

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT LENNOX KENDLE PIERCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42877 FILED

DEC 02 2004

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is a direct appeal from a judgment of conviction. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

Appellant Gilbert Lennox Kendle Pierce was convicted pursuant to a jury verdict of burglary and uttering a forged instrument. The district court adjudicated Pierce a habitual criminal and sentenced him to a life term in the Nevada State Prison with the possibility of parole after ten years.

Pierce raises three allegations of error in his appeal. First, he claims that there is insufficient evidence to support his conviction for burglary. Specifically, Pierce argues that the State presented no evidence demonstrating that he entered the Rail City Casino in Sparks with the intent to utter a forged instrument (check). The relevant inquiry for this court in reviewing a sufficiency of the evidence challenge is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."¹ The State introduced evidence that

¹Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

Pierce presented a forged check for payment to a cashier at the Rail City Casino in Sparks. Upon presentment of the check, Pierce received \$663.02 in cash. Evidence adduced at trial also revealed that Pierce had no legitimate reason to be in possession of the check. Although the evidence presented at trial supports Pierce's conviction for uttering a forged check, we conclude that there was insufficient evidence upon which a jury could find beyond a reasonable doubt that Pierce entered the Rail City Casino with the intent to utter a forged instrument.² Therefore, the burglary conviction cannot stand. Accordingly, we affirm Pierce's conviction for uttering a forged instrument, but reverse his conviction for burglary.

Pierce also complains that the district court erred in refusing to grant him an advisory verdict with respect to the burglary charge. However, in light of our decision to reverse his burglary conviction, we conclude Pierce's claim in this regard warrants no relief.

Second, Pierce argues that the district court improperly allowed the State to "highlight" uncharged prior bad acts and that the prejudicial impact on the jury was evidenced by the jury's request that witness Larry Bell's testimony be reread for the sole purpose of determining "whether Mr. Bell had said that Mr. Pierce's name was on some of the other stolen checks." However, defense counsel elicited the evidence about which Pierce complains, and the record does not demonstrate that the State misrepresented Bell's testimony. Furthermore, although Pierce correctly asserts that the jury requested Bell's testimony be reread, the jury foreman did not specify the purpose of

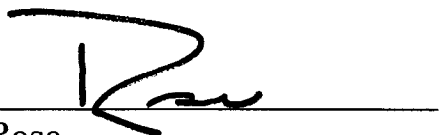
²See NRS 205.060.

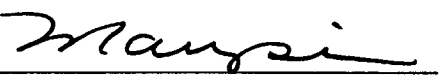
the jury's request. Accordingly, we conclude the district court did not err in this regard.

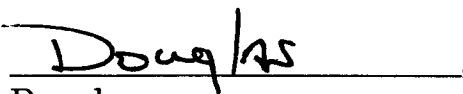
Finally, Pierce argues that the district court erred in failing to award him credit for time served as part of his sentence. As the record on appeal is unclear in this regard, we remand this matter to the district court to determine what, if any, sentence credit is due Pierce.

Our review of the record, however, reveals an error in the judgment of conviction. Specifically, the sentence set forth in the judgment of conviction provides for only one definite term; however, Pierce was convicted of two offenses. Therefore, it appears that the judgment does not set forth definite terms for each conviction.³ Further, in light of our reversal of Pierce's burglary conviction, we remand this matter to the district court for resentencing. Accordingly, we

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


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

³See NRS 176.033(1)(b); NRS 176.035; Powell v. State, 113 Nev. 258, 264 n.9, 934 P.2d 224, 228 n.9 (1997).

cc: Hon. James W. Hardesty, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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