

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 49000

FILED

SEP 08 2008

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying appellant Demario Shelton Lynch's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On September 11, 2006, appellant Demario Shelton 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, 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.

On December 21, 2006, Lynch filed a motion to correct an illegal sentence in the district court. The district court conducted a hearing and, on February 5, 2007, entered an order denying Lynch's motion. This timely appeal followed.

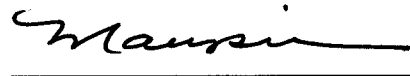
On appeal, Lynch challenges the legality of the flat time sentence. In Haney v. State, this court recently held that "there is no statutory basis for flat time sentencing" and noted that "the Legislature has clearly evinced its intention to confer authority upon the sheriff's office to determine whether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

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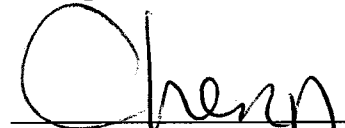
to that intent.”¹ Based on the sentence imposed in this case, however, it appeared likely that Lynch had expired his sentence.² Therefore, we directed counsel for Lynch to show cause why this appeal should not be dismissed as moot.³

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

ORDER this appeal DISMISSED.


_____ J.

Maupin


_____ J.

Cherry


_____ J.

Saitta

¹124 Nev. ___, ___, ___, 185 P.3d 350, 352, 353 (2008).

²On December 22, 2006, the district court entered an order revoking Lynch’s probation and imposing the original sentence with 101 days credit for time served.

³See 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
Demario Shelton Lynch
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk