

IN THE SUPREME COURT OF THE STATE OF NEVADA

TYRONE WALKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47875

FILED

FEB 01 2007

ORDER OF REVERSAL AND REMAND

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

This is a proper person appeal from an order of the district court denying a motion for specific performance of plea agreement. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On May 31, 2001, the district court convicted appellant, pursuant to an Alford plea,<sup>1</sup> of four counts of robbery. The district court entered a written judgment of conviction imposing four consecutive terms of 72 to 180 months. The district court further imposed these sentences to run concurrently with the sentence in district court case number C167477 and consecutively to the sentence in district court case number C84397. No direct appeal was taken.

On July 3, 2006, appellant filed a proper person motion for specific performance of plea agreement in the district court. The State opposed the motion. On August 16, 2006, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that the plea agreement was breached because the sentences on the four counts were imposed to run

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<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

consecutively, rather than concurrently. Appellant claimed that his plea agreement provided that he would be sentenced to serve four concurrent terms of 72 to 180 months. The district court summarily denied the motion.

It appeared from this court's review of the record on appeal that the district court may have erred in denying the motion. Specifically, the written guilty plea agreement set forth the negotiations as follows:

The State and Defendant have stipulated to a sentence of seventy-two (72) months to one hundred eighty (180) months in the Nevada Department of Prisons.

This is a conditional plea in that if the Court sentences the Defendant in excess of the stipulated sentence then the Defendant can withdraw his plea and proceed to trial.

Further, the State has stipulated that this run concurrent with Case No. 167477.

Although the form written guilty plea agreement set forth that it was within the discretion of the district court to impose the sentences for the counts to run concurrently or consecutively, and the district court stated during the plea canvass that the decision respecting concurrent or consecutive sentences was within its discretion, the district court during the plea canvass clarified that appellant was agreeing to a stipulated sentence of 72 to 180 months. Further, at sentencing the district court questioned whether the plea negotiations contemplated concurrent sentences between the four counts of robbery. The following exchange occurred:

Court: Does this sentence contemplate that these run concurrent?

Defense Counsel: Concurrent.

Court: I think they would.

Defense Counsel: Yes.

[The district court imposes a sentence of 72 to 180 months for each count].

Court: All right. That's the sentence of the court. Counts I, II, III, and IV are to run concurrent.

Two days later, the district court conducted a clarification of sentencing hearing, wherein it specified that the sentences in the instant case were imposed to run consecutively to the sentence in district court case number C84397. No mention was made that the district court had changed its decision to impose concurrent sentences on the four counts involved in the instant case. However, the written judgment of conviction that was subsequently entered and that was apparently drafted by the State provided that the terms imposed on each of the four counts were to be served consecutively.

It appeared from this court's review of the record on appeal that the judgment of conviction in the instant case may have contained a clerical error—the imposition of consecutive sentences on the four counts appears to be a clerical error in the drafting of the judgment of conviction. Although a district court's oral pronouncement of a sentence is not final, nothing in the record indicates that the district court changed its decision to sentence appellant to serve four concurrent terms in the instant case.<sup>2</sup>


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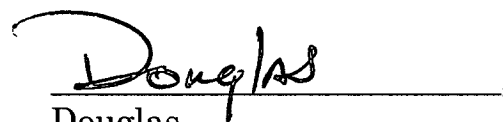
<sup>2</sup>See NRS 176.565; Miller v. Hayes, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979).

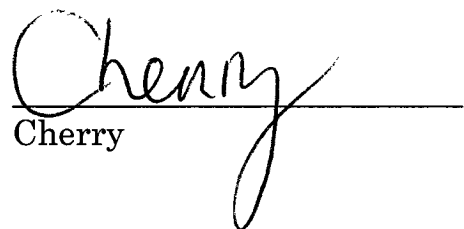
Thus, this court directed the State to show cause why the matter should not be remanded for further proceedings in the district court.

The State filed a timely response indicating that the record on appeal did not explain why the sentences for the four counts were changed from concurrent to consecutive. The State conceded that an order of remand would be appropriate under these circumstances. Therefore, we reverse the order of the district court denying the motion, and we remand this matter to the district court for further proceedings within 60 days from the date of this order. If the district court determines that the judgment of conviction contains an error in drafting, the district court shall enter a corrected judgment of conviction. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>3</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>3</sup>This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

cc: Hon. Joseph T. Bonaventure, District Judge  
Tyrone Walker  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk