

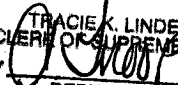
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EDWARD ENTRIKIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50382

FILED

JAN 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE THIRD AMENDED JUDGMENT OF CONVICTION

This is an appeal from a third amended judgment of conviction. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Although the jury found appellant Robert Edward Entrikin guilty of one felony count of violating an extended protective order and one gross misdemeanor count of violating a temporary protective order, the district court convicted him of one misdemeanor count of violating an extended protective order and one misdemeanor count of violating a temporary protective order. The district court sentenced Entrikin to serve two consecutive six-month jail terms with credit for 365-days time served.

First, Entrikin contends that insufficient evidence was presented at trial to sustain his convictions for violating protective orders. Entrikin specifically claims that none of the State's witnesses testified with personal knowledge that the victim's temporary protective order and extended protective order were properly served. However, our review of the record on appeal reveals sufficient evidence to establish Entrikin's guilt beyond a reasonable doubt as determined by a rational trier of fact. See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

We note that the jury heard testimony that the victim ended her relationship with Entrikin after his threatening behavior caused her to fear him. However, Entrikin continued to frequent the bar where the victim worked and directed offensive and threatening comments towards her. After Entrikin was banned from the bar, he continued to make offensive and threatening comments to the victim by calling her residence, place of employment, and cell phone. On May 15, 2005, Entrikin entered the victim's residence without her consent, called the victim from her home phone, and threatened to have her killed.

On May 17, 2005, the victim obtained a temporary protective order, which prohibited Entrikin from contacting her or coming within 100 yards of her. On June 2, 2005, Entrikin called the victim and informed her that he had been served with the protective order. Even with the temporary protective order in place, Entrikin continued to call and harass the victim. Additionally, Entrikin followed the victim home from work early one morning and physically attacked one of her customers within 20 yards of the bar's front entrance.

On June 10, 2005, the victim obtained an extension on her protective order. On July 4, 2005, a police officer served the extended protective order on Entrikin outside of the victim's residence. Nonetheless, Entrikin continued to call the victim and leave messages on her phone. On July 24, 2005, Entrikin called the bar 45 times in a span of 30 minutes, he was later seen parked near the bar, and in one of his phone calls he stated that he could see the police officer in the parking lot. The following day, the police confronted Entrikin at his home and arrested him for aggravated stalking.

We conclude that a rational juror could reasonably infer from this testimony that the protective orders were served on Entrikin and that he violated the protective orders. See NRS 200.591. It is for the jury to

determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

Second, Entrikin contends that “[n]either the jury nor the district court judges had jurisdiction to convict [him] of violations of the protective orders.” Entrikin asserts that the justice courts have exclusive jurisdiction over misdemeanors, concurrent jurisdiction between the district courts and the justice courts cannot exist, and the absence of jurisdiction cannot be cured by stipulation of the parties. Entrikin argues that the jury's verdict on the misdemeanor counts is void and the attempts by the district court and the State to correct the jurisdictional error are equally invalid.

“The original jurisdiction of the district court is in fact limited to felonies and gross misdemeanors, and original jurisdiction over misdemeanors generally lies with the justice's court. Once a district court properly obtains original jurisdiction over a defendant by virtue of a felony or gross misdemeanor charge, however, its jurisdiction is maintained to convict and sentence on any lesser-included offense, even if that offense is a misdemeanor.” Kimball v. State, 100 Nev. 190, 191, 678 P.2d 675, 676 (1984) (internal citations omitted), distinguished on other grounds by State v. Kopp, 118 Nev. 199, 43 P.3d 340 (2002).

Here, the State filed an information in the district court, charging Entrikin with one count of felony aggravated stalking, one count of felony violation of an extended protective order, and one count of gross misdemeanor violation of a temporary protective order. The charged offenses were within the district court's original jurisdiction. Accordingly, the district court had jurisdiction to convict and sentence Entrikin on any

lesser-included offense and we conclude that Entrikin is not entitled to any relief on this contention.

Third, Entrikin contends that the State “committed misconduct when it submitted an amended information months after a verdict was returned” and that “[t]he district court erred in adjudicating [him] guilty of misdemeanor violations of protection orders on the amended information.” Entrikin asserts that the State and the district court attempted to “cover-up a heinous wrong with the promise of giving [him] ‘credit for time served’” and that “defense counsel who failed to note the original error” could not waive the procedural defect. Entrikin specifically argues that the district court’s rulings prejudiced his right to a fair trial in another case.

Entrikin cites to NRS 173.095(1), which provides that “[t]he court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.” He also relies on Laney v. State, 86 Nev. 173, 177, 466 P.2d 666, 669 (1970), wherein this court stated that “a judgment will not be set aside or a new trial granted, in a criminal case, unless the accused is able to affirmatively demonstrate that the information is so insufficient that it results in a miscarriage of justice or actually prejudices him in respect to a substantial right.”

The record on appeal reveals that the State and the district court imprudently acted to correct what they thought was an illegal sentence. However, the record does not reveal why they believed the sentence was illegal or even that the sentence was illegal.¹ We note that

¹The parties have not provided this court with a transcript of the district court’s September 28, 2006, hearing on the State’s request for
continued on next page . . .

the criminal information presented to the jury was facially valid, the jury acquitted Entrikin of aggravated stalking and found him guilty of felony and gross misdemeanor protection-order violations. Even if these could be viewed as inconsistent verdicts, they are permissible in Nevada. Greene v. State, 113 Nev. 157, 173, 931 P.2d 54, 64 (1997), overruled in part on other grounds by Byford v. State, 116 Nev. 215, 235, 994 P.2d 700, 713 (2000). We further note that the district court's decision to convict Entrikin of the misdemeanors instead of a felony and a gross misdemeanor inured to Entrikin's benefit. Under these circumstances, Entrikin has failed to demonstrate that he suffered a miscarriage of justice or was actually prejudiced by the district court's actions and we conclude that he is not entitled to relief on this contention.

Fourth, Entrikin contends that "[t]he district court erred by running [his] sentences consecutive after initially running them concurrently." Citing to Wilson v. State, 123 Nev. ___, ___, 170 P.3d 975, 981 (2007), Entrikin specifically argues that the district court violated his double jeopardy protections by restructuring the relationship between the two counts of violating protection orders in the third amended judgment of conviction. The district court sentenced Entrikin to serve two consecutive six-month terms in the county jail with credit for 365-days time served. As a result of this sentencing decision, Entrikin has expired his sentence


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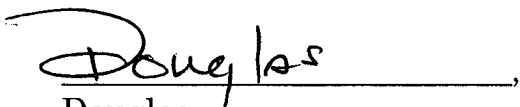
resentencing. However, the State's appendix contains a copy of the district court minutes for this hearing. The minutes indicate that the State filed the second amended information in open court and made statements "regarding the problems with [the] statute in relation to the Aggravated Stalking charge," and that appellant's counsel asked the district court to "proceed with sentencing today."

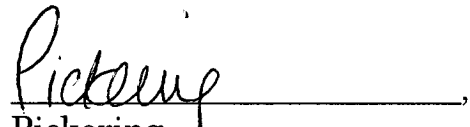
and any questions concerning the restructuring of the sentence are moot. Cf. Johnson v. Director, Dep't Prisons, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989) (stating that the expiration of a defendant's sentence rendered moot any question concerning the computation of the sentence).

Although we conclude that Entrikin is not entitled to any relief, our review of the record on appeal reveals two errors: the third amended judgment of conviction incorrectly declares that the jury found Entrikin guilty of misdemeanor violations of protective orders and that the district court was sitting "as magistrate" instead of as the district court when it sentenced Entrikin. Both of these declarations are incorrect. The jury found Entrikin guilty of a felony and a gross misdemeanor pursuant to NRS 200.591, and the district court did not sit as a magistrate when it sentenced Entrikin. Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the third amended judgment of conviction.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Bunin & Bunin
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk