

IN THE SUPREME COURT OF THE STATE OF NEVADA

GISTARVE RUFFIN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49231

FILED

SEP 07 2007

ORDER OF AFFIRMANCE

ANETTE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

This is a proper person appeal from a district court order denying appellant's motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Gistarve Ruffin was originally convicted, pursuant to a jury verdict, of burglary (Count I) and possession of tools commonly used for the commission of burglary (Count II) on August 9, 1994. The district court sentenced Ruffin to serve a prison term of 10 years for Count I and a concurrent jail term of 1 year for Count II. The district court also adjudicated Ruffin a habitual criminal and sentenced him to serve a life prison term with the possibility of parole. Ruffin appealed. This court affirmed Ruffin's conviction, but remanded the matter for resentencing, concluding the district court erred in separately sentencing Ruffin for his habitual criminal status.¹

Pursuant to this court's order, on January 29, 1996, the district court entered an amended judgment of conviction, which adjudicated Ruffin a habitual criminal and resentenced him to serve a

¹Ruffin v. State, Docket No. 26230 (Order of Remand, December 12, 1995).

prison term of life with the possibility of parole for Count I and a concurrent jail term of 1 year for Count II. Ruffin appealed, but thereafter this court granted Ruffin's motion to voluntarily withdraw his appeal.²

On March 22, 1996, the district court entered a corrected amended judgment of conviction. The corrected amended judgment imposed the same sentence as the judgment of conviction entered on January 29, 1996, but the corrected amended judgment of conviction made no mention of Ruffin's habitual criminal status.

After unsuccessfully seeking post-conviction relief, Ruffin filed a motion to correct an illegal sentence in the district court on January 9, 2007. In the motion, Ruffin contended that his sentence was facially illegal because it imposed a sentence of life for the count of burglary, which is greater than the sentence allowed by statute.³

It is clear from the record of these proceedings, however, that the district court adjudicated Ruffin a habitual criminal and sentenced him to life, in accordance with NRS 207.010(1)(b)(2). The district court did not, therefore, err by denying Ruffin's motion to correct the sentence.

The fact that the corrected amended judgment of conviction makes no mention of NRS 207.010 is merely a clerical omission. Following

²Ruffin, Jr. v. State, Docket No. 28239 (Order Dismissing Appeal, October 24, 1996).

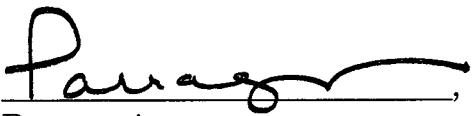
³At the time of Ruffin's offense, the statute provided that an individual convicted of burglary could be sentenced to a prison term of "not less than 1 year nor more than 10 years." 1995 Nev. Stat., ch. 443, § 124, at 1215 (amending NRS 205.060(2)).

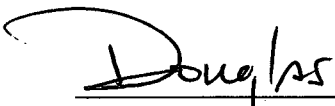
this court's issuance of its remittitur, the district court shall correct this error in the judgment of conviction.⁴

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁴See NRS 176.565 (providing that clerical error in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that district court does not regain jurisdiction following an appeal until supreme court issues its remittitur).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We 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.

cc: Hon. Brent T. Adams, District Judge
Gistarve Ruffin, Jr.
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk