

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LUONGO A/K/A JOHN F.
LUONGO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48769

FILED

JUN 08 2007

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On April 8, 1999, the district court convicted appellant, pursuant to a jury verdict, of three counts of burglary and four counts of robbery. The district court sentenced appellant to serve in the Nevada State Prison the following terms: (1) for count 1, a term of 22 to 96 months; (2) for count 2, a term of 35 to 156 months, to be served consecutively to count 1; (3) for count 6, a term of 22 to 96 months, to be served concurrently with count 2, (4) for count 7, a term of 35 to 156 months, to be served consecutively to counts 1 and 2; (5) for count 8, a term of 22 to 96 months, to be served concurrently with the other counts; (6) for count 9, a term of 35 to 156 months, to be served concurrently with the other counts; and (7) for count 10, a term of 35 to 156 months, to be served consecutively to the other counts. The district court further ordered this sentence to be served concurrently with the sentence imposed in district court case number C148913. This court dismissed the direct

appeal.¹ Appellant unsuccessfully sought post-conviction relief from his conviction.²

On September 1, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 2, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant challenged the Nevada Department of Correction's (the Department) calculation of his sentence structure. Appellant appeared to claim that the Department ignored the fact that the district court imposed count 9 to run concurrently with the other counts and instead required him to serve time on count 9. Appellant further requested a review of the entire sentence structure.

Our review of the record on appeal reveals that the district court did not err in denying appellant's petition. The Department has correctly calculated the sentence structure in the instant case to include count 9 as a controlling sentence in the instant case.³ As stated earlier, the district court imposed a term of 35 to 156 months for count 9. Because

¹Luongo v. State, Docket No. 34158 (Order Dismissing Appeal, November 19, 1999).

²Luongo v. State, Docket Nos. 35779, 36603 (Order of Affirmance, December 14, 2001).

³Although appellant did not attach sufficient documentation regarding the Department's structuring of his sentences, this information was available on the web site maintained by the Department. See <http://www.doc.nv.gov/ncis/detail.php?idnum=61008>.

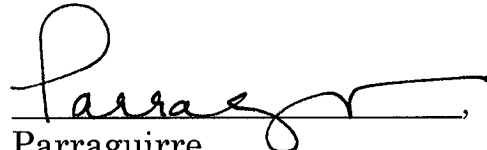
the district court did not impose the term for count 9 to run concurrently with a specific count, but rather imposed the term to run concurrently with the other counts, the Department correctly interpreted this language to require count 9 to run concurrently with count 1.⁴ Because the term imposed for count 1, 22 to 96 months, is the lesser term, the term imposed for count 9, 35 to 156 months, is the controlling term for establishing the sentence structure.⁵ The Department further correctly determined that upon parole or discharge from the term imposed in count 9, the next term required to be served was a term of 35 to 156 months for count 2. The term for count 6, a term of 22 to 96 months, was correctly calculated to run concurrently with count 2. Finally, the Department correctly determined that the term imposed for count 7 would run consecutively to the term for count 2 and the term for count 10 would run consecutively to count 7. Because appellant failed to demonstrate that the district court erred in its calculation of his sentence structure, we affirm the order of the district court denying his petition.

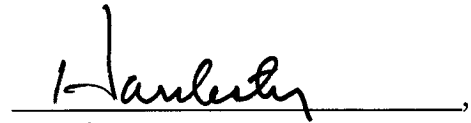
⁴Likewise, the same language used in count 8 required the Department to determine that count 8 was to be served concurrently with counts 1 and 9. Further, the Department correctly determined that the sentence imposed in district court case number 148913 would run concurrently with counts 9, 1 and 8.

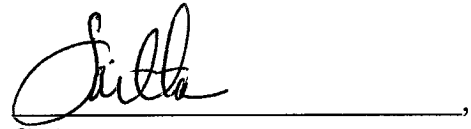
⁵See NRS 213.1213 ("If a prisoner is sentenced pursuant to NRS 176.035 to serve two or more concurrent sentences, whether or not the sentences are identical in length or other characteristics, eligibility for parole from any of the concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole.")

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.⁷


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Jennifer Togliatti, District Judge
John Luongo
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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

⁷We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.