

IN THE SUPREME COURT OF THE STATE OF NEVADA

LADISLAO FRANCO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48537

**FILED**

AUG 22 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: S. Young  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying appellant Ladislao Franco's motion to modify a sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On September 11, 2006, Franco was convicted, pursuant to a guilty plea, of one count of conspiracy to commit possession of a stolen vehicle. The district court sentenced Franco to a jail term of 365 days flat time with 102 days credit for time served. Franco did not pursue a direct appeal from the judgment of conviction and sentence.

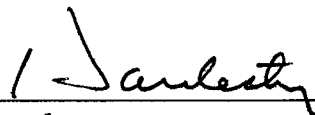
On October 12, 2006, Franco filed a motion to modify his sentence in the district court. The State opposed the motion. The district court conducted a hearing and, on November 17, 2006, entered an order denying Franco's motion. This timely appeal followed.

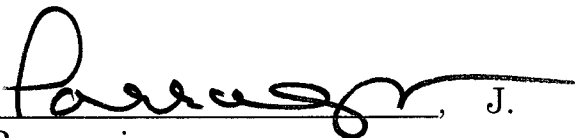
On appeal, Franco challenges the legality of the flat time sentence. In Haney v. State, this court recently held that "there is no statutory basis for flat time sentencing" and noted that "the Legislature has clearly evinced its intention to confer authority upon the sheriff's office to determine whether an individual inmate is eligible for good time

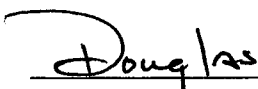
[and work time] credits and that allowing flat time sentencing is contrary to that intent.”<sup>1</sup> Based on the sentence imposed in this case, however, it appeared likely that Franco had expired his sentence. Therefore, we directed counsel for Franco to show cause why this appeal should not be dismissed as moot.<sup>2</sup>

On July 24, 2008, counsel for Franco filed a response to this court’s order to show cause. In the response, counsel notes that Franco is no longer incarcerated and concedes that “the appeal has truly become moot.” Accordingly, having considered Franco’s response to this court’s order and concluding that this appeal is moot, we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

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

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<sup>1</sup>124 Nev. \_\_\_, \_\_\_, \_\_\_, 185 P.3d 350, 352, 353 (2008).

<sup>2</sup>See Johnson v. Director, Dep’t Prisons, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989) (stating that expiration of a defendant’s sentence rendered moot any question concerning computation of the sentence).

cc: Hon. Donald M. Mosley, District Judge  
Clark County Public Defender Philip J. Kohn  
Ladislao Franco  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk