

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. HISSUNG,
Petitioner,
vs.
THE STATE OF NEVADA; NEVADA
DEPARTMENT OF CORRECTIONS
AND WARDEN, HIGH DESERT STATE
PRISON, DWIGHT NEVEN,
Respondents.

No. 47372

FILED

DEC 11 2006

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

ORDER GRANTING PETITION FOR A WRIT OF MANDAMUS

This is a proper person petition for a writ of mandamus. Petitioner Michael J. Hissung seeks an order directing the Department of Corrections to apply the sentences as provided in his judgment of conviction in district court case number C215395.

Petitioner claims that the judgment of conviction entered in district court case number C215395 directs that his sentences in that case shall run concurrently with any other sentences he is serving. Petitioner further claims, however, that the Department of Corrections will not permit him to serve the sentences in district court case number C215395 concurrently with the sentences in his parole revocation case. In support of his claim, petitioner has attached to his petition a copy of a judgment of conviction in district court case number C215395, which provides that the sentences shall run concurrently with "any other cases."

Although petitioner provided this court with a copy of a judgment of conviction indicating that concurrent sentences were imposed, the copy was not file-stamped. Further, it appeared that the imposition of concurrent sentences might violate NRS 176.035(2), which requires

consecutive sentences whenever a person under a sentence of imprisonment for a felony commits another felony. It appeared that petitioner was under a sentence of imprisonment for a felony and on parole at the time he committed the offenses involved case number C215395.

Accordingly, this court directed the attorney general to file a response informing this court: (1) whether the district court imposed the sentences for district court case number C215395 to run concurrently with the sentences for the parole revocation case; (2) whether the Department of Corrections is treating the sentences between the cases as concurrent sentences; (3) if concurrent sentences were imposed, whether those sentences are in fact legal; and (4) whether any authority would permit the Department of Corrections to disregard the sentence structure set forth in a written judgment of conviction if the sentence structure was illegal.

The attorney general responded that the plain language of the judgment of conviction provided that the sentences in case number C215395 were to run concurrently with the sentences in the parole revocation case, but that concurrent sentences were illegal under NRS 176.035(2).¹ Further, the attorney general represented that the Department of Corrections was treating the sentences in the two cases as consecutive terms. Finally, the attorney general argued that a writ of mandamus should not issue to direct the Department of Corrections to

¹The attorney general included as exhibits file-stamped copies of the judgments of conviction in district court case numbers C215395 and C197129 (the parole revocation case).

treat the sentences in the two cases as concurrent because that would violate NRS 176.035(2).

This court concluded that a response from the district attorney would be of assistance in resolving this matter. The judgment of conviction in district court case number C215395 stated the sentences in that case shall run "CONCURRENT . . . with any other cases Defendant is presently serving." A plain reading of this language was that the district court imposed the sentences in district court case number C215395 to run concurrently with the parole revocation case.² It further appeared, however, that permitting the sentences to be served concurrently directly violated NRS 176.035(2), and that the appropriate remedy for such an unlawful sentence required the district court's amendment or correction of the judgment of conviction. Thus, this court directed the district attorney to file a response explaining why a writ of mandamus should not issue compelling the district attorney to seek correction or amendment of the judgment of conviction in the district court.

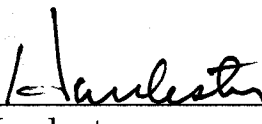
The district attorney has filed a timely response and indicates that it does not oppose the issuance of a writ of mandamus. Accordingly, we grant the petition, and we direct the clerk of this court to issue a writ of mandamus instructing the district attorney to file a motion to correct

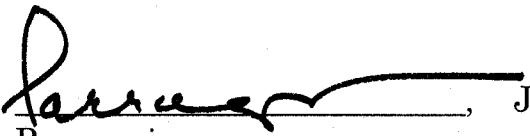
²The attorney general's eleventh exhibit was a letter from the office of the Clark County District Attorney to the Department of Corrections. The position of the district attorney in the letter appears to have been that the language "any other case" would only refer to cases where the sentences could be run concurrently by law and would exclude the parole revocation case. A plain reading of the language in the judgment of conviction does not support this position.

an illegal sentence in district court case number C215395. Pursuant to this court's holding in Miranda v. State,³ we note that the court may correct an illegal sentence to increase its severity only when necessary to bring the sentence in compliance with the pertinent statute; and only when there are no other less severe means of correcting the illegality. The district court may in its discretion appoint counsel to assist petitioner.

It is so ORDERED.

 _____, J.
Becker

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Michael J. Hissung
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³114 Nev. 385, 956 P.2d 1377 (1998).