

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR XAVIER WRIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48531

FILED

FEB 07 2007

ORDER OF AFFIRMANCE

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 to amend and clarify the judgment of conviction. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On July 31, 1989, the district court convicted appellant, pursuant to a jury verdict, of one count of attempted sexual assault (count 1), two counts of battery with the intent to commit sexual assault (counts 2 and 6), one count of first degree kidnapping (count 3), one count of sexual assault (count 4), four counts of first degree kidnapping with the use of a deadly weapon (counts 5, 8, 13, 14), seven counts of sexual assault with the use of a deadly weapon (counts 9, 10, 11, 12, 17, 18, 19), three counts of attempted sexual assault with the use of a deadly weapon (counts 7, 15, 16), one count of battery with a deadly weapon with the intent to commit sexual assault (count 20), two counts of assault with a deadly weapon (counts 21, 22), and one count of attempted first degree kidnapping with a deadly weapon (count 23). The district court sentenced appellant to serve the following terms in the Nevada State Prison: (1) for count 1, a term of 8 years; (2) for count 2, a term of 5 years, to run concurrent with count 1; (3) for count 3, a term of life with the possibility of parole, to run consecutive to counts 1 and 2; (4) for count 4, a term of life

with the possibility of parole, to run concurrent with count 3; (5) for count 5, two consecutive terms of life with the possibility of parole, to run consecutive to count 4; (6) for count 6, a term of 5 years, to run concurrent with count 5; (7) for count 7, two consecutive terms of eight years, to run concurrent with count 6; (8) for count 8, two consecutive terms of life with the possibility of parole, to run consecutive to count 7; (9) for count 9, two consecutive terms of life with the possibility of parole, to run concurrent with count 8; (10) for count 10, two consecutive terms of life with the possibility of parole, to run concurrent with count 9; (11) for count 11, two consecutive terms of life with the possibility of parole, to run concurrent with count 10; (12) for count 12, two consecutive terms of life with the possibility of parole, to run concurrent with count 11; (13) for count 13, two consecutive terms of life with the possibility of parole, to run consecutive to count 12; (14) for count 14, two consecutive terms of life with the possibility of parole, to run consecutive to count 13; (15) for count 15, two consecutive terms of eight years, to run concurrent with count 14; (16) for count 16, two consecutive terms of eight years, to run concurrent with count 15; (17) for count 17, two consecutive terms of life with the possibility of parole, to run concurrent with count 16; (18) for count 18, two consecutive terms of life with the possibility of parole, to run concurrent with count 17; (19) for count 19, two consecutive terms of life with the possibility of parole, to run concurrent with count 18; (20) for count 20, two consecutive terms of 5 years, to run concurrent with count 19; (21) for count 21, a term of 3 years, to run concurrent with count 20; (22) for count 22, a term of 3 years, to run consecutive to count 21; (23) for count 23, two consecutive terms of eight years, to run concurrent with count 22. On direct appeal, this court affirmed eighteen of the counts in the judgment of

conviction, but vacated five counts (counts 2, 6, 13, 21, 22).¹ The district court entered an amended judgment of conviction on December 11, 1990. Appellant unsuccessfully sought post-conviction relief.²

On October 23, 2006, appellant filed a proper person post-conviction motion to amend and clarify the judgment of conviction. The State opposed the motion. On November 21, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his judgment of conviction should be amended or clarified because: (1) the judgment of conviction did not specify the minimum term he would have to serve for each count in order to be eligible for parole; (2) the judgment of conviction included a count 14, and count 14 was previously dismissed at the conclusion of the preliminary hearing; (3) the amended judgment of conviction failed to specify whether certain counts would run concurrently or consecutively in light of the reversal of five counts; and (4) he was entitled to have credit for time served on reversed count 2 applied to pending counts.

Our review of the record on appeal reveals that the district court did not abuse its discretion in denying appellant's motion. Appellant did not demonstrate that there was any confusion about parole eligibility in the instant case, and thus the judgment of conviction was not required to set forth the minimum term to be served for parole eligibility for each

¹Wright v. State, 106 Nev. 647, 799 P.2d 548 (1990).

²Wright v. State, Docket No. 47419 (Order of Affirmance, October 26, 2006); Wright v. State, Docket No. 24371 (Order Dismissing Appeal, July 8, 1994).

count.³ Appellant's claim that the judgment of conviction mistakenly included count 14 is patently without merit. At the conclusion of the preliminary hearing, count 14 in the criminal complaint involving the attempted sexual assault of C.K. was dismissed. When the criminal information was prepared and filed in the district court, the counts were renumbered so that count 14 now alleged first degree kidnapping with the use of a deadly weapon of L.W.. The amended judgment of conviction was not required to restate the concurrent and consecutive sentencing structure upon the reversal of five counts. If a judgment of conviction makes no reference as to whether a sentence runs concurrently or consecutively, all such subsequent sentences for which there is no reference would run concurrently.⁴ With the exception of count 3, the sentencing structure for each count was based upon the immediately preceding count. Thus, for those counts reversed, the subsequent count would run concurrently to the count preceding the reversed count unless

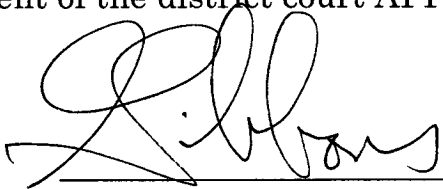
³See NRS 176.105(1)(c) (requiring the judgment of conviction to set forth the applicable provision of a statute if necessary to determine parole eligibility). NRS 213.120(1) provides that a prisoner sentenced for a crime committed before July 1, 1995, is eligible for parole when he has served one-third of the definite period of time for which he has been sentenced unless parole eligibility is limited by statute for certain specified sentences. When he committed his crimes, the offenses of first degree kidnapping and sexual assault required that a minimum of five years be served before parole eligibility. See 1973 Nev. Stat., ch. 798, § 6, at 1804-05 (NRS 200.320—first degree kidnapping); 1977 Nev. Stat., ch. 598, § 3, at 1626-27 (NRS 200.366—sexual assault).

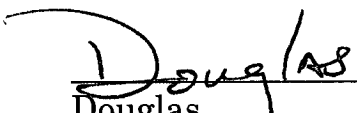
⁴NRS 176.035(1).

otherwise specified.⁵ Finally, appellant failed to demonstrate that he was entitled to any credit for time served on count 2 as count 2 was served concurrently with count 1, and count 1 was the greater term. Therefore, we affirm the order of the district court denying the motion.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Jackie Glass, District Judge
Victor Xavier Wright
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵Count 3 states that it was imposed to run consecutively to counts 1 and 2. Thus, count 3 runs consecutively to count 1.

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).