

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCIS JOSEPH GHILONI, III,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50270

**FILED**

SEP 04 2008

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DISMISSING APPEAL

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

On August 23, 2006, appellant Francis Joseph Ghiloni, III, was convicted, pursuant to a guilty plea, of one count of attempted grand larceny. The district court sentenced Ghiloni to a jail term of 365 days, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed two years. Ghiloni did not pursue a direct appeal from the judgment of conviction and sentence.

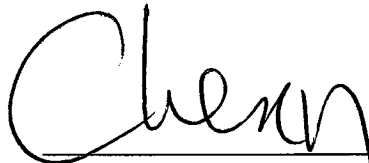
On July 31, 2007, the State filed a notice of intent to seek revocation of Ghiloni's probation. The district court conducted a hearing and, on September 6, 2007, entered an order revoking Ghiloni's probation and an amended judgment of conviction sentencing him to serve 365 days flat time in jail with 55 days credit for time served. This timely appeal followed.


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

On July 25, 2008, counsel for Ghiloni filed a response to this court’s order to show cause. In the response, counsel notes that Ghiloni served his sentence and concedes that “the issue is moot.” Accordingly, having considered Ghiloni’s response to this court’s order and concluding that this appeal is moot, we

ORDER this appeal DISMISSED.

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

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

  
\_\_\_\_\_, 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 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  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk  
Francis Joseph Ghiloni, III