

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEMARIO SHELTON LYNCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48803

FILED

AUG 13 2008

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking appellant Demario Shelton Lynch's probation. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On September 11, 2006, Lynch was convicted, pursuant to a guilty plea, of one count of carrying a concealed weapon. The district court sentenced Lynch to a jail term of 365 days flat time,¹ suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed two years. Lynch did not pursue a direct appeal from the judgment of conviction and sentence.

¹See Haney v. State, 124 Nev. ___, ___, 185 P.3d 350, 352 (2008) ("A flat time sentence is a form of determinate sentencing . . . whereby the offender must serve the exact penalty imposed without the ability to earn credits, while incarcerated, towards early release.").

On November 7, 2006, the State filed a notice of intent to seek revocation of Lynch's probation. The district court conducted a hearing and, on December 22, 2006, entered an order revoking Lynch's probation and imposing the original sentence with 101 days credit for time served.² This timely appeal followed.

Lynch contends that the district court erred by sentencing him to 365 days flat time. Lynch argues that (1) no statute or rule allows for the imposition of a flat time sentence, and (2) the imposition of a flat time sentence is unconstitutional and violates the separation of powers doctrine.

This issue is not appropriately raised in this appeal from the order revoking probation, and thus, will not be addressed. This court has repeatedly stated that "claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings."³ Therefore, we conclude that Lynch waived his

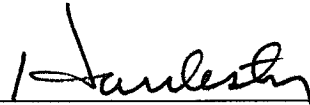
²At the revocation hearing, Lynch admitted to violating conditions of his probation and stipulated to the revocation. Lynch does not challenge the revocation determination on appeal.

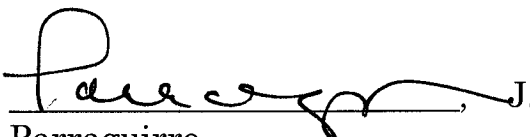
³See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

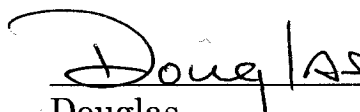
right to raise this issue by failing to pursue the matter in a direct appeal.⁴

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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

⁴In Haney, this court stated 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.” 124 Nev. at ___, ___, 185 P.3d at 352, 353.