

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY MANNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44086

FILED

OCT 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART, AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

Appellant contends that the district court erred by conducting a re-sentencing hearing after he had already begun to serve his sentence. Specifically, appellant argues that, although a judgment of conviction had not yet been entered, the order admitting him to probation had been signed by the district judge and filed by the district court clerk and the district court was therefore without authority to modify his sentence. We agree.

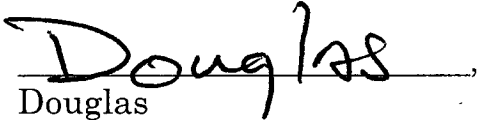
Generally, a district court is without jurisdiction to suspend or modify a sentence once a defendant has begun to serve it.¹ In the instant case, appellant was sentenced on July 1, 2004, but the entry of the judgment of conviction was delayed until September 15, 2004. The State had filed a motion for resentencing on July 12, 2004, because of the prosecutor's failure to inform the victim of the original sentencing date, and the victim's desire to be heard. The State concedes that "the logical

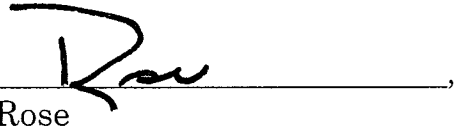
¹See Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979).


explanation for the State's delay [in preparing the judgment of conviction] was to have a ruling on its motion prior to filing."

However, on July 21, 2004, the district court entered an order admitting appellant to probation, as provided in the sentence pronounced on July 1, 2004. We conclude that upon the district court's entry of the order admitting appellant to probation, appellant had begun to serve his sentence, and the district court improperly resentenced appellant.² Accordingly, appellant's sentence is hereby vacated and this matter is remanded to the district court for imposition of the sentence pronounced on July 1, 2004.

It is so ORDERED.

 J.
Douglas

 J.
Rose

 J.
Parraguirre

cc: Hon. Michael A. Cherry, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

²See Grant v. State, 99 Nev.149, 150, 659 P.2d 878, 878-79 (1983) (holding that an individual begins to serve his sentence when he is sentenced and placed on probation).