

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN ANTHONY MCDONALD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49178

**FILED**

SEP 08 2008

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order revoking probation and amending the judgment of conviction. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On October 17, 2006, the district court convicted appellant Brian Anthony McDonald, pursuant to a guilty plea, of one count of conspiracy to commit possession of a dangerous drug not to be introduced into interstate commerce. The district court sentenced McDonald "to the Clark County Detention Center for three hundred sixty-five (365) days," suspended execution of the sentence, and placed McDonald on probation for a period not to exceed three years. McDonald did not file a direct appeal.


On March 14, 2007, following a probation revocation hearing, the district court revoked McDonald's probation and ordered that "the original sentence of three hundred sixty-five (365) days flat in the Clark County Detention Center will be imposed with 137 days credit for time served." (Emphasis added.) This appeal followed.

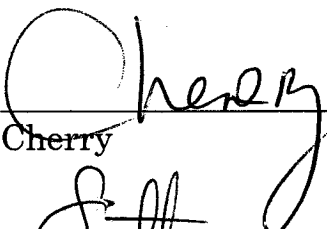
McDonald challenges the flat time sentence. We recently held in Haney v. State that "there is no statutory basis for flat time sentencing" and noted that "the Legislature has clearly evinced its intention to confer


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> However, based on the length of the sentence imposed in this case, it appeared likely that McDonald's sentence had expired. Accordingly, we directed McDonald's counsel to show cause why the appeal should not be dismissed as moot.<sup>2</sup>

On July 25, 2008, McDonald's counsel filed a response to our order to show cause. In his response, counsel acknowledged that "the one year sentence has been served and the issue is moot for McDonald." Having considered counsel's response, we conclude that this appeal is moot and we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

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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 the expiration of a defendant's sentence rendered moot any question concerning the computation of the sentence).

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