from the Fund.

The LLCs may not recover because the fraudulent transactions did not require a license

We next consider whether Melani's eight LLCs may recover from the Fund. The district court granted Melani's petitions and directed payments to the LLCs from the Fund under NRS 645.844(1). Chandra contends that because William co-owned the defrauded properties, the fraudulent transactions did not require a real estate license and Fund recovery was therefore impermissible. We agree.

Conclusions of law are reviewed de novo. *Dewey*, 119 Nev. at 93, 64 P.3d at 1075. In order to recover from the Fund, a petitioner must show that the underlying judgment is "with reference to any transaction for which a license is required" pursuant to NRS Chapter 645. NRS 645.844(1). NRS Chapter 645 excludes any "[o]wner or lessor of property" who manages the property or conducts real estate

[4]The Nevada Real Estate Division aims to maintain the Fund at $300,000, and Melani's petitions for recovery are for a total of $94,045.46, nearly a third of the total available. *See* NRS 645.842.

transactions "with respect to the property in the regular course of or as an incident to the management of or investment in the property." NRS 645.0445(1)(a).

We conclude that NRS Chapter 645 does not apply to William's transactions regarding the LLC-owned properties. William co-owned the victim properties as community property when he fraudulently collected their rents and security deposits. As such, no real estate license was required. *See* NRS 645.0445(1)(a); *see also* NRS 645.030(1) (defining "real estate broker" as a person performing tasks "for another"); NRS 645.019 (defining "property management" as requiring compensation pursuant to a property management agreement); *Stout v. Edmonds*, 225 Cal. Rptr. 345, 347 (Ct. App. 1986) ("[I]t is well established that a person does not act as a broker and does not require a license when he deals with his own property."). This outcome is in accordance with the intent of the Fund to aid third parties and not co-owners. *See Colello*, 100 Nev. at 347, 683 P.2d at 16; *see also Loomis v. Lange Fin. Corp.*, 109 Nev. 1121, 1127, 865 P.2d 1161, 1164 (1993) ("The legislature has enacted a comprehensive [real estate licensing] regulatory scheme . . . for the purpose of protecting the public in their dealings with persons in the real estate profession.").

William and Melani, as a community, were defrauded by William as an individual. Although Melani was uninvolved in the fraud and the properties were transferred from the community to Melani individually, it would be improper under NRS 645.844(1) to allow Melani to fictitiously remove William from the community at the time of the fraud so that she could assert a claim that required a real estate license. *See Buhecker*, 113 Nev. at 1149-50, 945 P.2d at 955-56 (holding that a husband and wife who jointly owned defrauded property could not separate their judgment in order to recover additional awards from the Fund). William, as an owner of the properties he defrauded, could not be said to have expected himself to be honest and dependable because of his real estate license. The Fund therefore may not serve to enlarge his former community property.

We also find Melani's argument that William defrauded the properties in his capacity as a real estate licensee while working for the marital community's real estate management business unpersuasive. Regardless of whether William directly managed the properties or managed them through the real estate management business, the Fund does not compensate victims when a co-owner of community property defrauds the community. The district court therefore erred in finding that the judgments in favor of the LLCs refer to transactions requiring a real estate license. Therefore, the LLCs failed to meet NRS 645.844(1)'s requirement.

Having concluded that the spousal exception applies at the time of the misconduct, and that transactions involving one's own prop-

erties do not require a real estate license and therefore do not qualify for NRS Chapter 645's protections, we hold that neither Melani nor her LLCs may recover from the Fund. Accordingly, we reverse the district court orders directing payment from the Fund.[5]

Hardesty and Silver, JJ., concur.

DARRELL E. WHITE, an Individual, Appellant, *v.* STATE OF NEVADA, DIVISION OF FORESTRY; and CANNON COCHRAN MANAGEMENT SERVICES, INC., aka CCMSI, a Foreign Corporation, Respondents.

No. 76737

December 26, 2019 454 P.3d 736

Appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Affirmed.

Gallian Welker & Beckstrom and *Travis N. Barrick*, Las Vegas, for Appellant.

Lewis Brisbois Bisgaard & Smith LLP and *Daniel L. Schwartz* and *Joel P. Reeves*, Las Vegas, for Respondents.

Before the Supreme Court, Hardesty, Stiglich and Silver, JJ.

OPINION

By the Court, Hardesty, J.:

We are asked to determine whether a person who suffers an industrial injury while incarcerated but who subsequently is released and seeks workers' compensation disability benefits due to that injury is entitled to have the benefits calculated at the minimum wage guaranteed under the Nevada Constitution. Under the modified workers' compensation program for prisoners, NRS 616B.028, the amount of compensation a prisoner may receive upon release is based on the average monthly wage the prisoner actually received as of the

[5]Because we hold that Melani and her LLCs cannot recover under NRS 645.844(4)(a) and NRS 645.844(1), respectively, we need not address Chandra's alternative arguments regarding whether the district court lacked jurisdiction to amend the decree of divorce. We also need not decide the total amount Melani and her LLCs may collectively recover from the Fund. *See* NRS 645.844(1).

date of the injury. The fact that this wage may be low—here $22.93, amounting to a daily wage of $0.50—does not permit the administrative appeals officer to recalculate the average monthly wage at an amount the prisoner did not actually receive. Therefore, we affirm the district court's order denying the petition for judicial review.

FACTS AND PROCEDURAL HISTORY

In December 2015, while incarcerated in the Nevada Department of Corrections (NDOC), appellant Darrell White injured his right middle finger while working for respondent Nevada Division of Forestry through an NDOC work program. White timely filed a workers' compensation claim, and the Division of Forestry's insurance carrier, respondent Cannon Cochran Management Services, Inc., accepted White's claim. In July 2016, White was released from NDOC. White retained counsel and notified Cannon Cochran he had had trouble receiving medical care while incarcerated and now wished to be seen by a medical provider to rehabilitate his finger. Cannon Cochran scheduled him to be seen by a medical professional. From August 6, 2016, until December 28, 2016, totaling 144 days, White was deemed temporarily totally disabled for the injuries sustained while he was incarcerated.

Cannon Cochran notified White it had calculated his total wages to be "$69.30" from October 1 through December 31, 2015, with an average monthly wage calculation of "$22.93 for a daily rate of $0.50." White administratively appealed Cannon Cochran's calculation and argued that his wage should have been calculated at $7.25 per hour—the minimum wage at the time of his injury. The thrust of his argument was that NRS 616B.028, the modified workers' compensation program for persons who are injured while incarcerated, controlled his rate of compensation only during incarceration. White argued the statute did not detail what happens after incarcerated persons are released but are still injured from an accident that occurred while incarcerated. White contended that his monthly wage for the purpose of disability benefits should be set at no less than the minimum wage guaranteed by the Minimum Wage Amendment to the Nevada Constitution. The State disputed White's constitutional argument, claiming the date of his injury controlled the calculation of workers' compensation and he was therefore entitled to $0.50 a day, his wage while incarcerated. The State further argued that White could not have his calculation shifted simply because White believed the calculation was unfair; instead, the State averred that there must be a statute to support the argument.

The appeals officer denied White's appeal and affirmed Cannon Cochran's calculation. The appeals officer found "there is no doubt that claimant, subsequent to release from custody, was declared unable to work," but reasoned that White "entered into this 'employ-

ment' at the wage set by the work program/prison industry" and his benefits were set by the wages he earned while working for the Division of Forestry. The appeals officer concluded that Cannon Cochran correctly calculated White's average monthly wage because, under NRS 616B.028(2), coupled with NRS 616C.425, "the amount of compensation [owed to White] must be determined as of the date of the accident."

White petitioned for judicial review in the district court and reiterated the constitutional claim he had raised at the administrative level. The State rebutted his arguments again on the grounds that the modified workers' compensation program under NRS 616B.028(2), along with NRS 616C.425(1), controlled White's daily wage calculation at $0.50 a day.

The district court affirmed the appeals officer's decision and denied the petition for judicial review. The district court found that, although NRS 616B.028 does not specifically address benefits after a prisoner has been released from custody, NRS 616C.500(2) addresses the issue by providing that prisoners "are entitled to receive [workers' compensation] benefits if the injured employee is released from incarceration during the period of disability." The district court rejected White's constitutional argument and instead relied on NRS 616C.425(1), finding average monthly wage calculations are determined by the date of accident. The district court held neither Cannon Cochran nor the appeals officer erred in White's wage calculation.

White appeals to this court. Following oral argument, we ordered simultaneous supplemental briefing on the issue of whether the definition of "wages" in NAC 616B.964 violates the Minimum Wage Amendment to the Nevada Constitution.

DISCUSSION

"This court reviews an administrative decision in the same manner as the district court." *State, Dep't of Motor Vehicles v. Taylor-Caldwell*, 126 Nev. 132, 134, 229 P.3d 471, 472 (2010). Accordingly, "an administrative appeals officer's determination of questions of law, including statutory interpretation, [are reviewed] de novo." *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). However, "this court defer[s] to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." *Taylor v. State, Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013) (alteration in original) (internal quotation marks omitted).

NRS 616B.028 provides for a modified workers' compensation program for prisoners who incur workplace injuries while incarcerated. The statute mandates that the Division of Industrial Relations of the Department of Business and Industry (the Division) "adopt regulations setting forth a modified program of industrial insur-

ance to provide offenders with industrial insurance against personal injuries arising out of and in the course of their work" while incarcerated.[1] NRS 616B.028(3); *see also* NRS 616A.100 (defining the "Division"). Inmates are "limited to the rights and remedies established by the provisions of the modified program of industrial insurance established by regulations adopted by the Division" and are "not entitled to any rights and remedies" of Nevada's workers' compensation laws set forth in NRS Chapters 616A through 617. NRS 616B.028(2).

As mandated, the Division adopted NAC 616B.960-.986 detailing the modified workers' compensation program for prisoners who are injured during their work in the prison industry program. NAC 616B.960. Under these regulations, payment of disability compensation begins only after the prisoner is discharged from custody or released on parole. NAC 616B.972(3). The amount of compensation must be determined as of the date of injury and is based on the "average monthly wage" received on that date. NRS 616A.065(1); NRS 616C.425; *see also* NAC 616B.962 (applying statutes and regulations in NRS Chapters 616A to 617 to the calculation of prisoners' benefits to the extent they do not conflict with the regulations for the prisoners' modified program). NAC 616B.964(1) defines a prisoner's "wages" as "the money [a prisoner] earns in the prison industry program before any deductions are made from those earnings." Wages do not include "[t]he value of room and board, medical care and other goods and services provided by the Department of Corrections," "[t]he value of good time earned towards" sentence reduction, or "[i]ncome from any source other than the prison industry program." NAC 616B.964(2)(a)-(c).

Turning to the calculation of White's compensation under the modified program, the record shows that his average monthly wage at the time of the injury was based on his gross earnings, without any deductions for room and board, medical care, or good time credits while he was incarcerated. White's gross earnings were $69.30 from October 1, 2015, through December 31, 2015, resulting in

[1]A review of the legislative history of this statute reveals that this modified workers' compensation program for prisoners stemmed from a desire to cut costs from the fire preservation programs within the Division of Forestry and reduce civil rights litigation arising from injuries sustained by inmates while fighting fires. The hearings surrounding the bills to enact the benefits program did not evidence a concern about compensating the inmates for their injuries, but rather focused on limiting liability for those injuries. *See* Hearing on S.B. 458 Before the Senate Commerce & Labor Comm., 68th Leg. (Nev., June 27, 1995) (noting that the ability of prisoners, whose medical care is covered in the prison system, to sue the Division of Forestry for failure to train and having inadequate equipment "is a legal loophole" needing to be filled); Hearing on A.B. 587 Before the Assembly Comm. on Labor & Mgmt., 68th Leg. (Nev., June 6, 1995) ("[I]ndividuals who worked for the Division of Forestry, in work camps, were not ' . . . covered by exclusive remedy . . . .'").

an average monthly wage of $22.93. White does not dispute that $22.93 correctly reflects the average monthly wage he received as of the date of his injury.[2] Instead, the only argument White has raised is that this calculation is unfair because he is no longer incarcerated and his wage should be recalculated and set to at least the state minimum wage. However, the date of injury and the wages earned by a claimant at that time control the calculation of a prisoner's workers' compensation benefits, NRS 616C.425(1); NAC 616B.964(1), and nothing in the regulations or statutes permits Cannon Cochran or the appeals officer to ignore the wage actually received at the time of the injury.[3] *Cf.* NAC 616B.982 (precluding an offender from reopening a workers' compensation claim on the ground that the wage earned during incarceration is low).

White's counsel stated throughout briefing and oral argument that White was not challenging the underlying wage he earned while incarcerated. Despite this claim, the result White seeks would require us to disturb the underlying wage and conclude the wages he earned while incarcerated were unconstitutional. Whether inmates are entitled to the minimum wage under our constitution is an open question in Nevada, and we conclude that a workers' compensation benefits challenge is not the proper vehicle for us to resolve this question. The Legislature has afforded White—and all Nevadans—a detailed scheme to challenge unlawful wages. *See generally* NRS Chapters 606-618 (detailing Nevada's Labor and Industrial Relations statutory scheme). Because White improperly collaterally challenges the wages he earned in the workers' compensation context, instead of directly challenging the wages he earned from his employer, NDOC, we decline to consider this argument. *See Prieur v. D.C.I. Plasma Ctr. of Nev., Inc.*, 102 Nev. 472, 473-74, 726 P.2d 1372, 1372-73 (1986) (affirming the dismissal of litigation by two prisoners after they brought suit against the blood plasma facility where they provided services and not their employer, NDOC).

CONCLUSION

The prisoners' workers' compensation statutory scheme requires compensation to be calculated based on the claimant's wages, as defined in NAC 616B.964, on the date of the injury. Despite failing to

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[2]We note that neither Cannon Cochran, nor the appeals officer, nor the district court cited or relied upon the administrative code provision that specifically applies to a prisoner's workers' compensation calculation. Nevertheless, we conclude that their calculation was in accordance with NAC 616B.964. *Cf. Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("This court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason.").

[3]To the extent White argues that the date of injury is not controlling because he was not on work restriction following the injury, he provides no authority for his alternative method for calculating the average monthly wage.

apply NAC 616B.964 during its review, the appeals officer's order affirming Cannon Cochran's calculation of White's average monthly wage was nonetheless correct. We decline to consider White's argument that he was entitled to receive the minimum wage for his work while incarcerated, as collateral challenges to wages in a workers' compensation context are improper. Therefore, we affirm the district court's order denying the petition for judicial review.

STIGLICH and SILVER, JJ., concur.

HIGH DESERT STATE PRISON; THE STATE OF NEVADA; AND OFFENDER MANAGEMENT DIVISION, APPELLANTS, *v.* LUIS RICHARD SANCHEZ, RESPONDENT.

No. 77622

December 26, 2019 454 P.3d 1270

Appeal from a district court order granting in part a postconviction petition for a writ of habeas corpus challenging the computation of time served. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Affirmed.

Aaron D. Ford, Attorney General, and *Natasha M. Gebrael*, Deputy Attorney General, Carson City, for Appellants.

Luis Richard Sanchez, Indian Springs, in Pro Se.

Before the Supreme Court, HARDESTY, STIGLICH and SILVER, JJ.

OPINION

By the Court, HARDESTY, J.:

NRS 209.4465(7)(b) permits the award of good time credit deductions from an offender's minimum sentence towards the parole eligibility date for crimes committed on or after July 17, 1997. In 2007, the Legislature amended NRS 209.4465 to preclude the application of these statutory good time credits to an offender's parole eligibility when convicted of certain crimes, including felony sex offenses and category A or B felonies. As a result, offenders convicted of the crimes enumerated in NRS 209.4465(8) may have credits applied to their parole eligibility date if they committed the crimes prior to the amendment's effective date of July 1, 2007, while those offenders captured by the addition of subsection 8 may not.

This appeal requires us to determine which version of NRS 209.4465 applies when the offender's criminal conduct began prior to the effective date of the 2007 amendment and continued through its enactment. Respondent Luis Sanchez was convicted of two counts of attempted lewdness with a child under 14—a crime captured by the addition of subsection 8 to NRS 209.4465—and was alleged to have committed the offenses between 2006 and 2013. The district court applied the 2003 version of NRS 209.4465, but the State contends this was error because the attempted lewdness counts were charged as continuing offenses through 2013. We hold that NRS 209.4465(8) (2007) applies when the charged offense is continuous in nature. However, because attempted lewdness with a child under 14 is not a continuing offense, we conclude the district court properly applied the pre-2007 version of the statute, and we affirm.

FACTS AND PROCEDURAL HISTORY

The State charged Sanchez with two counts of attempted lewdness with a child under 14 in violation of NRS 201.230 and NRS 193.330. The information provided that Sanchez committed these offenses on or between May 8, 2006, and January 31, 2013, but did not otherwise distinguish any specific dates within this range. Sanchez pleaded guilty to the charged offenses, and the district court entered a judgment of conviction and sentenced him to two consecutive terms of 5 to 15 years for his convictions.

Thereafter, Sanchez filed a postconviction petition for a writ of habeas corpus, arguing that the Nevada Department of Corrections miscalculated his parole eligibility by failing to properly apply good time credit to his minimum term of imprisonment. The district court agreed and granted Sanchez's petition in part.[1] Specifically, the district court found that NRS 209.4465(7)(b) (2003), pursuant to *Williams v. State*, 133 Nev. 594, 402 P.3d 1260 (2017), afforded Sanchez a good time credit deduction from his parole eligibility date. The State appeals.

DISCUSSION

The State argues on appeal that the district court erred by applying the pre-2007 version of NRS 209.4465 because Sanchez's crime—attempted lewdness with a child under 14—constituted a continuing offense. As such, the State maintains that the district court should have applied the version of the statute in effect when

[1]The district court denied several other claims relating to credits. In his answering brief, Sanchez challenges the district court's determination concerning his work and merit credits calculations. Because Sanchez did not pursue an appeal from the district court's order, we lack jurisdiction to address Sanchez's argument here. NRS 34.575(1).

the crime ended in 2013. NRS 209.4465(8) (2007), the State continues, precludes the application of good time credit against Sanchez's minimum sentence because the crime Sanchez was convicted of constitutes a category B felony.

We review questions of statutory construction de novo. *Jackson v. State*, 128 Nev. 598, 603, 291 P.3d 1274, 1277 (2012). NRS 209.4465(7)(b) mandates that credits earned pursuant to the statute, by an offender who committed a crime on or after July 17, 1997, must "[a]pply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole." In 2007, the Legislature amended NRS 209.4465 to add subsection 8, which excludes offenders who committed certain offenses from having statutory credits applied to their minimum terms. 2007 Nev. Stat., ch. 525, § 5, at 3177. Relevant to this appeal, NRS 209.4465(8)(b) and (d) prohibit offenders convicted of "[a] sexual offense that is punishable as a felony" or "[a] category A or B felony," respectively, from receiving the benefit of such credits.

Logically, where an offender committed a crime that began prior to the 2007 amendment to NRS 209.4465 and ended after the statute's enactment, the nature of the convicted offense controls which version of the statute applies. If the nature of the convicted offense is not continuous, NRS 209.4465 (2003) applies. But if the convicted offense is continuous in nature, NRS 209.4465 (2007) applies.

Attempted lewdness with a child under the age of 14 constitutes both a category B felony and a sexual offense punishable as a felony. *See* NRS 201.230 (2005); NRS 193.330(1)(a)(1) (1997). As such, Sanchez would be prohibited from applying good time credits to his parole eligibility date under the 2007 version of NRS 209.4465. Therefore, we must determine whether attempted lewdness with a child under 14 constitutes a continuing offense. We conclude that it does not.

We "consider an offense to be a continuing offense only when 'the explicit language of the substantive criminal statute compels such a conclusion, *or* the nature of the crime involved is such that [the Legislature] must assuredly have intended that it be treated as a continuing one.'" *Rimer v. State*, 131 Nev. 307, 319, 351 P.3d 697, 706 (2015) (alteration in original) (quoting *Toussie v. United States*, 397 U.S. 112, 115 (1970)). We determined in *Rimer v. State* that, considering the cumulative effect of child-abuse-and-neglect violations, the Legislature must have intended to treat such violations as a continuing offense. *Id*. at 319-20, 351 P.3d at 707. We are unpersuaded, however, by the State's arguments to extend this logic to the case at bar.

First, Sanchez was convicted under NRS 201.230 and NRS 193.330, and nothing in the language of these criminal statutes com-

pels us to conclude that the Legislature intended attempted lewdness with a child under the age of 14 to be treated as a continuing offense. Second, an "attempt" by definition is "[a]n act done with the intent to commit a crime, and tending but failing to accomplish it," not a pattern of behavior. NRS 193.330(1) (1997). Just because an act of sexual abuse may constitute child abuse—a continuing offense, *see* NRS 200.508(4)(a)—it does not follow that *attempted* lewdness with a child under the age of 14 should be treated as a continuing offense. Finally, we recognize that while the State was not required to allege an exact date of the offense committed here, the inclusion of a date range does not mean that the offense was a continuing offense. *See Wilson v. State*, 121 Nev. 345, 368-69, 114 P.3d 285, 301 (2005) (acknowledging that the State may allege "a time frame for an offense instead of a specific date, provided that the dates listed are sufficient to place the defendant on notice of the charges").

Because we conclude that attempted lewdness with a child under the age of 14 is not a continuing offense, we further conclude that the district court properly relied on the 2003 version of NRS 209.4465 and applied Sanchez's earned credits to his parole eligibility. Accordingly, we affirm the district court's order granting in part Sanchez's petition for a writ of habeas corpus.

Stiglich and Silver, JJ., concur.

THE STATE OF NEVADA, Appellant, *v.*
RIGOBERTO INZUNZA, Respondent.

No. 75662

December 26, 2019 454 P.3d 727

Appeal from a district court order granting respondent's pretrial motion to dismiss an indictment. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Affirmed.

Aaron D. Ford, Attorney General, Carson City; *Steven B. Wolfson*, District Attorney, *Jonathan VanBoskerck*, Chief Deputy District Attorney, and *Jacob J. Villani*, Deputy District Attorney, Clark County, for Appellant.

Darin Imlay, Public Defender, and *Deborah L. Westbrook* and *P. David Westbrook*, Chief Deputy Public Defenders, Clark County, for Respondent.

Before the Supreme Court, Hardesty, Stiglich and Silver, JJ.

OPINION

By the Court, Hardesty, J.:

The question presented in this case is whether the district court abused its discretion in granting respondent Rigoberto Inzunza's pretrial motion to dismiss the indictment for violation of his Sixth Amendment right to a speedy trial. The district court applied the factors enunciated in *Barker v. Wingo*, 407 U.S. 514, 530-33 (1972), and *Doggett v. United States*, 505 U.S. 647, 651-54 (1992), and concluded that the State violated Inzunza's right to a speedy trial because the State's gross negligence caused a 26-month delay between the filing of charges and Inzunza's arrest, and the State offered nothing to rebut the presumption that the delay prejudiced Inzunza. We conclude that, given the length of the delay and the finding that it was caused by the State's gross negligence, the district court did not err in concluding that Inzunza was entitled to a presumption of prejudice under the *Barker-Doggett* factors. The State did not rebut this presumption in its opposition to Inzunza's motion to dismiss or at the evidentiary hearing before the district court, nor has the State explained on appeal how Inzunza was not prejudiced by the delay. Therefore, we affirm the district court's dismissal of the indictment.

FACTS AND PROCEDURAL HISTORY

Rigoberto Inzunza lived with E.J.'s mother when E.J. was nine years old. During this time, Inzunza allegedly sexually assaulted E.J. while her mother was at work and her siblings were sleeping. The abuse was alleged to have continued for at least a year until Inzunza eventually moved out and relocated to New Jersey. Six years later, 15-year-old E.J. disclosed to her therapist that Inzunza had sexually assaulted her. The therapist informed E.J.'s mother, and E.J. and her mother both went to the North Las Vegas Police Department (NLVPD) to file a police report. The NLVPD interviewed E.J. and began an investigation into Inzunza. E.J.'s mother informed Detective Mark Hoyt that Inzunza lived in New Jersey. She also gave Detective Hoyt printouts from Inzunza's Facebook profile that depicted his car, New Jersey license plate, and his employer's work truck with the business's name and number. Following an attempt to locate Inzunza locally, Detective Hoyt submitted the case to the District Attorney's (DA's) office to file charges against Inzunza.

On December 3, 2014, one month after E.J. reported the sexual assault, the State filed a criminal complaint charging Inzunza with 10 counts of sexual assault of a minor under 14 years of age and 5 counts of lewdness with a child under 14 years of age. The NLVPD's records department staff entered the warrant into the National Crime Information Center (NCIC) database, but consistent with NLVPD policy, no one informed Detective Hoyt, and Detective Hoyt made

no further effort to follow up on the case. A little over two years later, on January 29, 2017, Monmouth County Sheriff's Department arrested Inzunza in New Jersey based on the outstanding warrant. He was transported to Nevada, and the State subsequently obtained an indictment, adding another count of sexual assault of a child under 14 years of age.

Inzunza moved to dismiss the case, arguing that the State had violated his Sixth Amendment right to a speedy trial and his due process rights under the Fifth and Fourteenth Amendments. Inzunza complained of the delay between the day he was charged and his arrest, which was approximately two years and two months.

The State conceded that the NLVPD knew that Inzunza was in New Jersey, but it explained that it would have been futile for the NLVPD to contact New Jersey authorities before the State obtained a warrant for Inzunza's arrest. It further explained that the State's policy does not alert the detective when the warrant issues, so the error was in the NLVPD "failing to check up and then seeing that a warrant was approved and then following up on the information from New Jersey." Detective Hoyt explained at the evidentiary hearing that he had relied on the DA's office to file charges, and return the case to NLVPD to get a warrant and enter the warrant into the NCIC database. He then "hope[d]" that utilizing the NCIC database would work to apprehend Inzunza, but he never followed up on the New Jersey identification or Facebook information or attempted to contact authorities in New Jersey. He indicated that it was not the NLVPD's policy to follow up on a case once submitted to the DA's office, to call other jurisdictions without a warrant, or to follow up on Facebook leads. Rather, after he submits a case to the DA's office, the case is "out-of-sight out-of-mind" for the department. Finally, Detective Hoyt explained that it was not customary for the already taxed police department to expend additional resources in tracking down the perpetrator in a case that was not "high profile," but rather a "common sexual assault" case.

The district court concluded that the State had been grossly negligent in pursuing Inzunza. Applying the principles and factors under the *Barker-Doggett* test, the district court determined that the case should be dismissed because: (1) the delay between the filing of charges and the time of Inzunza's arrest was presumptively prejudicial, (2) the State's gross negligence caused the entire delay, (3) Inzunza was not required to assert his right to a speedy trial earlier when he did not know about the charges or arrest warrant, and (4) the State had not rebutted the presumption that the delay had prejudiced Inzunza.

The State appeals the dismissal, arguing that the district court abused its discretion because the *Barker-Doggett* factors do not weigh in Inzunza's favor.

DISCUSSION

We review a district court's decision to grant or deny a motion to dismiss an indictment based on a speedy trial violation for an abuse of discretion. *See Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008) (reviewing for abuse of discretion a denial of motion to dismiss an indictment based on grand juror bias); *cf. State v. Craig*, 87 Nev. 199, 200, 484 P.2d 719, 719 (1971) (reviewing for abuse of discretion a grant of motion to dismiss an indictment based on a statutory speedy trial violation). In evaluating whether a defendant's Sixth Amendment right to a speedy trial has been violated, this court gives deference to the district court's factual findings and reviews them for clear error, but reviews the court's legal conclusions de novo. *See United States v. Gregory*, 322 F.3d 1157, 1160-61 (9th Cir. 2003); *see also United States v. Carpenter*, 781 F.3d 599, 607-08 (1st Cir. 2015) (noting that most federal circuit courts review district court rulings on Sixth Amendment speedy trial claims de novo).

The Barker-Doggett speedy trial test

The Sixth Amendment to the United States Constitution guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial." U.S. Const. amend. VI. We evaluate a claim alleging a violation of the Sixth Amendment speedy trial right by applying the four-part balancing test the United States Supreme Court set out in *Barker*, 407 U.S. at 530, and clarified in *Doggett*, 505 U.S. at 651. Under this test, courts must weigh four factors: "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Barker*, 407 U.S. at 530. What is prevalent throughout speedy trial challenges is that "there [are] no hard and fast rule[s] to apply . . . , and each case must be decided on its own facts." *United States v. Clark*, 83 F.3d 1350, 1354 (11th Cir. 1996). Additionally, "[n]o one factor is determinative; rather, they are related factors which must be considered together with such other circumstances as may be relevant." *United States v. Ferreira*, 665 F.3d 701, 705 (6th Cir. 2011) (internal quotation marks omitted). We therefore lay out the intricate *Barker-Doggett* test and the factors necessary for us to consider in this case.

Length of delay

The first factor, length of delay, is a "double [i]nquiry." *Doggett*, 505 U.S. at 651. First, to trigger the *Barker-Doggett* speedy-trial analysis, the length of the delay must be presumptively prejudicial. *Id*. at 651-52; *United States v. Erenas-Luna*, 560 F.3d 772, 776 (8th Cir. 2009). A post-accusation delay meets this standard "as it approaches one year." *Doggett*, 505 U.S. at 652 n.1; *see also United States v. Corona-Verbera*, 509 F.3d 1105, 1114 (9th Cir. 2007) (recognizing that "[m]ost courts have found a delay that approaches

one year is presumptively prejudicial"). Second, if the speedy-trial analysis is triggered, the district court must consider, "as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." *Doggett*, 505 U.S. at 652; *United States v. Ingram*, 446 F.3d 1332, 1336 (11th Cir. 2006). The length of time extending beyond the threshold one-year mark tends to correlate with the degree of prejudice the defendant suffers and will be considered under factor four—the prejudice to the defendant. *Doggett*, 505 U.S. at 652.

We hold that the district court did not abuse its discretion in determining that Inzunza's length of delay from charge to arrest was sufficient to trigger the *Barker-Doggett* analysis. A 26-month delay from charge to arrest is well over a year and, therefore, is long enough for the district court to classify as presumptively prejudicial so as to trigger the speedy-trial analysis. In arguing that this delay "is not so lengthy as to greatly prejudice Inzunza," the State ignores a string of cases allowing a *Barker-Doggett* analysis for significantly shorter delays than in *Doggett*. *See, e.g.*, *United States v. Moreno*, 789 F.3d 72, 81 (2d Cir. 2015) (analyzing a 27-month delay, of which 10 months were attributable to the government); *United States v. Dent*, 149 F.3d 180, 185 (3d Cir. 1998) (analyzing a 26-month delay, of which 14 months were attributable to the government); *United States v. Beamon*, 992 F.2d 1009, 1014 (9th Cir. 1993) (analyzing a 17- and 20-month delay attributable to the government).

Reason for delay

The second factor, the reason for the delay, focuses on whether the government is responsible for the delay and is the "focal inquiry" in a speedy trial challenge. *United States v. Alexander*, 817 F.3d 1178, 1182 (9th Cir. 2016) (internal quotation marks omitted). A district court's finding on the reason for delay and its justification is reviewed "with considerable deference." *Doggett*, 505 U.S. at 652. The *Barker* Court outlined three types of governmental delay, with each assigned a corresponding weight:

> A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

407 U.S. at 531 (footnote omitted). Furthermore, and applicable to these facts, "[o]ur toleration of negligence varies inversely with the length of the delay that the negligence causes." *United States*

v. Oliva, 909 F.3d 1292, 1302 (11th Cir. 2018) (internal quotation marks omitted).

We conclude the district court did not abuse its discretion under factor two when it found the 26-month delay was caused entirely by the State's "gross negligence." Though Detective Hoyt had knowledge of Inzunza's whereabouts, he did not attempt to contact Inzunza or have him arrested during the entire 26-month period. Moreover, there was no evidence showing that Inzunza was aware of the charges before the date of his arrest. Therefore, the district court correctly found that the State was solely responsible for the delay. *See Doggett*, 505 U.S. at 652 (affording a district court's finding "considerable deference" when it determines the reason for delay and its justification).

Assertion of the right

The third factor is "whether in due course the defendant asserted his right to a speedy trial." *Erenas-Luna*, 560 F.3d at 778 (internal quotation marks omitted); *see Barker*, 407 U.S. at 531-32 (explaining that "[t]he defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right"). The State argues that this factor weighs against Inzunza because he did not assert his right to a speedy trial during the period of time between the filing of charges and his arrest. However, this argument misses the fact that a defendant must know that the State had filed charges against him to have it weighed against him. *See Doggett*, 505 U.S. at 653-54 (stating that a defendant who is ignorant as to the formal charges against him "is not to be taxed for invoking his speedy trial right only after his arrest"). Thus, the district court did not abuse its discretion in finding that the assertion of the right was not weighed against Inzunza under *Doggett*.

Prejudice to the defendant

The last factor we must consider is prejudice to the defendant. In assessing prejudice, courts look at the following harms that the speedy-trial right was designed to protect against: "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the defense will be impaired." *Barker*, 407 U.S. at 532. "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id*. The only relevant interest here is the last, as Inzunza was not incarcerated before his arrest, nor did he suffer anxiety given that he was unaware of the charges against him.

"[I]mpairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony 'can rarely be shown.'" *Doggett*, 505

U.S. at 655 (quoting *Barker*, 407 U.S. at 532). Thus, "courts should not be overly demanding with respect to proof of such prejudice." 5 Wayne R. LaFave et al., *Criminal Procedure* § 18.2(e) (4th ed. 2015). As *Doggett* makes clear, the prejudice factor of *Barker* may weigh in favor of the defendant even though he "failed to make any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." 505 U.S. at 655. For example, in *Doggett*, the Supreme Court found that the delay between the defendant's indictment and arrest, of which six years was solely attributable to the government's negligence, was sufficiently egregious to presume prejudice. *Id.* at 657-58. When the presumption of prejudice is applied, the State is afforded the opportunity to rebut the presumption and detail how the defendant was not prejudiced by the delay. *See id.* at 658. If the State is unable to rebut the presumption, the *Barker* factors will weigh in a defendant's favor, necessitating the "severe remedy of dismissal," which is "the only possible remedy" when a defendant's speedy-trial right has been denied. *Barker*, 407 U.S. at 522.

Relieving the defendant of showing actual prejudice is typically triggered in cases in which the delay is five years or more. *See, e.g.*, *United States v. Serna-Villarreal*, 352 F.3d 225, 232 (5th Cir. 2003) ("[T]his Court and others generally have found presumed prejudice only in cases in which the post-indictment delay lasted at least five years."); *see also United States v. Velazquez*, 749 F.3d 161, 175 (3d Cir. 2014) ("Negligence over a sufficiently long period can establish a general presumption that the defendant's ability to present a defense is impaired, meaning that a defendant can prevail on his claim despite not having shown specific prejudice."). However, a "bright-line rule" is not appropriate under the *Barker-Doggett* test, and, therefore, the presumption of prejudice is not forfeited simply because Inzunza's delay is less than five years.[1] *Ferreira*, 665 F.3d at 708-09. Rather, "[t]he amount of prejudice a defendant must show is inversely proportional to the length and reason for the delay." *Alexander*, 817 F.3d at 1183 (citing *Doggett*, 505 U.S. at 655-56).

In this case, we face the difficult task of analyzing contextually a delay that is greater than one year but less than five, coupled with a reason for the delay that is something more than mere negligence,

[1]We previously held in *State v. Fain*, 105 Nev. 567, 569-70, 779 P.2d 965, 966-67 (1989), that dismissal of the indictment was improper because the defendant was unable to show particularized prejudice from the nearly 4½-year delay. However, *Fain* predates *Doggett*, which rejected a defendant's requirement to affirmatively establish prejudice in every case to prevail on a speedy trial claim. *See Doggett*, 505 U.S. at 655-56 (detailing that "consideration of prejudice is not limited to the specifically demonstrable" and that "affirmative proof of particularized prejudice is not essential to every speedy trial claim"). Therefore, we recognize that *Doggett* overruled *Fain* to the extent *Fain* precluded the court from presuming prejudice to the defendant under certain circumstances.

but less than bad-faith intentional misconduct on the government's part. *Oliva*, 909 F.3d at 1302 ("[T]he length of the delay impacts our determination of whether the Government's negligence weighs heavily against it."). While it is clear that intentional delay on the State's part would present "an overwhelming case for dismissal," *Doggett*, 505 U.S. at 656, it is less obvious whether something less than intentional delay—here, gross negligence—should result in dismissal when the delay is just over two years. Our canvass of federal caselaw involving similar lengths of delay caused by government negligence reveals that courts have applied the following factors in determining whether prejudice should be presumed: the length of the post-charge delay, whether the length of the post-charge delay was compounded by a lengthy and inordinate pre-charge delay, the complexity of the alleged crime, the investigation conduct by law enforcement, and whether the negligence was particularly egregious.[2] We find these factors useful and apply them here. *See Ferreira*, 665 F.3d at 705 ("No one factor is determinative; rather, they are related factors which must be considered together with such other circumstances as may be relevant." (internal quotation marks omitted)).

In arguing that the district court erred in presuming prejudice, the State asserts that the delay was justified by the fact that Inzunza had moved to New Jersey, meaning that Detective Hoyt could not locate him using local investigative procedures. The State acknowledged before us that the detective was negligent in pursuing Inzunza, but insisted that fact is not a determinative factor because Detective Hoyt's investigation was consistent with the NLVPD's policy. We disagree and hold that the extent of the State's negligence and its inaction weighs in favor of Inzunza.

The record shows that the State had the means to locate Inzunza and failed to take any steps to do so. *See Doggett*, 505 U.S. at 652-

[2]*See, e.g.*, *Oliva*, 909 F.3d at 1305-06 (analyzing a 23-month delay and determining "[t]he Government's negligence" did not favor the defendant); *Brown v. Romanowski*, 845 F.3d 703, 717 (6th Cir. 2017) (evaluating a 25-month delay and finding the government's actions were "negligent at most" and did not favor the defendant); *Moreno*, 789 F.3d at 81 (attributing a 10-month delay to the government for failing "to exercise reasonable diligence," but the delay did not favor the defendant); *Ferreira*, 665 F.3d at 705, 708-09 (reasoning a 35-month delay and the government's "gross negligence" favored the defendant); *Erenas-Luna*, 560 F.3d at 778-80 (analyzing a 36-month delay and the government's "serious negligence" weighed in favor of the defendant); *United States v. Hall*, 551 F.3d 257, 272-73 (4th Cir. 2009) (reasoning a 24-month delay and "'neutral' factor[s]" such as a "complex conspiracy charge" did not favor the defendant); *Ingram*, 446 F.3d at 1338-39 (examining a 24-month delay and "egregious" government negligence favored the defendant); *Dent*, 149 F.3d at 185 (reasoning the government's action was "to blame" for only 14 months of a 26-month delay and thus did not favor the defendant); *Beamon*, 992 F.2d at 1013-14 (determining a 17- and 20-month delay for two defendants coupled with "the government's negligence" did not favor the defendants).

53 (detailing that "[f]or six years the [g]overnment's investigators made no serious effort to [find him] . . . , and, had they done so, they could have found him within minutes"). The victim's mother provided Detective Hoyt with Facebook printouts with specific information about Inzunza's whereabouts in New Jersey. Detective Hoyt had Inzunza's location, and the printouts depicted his license plate and his employer's work truck, business name, and number. Further, the NLVPD crime report shows Inzunza's address in New Jersey and his employer's address. *See Ingram*, 446 F.3d at 1335 (recounting that law enforcement knew the defendant's phone numbers, where he lived, and where he worked). The only step taken by law enforcement to apprehend Inzunza was putting the arrest warrant in the NCIC database. *Doggett*, 505 U.S. at 652-53; *see also Ingram*, 446 F.3d at 1338 (reasoning the government's "feeble efforts to locate" the defendant and the lack of evidence showing the defendant evaded law enforcement weighed against the government). Thus, we hold the investigation by law enforcement weighs in favor of Inzunza. The actions—or in this case the inaction—of law enforcement, despite the overwhelming information provided by E.J.'s mother to locate Inzunza, is fatal to the State's argument. *See Doggett*, 505 U.S. at 657 ("Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal suspects assigned a low prosecutorial priority.").

As to the State's contention that Detective Hoyt was merely following NLVPD policy, this fact does not negate the district court's finding that the delay was caused by the State's gross negligence. The detective's failure to pursue leads to locate Inzunza in New Jersey and the NLVPD's policy of not notifying the detective in charge of the case that a warrant has issued is dilatory. *See United States v. Schlei*, 122 F.3d 944, 987 (11th Cir. 1997) ("Government actions which are tangential, frivolous, *dilatory*, or taken in bad faith weigh heavily in favor of a finding that a speedy trial violation occurred." (emphasis added) (citing *United States v. Loud Hawk*, 474 U.S. 302, 315-17 (1986))); *Dilatory*, *Black's Law Dictionary* (11th ed. 2019) (defining "dilatory" as "[d]esigned or tending to cause delay"); *see also Ingram*, 446 F.3d at 1339 (finding the government's "delay intolerable" where the officer in charge "knew that he was the only law enforcement agent responsible for arresting [the defendant]; and he had more than enough information to do so"). Had Detective Hoyt been informed that the warrant issued, steps could have been taken to arrest Inzunza that may have shifted the reason for delay from gross negligence to a valid reason to justify the delay. *See Barker*, 407 U.S. at 531. The only effort made by the State was placing Inzunza's warrant in the NCIC database and hoping this singu-

lar action by the State was sufficient to apprehend Inzunza. *Cf. Erenas-Luna*, 560 F.3d at 775, 777 (agreeing with the lower court's conclusion that the government was "clearly seriously negligent" when it omitted placing a defendant's warrant in the NCIC database and "fail[ed] to take appropriate action[ ] to attempt to apprehend" the defendant in a timely manner (internal quotation marks omitted)).

Furthermore, there is no evidence in the record to show that Inzunza knew about the charges or that he was fleeing from the NLVPD when he left the state. *See United States v. Mendoza*, 530 F.3d 758, 763 (9th Cir. 2008) (recognizing that a defendant who is aware of the charges against him or her and flees or otherwise causes the delay forecloses any Sixth Amendment speedy trial claim). Therefore, we agree with and defer to the district court's determination that the State's gross negligence was the sole reason for the delay of 26 months—entitling Inzunza to a presumption of prejudice. *See Doggett*, 505 U.S. at 652 (giving "considerable deference" to district court's determination).

With the burden shifted to the State to rebut the presumption of prejudice, we conclude the State failed to meet its burden. *See Doggett*, 505 U.S. at 658. As the district court noted, the State "offered no rebuttal evidence at the evidentiary hearing . . . [and] did not address prejudice in its Opposition to Defendant's Motion to Dismiss." In its opening brief, the State argues that during the evidentiary hearing the district court told the State "to stop" when it began to offer its argument why Inzunza was not prejudiced by the delay. Despite the State's attempt to rebut the district court's findings, we find no motions or pleadings in the record detailing the State's argument to supplement the evidentiary hearing. Further, the State makes no persuasive rebuttal before this court or otherwise describes what evidence it intended to introduce to the district court. Because the State raises an issue on appeal that was not properly raised (or preserved) before the district court, we need not consider it. *Browning v. State*, 120 Nev. 347, 354, 91 P.3d 39, 45 (2004) ("[A]n appellant must present relevant authority and cogent argument; issues not so presented need not be addressed by this court." (internal quotation marks omitted)); *see also* NRAP 28(a)(10)(A) ("[T]he argument . . . must contain . . . appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which appellant relies.").

The State further argues before us that the delay did not actually prejudice Inzunza because he was arrested during the statute of limitations period. This argument is misguided. Statutes of limitations deal with the period between the commission of the crime and the filing of charges, not the time period between obtaining a warrant to arrest until actual arrest, which is at issue here. Additionally, the

statute of limitations period is meant to give the victim more time to come forward, not afford law enforcement more time to arrest the perpetrator. Therefore, we affirm the district court's finding that the State has not persuasively rebutted the presumption of prejudice entitled to Inzunza under the *Barker-Doggett* factors.

CONCLUSION

The Sixth Amendment speedy-trial right is evaluated under the *Barker-Doggett* test, and we must afford the severe remedy of dismissal to Inzunza because it is "the only possible remedy" when a defendant's speedy-trial right has been denied. *Barker*, 407 U.S. at 522. The crimes alleged against Inzunza are serious. But the unusual facts concerning pre-arrest delay compel our affirmance of the district court's findings and conclusions that Inzunza properly invoked his speedy-trial right, he was entitled to a presumption of prejudice, and the State failed to rebut the presumption. Accordingly, we affirm the district court's dismissal of the indictment.

STIGLICH and SILVER, JJ., concur.