

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ANTHONY MARQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50066 **FILED**

DEC 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

This an appeal from a second amended judgment of conviction, entered pursuant to a guilty plea, of one count of unlawful sexual conduct between a school employee and a pupil and one count of statutory sexual seduction. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On July 29, 2005, the district court entered a judgment of conviction in which it sentenced appellant James Anthony Marquez to serve a prison term of 19 to 48 months for unlawful sexual conduct and a prison term of 19 to 48 months for statutory sexual seduction. The district court ordered the sentences to run consecutively, the sentence for statutory sexual seduction to be suspended, and Marquez to be placed on probation for a period not to exceed 48 months. The district court further ordered Marquez to pay \$7,006.21 in restitution. Marquez did not file a direct appeal. However, the district court determined that the sentence was illegal.

On September 8, 2005, the district court entered an amended judgment of conviction in which it sentenced Marquez to serve a two concurrent prison terms of 19 to 48 months and ordered Marquez to pay \$7,006.21 in restitution. The amended judgment of conviction did not suspend a prison term or impose a period of probation. Marquez did not

appeal from the amended judgment of conviction. He served 22 months in prison and was paroled on both offenses. Thereafter, the district court conducted a review hearing. During the hearing, the State argued that the probation term was mistakenly omitted from the amended judgment of conviction, the district court recalled that it had intended to suspend Marquez's concurrent prison term and place him on probation, and the district court decided to amend the judgment of conviction to include a term of probation "to make sure" Marquez paid the restitution award.

On August 1, 2007, the district court entered a second amended judgment of conviction in which it sentenced Marquez to serve a prison term of 19 to 48 months for unlawful sexual conduct and a prison term of 19 to 48 months for statutory sexual seduction. The district court ordered the sentences to run concurrently, the sentence for statutory sexual seduction to be suspended, and Marquez to be placed on probation for a period not to exceed 48 months. The district court also ordered Marquez to pay \$7,006.21 in restitution. This appeal follows.

Marquez contends that the district court erred by modifying a valid judgment of conviction after he had served his prison terms. Generally, the district court lacks jurisdiction to modify a sentence after a defendant has begun serving it.¹ In most cases, a defendant begins serving his sentence "[o]nly after a judgment of conviction is 'signed by the judge and entered by the clerk,' as provided by NRS 176.105."² Once a


¹Staley v. State, 106 Nev. 75, 79, 787 P.2d 396, 398 (1990) (quoting NRS 176.105(3)), overruled on other grounds by Hodges v. State, 119 Nev. 479, 78 P.3d 67 (2003).

²Miller v. Hayes, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979).

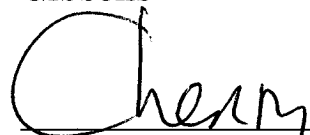
sentence has begun, the district court has jurisdiction to modify a facially legal sentence only where the sentence is "based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."³ This limited exception is based on the defendant's right to due process.⁴ Notably, "the State [is] not denied due process by the district court's failure to sentence [a defendant] to longer prison terms."⁵

Because the sentence imposed in the amended judgment of conviction was facially legal, Marquez had completed his prison terms, and Marquez had been paroled on both offenses, we conclude that the district court lacked jurisdiction to modify the sentence. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court with instructions to vacate the second amended judgment of conviction.

 _____, J.

Gibbons

 _____, J.

Cherry

 _____, J.

Saitta

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); see also Campbell v. District Court, 114 Nev. 410, 413, 957 P.2d 1141, 1142-43 (1998); Passanisi v. State, 108 Nev. 318, 320, 831 P.2d 1371, 1372 (1992); State v. District Court, 100 Nev. 90, 96-97, 677 P.2d 1044, 1048-49 (1984).

⁴See District Court, 100 Nev. at 96-97, 677 P.2d at 1048-49.

⁵Staley, 106 Nev. at 80, 787 P.2d at 399.

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk