

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD KEITH ANDERSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50435

**FILED**

APR 10 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a document labeled “motion to compel prison to fix [judgment of conviction].” Eighth Judicial District Court, Clark County; James A. Brennan, Judge.

On March 3, 2005, the district court convicted appellant, pursuant to a jury verdict, of six counts of burglary (Counts 1, 5, 9, 13, 17, and 20), six counts of forgery (Counts 2, 6, 10, 14, 18, and 21), four counts of theft (Counts 3, 7, 11, and 15), and six counts of obtaining and using personal identification information of another (Counts 4, 8, 12, 16, 19, and 22). The district court sentenced appellant to serve terms in the Nevada State Prison of 16 to 72 months for each burglary count, 12 to 34 months for each forgery count, 12 to 36 months for each theft count, and 32 to 144 months for each count of obtaining and using the personal identification information of another.<sup>1</sup> Further, the district court imposed the terms for Counts 1 through 4 to run consecutive to each other, and the terms for

---

<sup>1</sup>An amended judgment of conviction was entered on May 16, 2005, to fix a clerical error in the judgment of conviction.

Counts 5 through 22 to run concurrent to each other and Counts 1 through 4. This court affirmed appellant's judgment of conviction and sentence on appeal.<sup>2</sup> The remittitur issued on January 18, 2006. Appellant unsuccessfully sought post-conviction relief by way of two post-conviction petitions for writs of habeas corpus.<sup>3</sup>

On October 3, 2007, appellant filed a proper person document labeled, "motion to compel prison to fix [judgment of conviction]" in the Eighth Judicial District Court. On October 23, 2007, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that the Nevada Department of Corrections was improperly requiring him to serve an extra term of 32 to 144 months, instead of a term of 16 to 72 months, within the four-level sentence structure required by the judgment of conviction.<sup>4</sup>

Appellant's claim challenged the computation of time served; thus, appellant's claim should have been filed in a post-conviction petition for a writ of habeas corpus.<sup>5</sup> Despite the incorrect label affixed to the motion, we affirm the decision of the district court to deny the motion as appellant's claim lacked merit.

---

<sup>2</sup>Anderson v. State, Docket No. 45014 (Order of Affirmance, December 23, 2005).

<sup>3</sup>Anderson v. State, Docket No. 48576 (Order of Affirmance, July 20, 2007).

<sup>4</sup>A level within a sentence structure refers to those terms a prisoner must either discharge from or parole from in order to begin serving the next sentence. Thus, in the instant case, appellant had a four-level sentence structure because four of the terms were imposed to run consecutively.

<sup>5</sup>See NRS 34.724(2)(c).

Appellant failed to demonstrate that the Department of Corrections incorrectly calculated his sentence structure in the instant case. As stated earlier, the district court sentenced appellant to serve terms of 16 to 72 months for each burglary count (Counts 1, 5, 9, 13, 17, and 20), 12 to 34 months for each forgery count (Counts 2, 6, 10, 14, 18, and 21), 12 to 36 months for each theft count (Counts 3, 7, 11, and 15), and 32 to 144 months for each count of obtaining and using the personal identification information of another (Counts 4, 8, 12, 16, 19, and 22). Pursuant to the judgment of conviction appellant was sentenced to serve the terms imposed in Counts 1 through 4 consecutively, and they were as follows: (1) for Count 1 (burglary), a term of 16 to 72 months; (2) for Count 2 (forgery), a term of 12 to 34 months; (3) for Count 3 (theft), a term of 12 to 36 months; and (4) for Count 4 (obtaining and using personal identification information of another), a term of 32 to 144 months. The terms imposed for the subsequent counts, Counts 5 through 22, were imposed to run concurrently with one another and concurrently with Counts 1 through 4. The controlling term for Counts 5 through 22 was Count 8, a term of 32 to 144 months, because this term provided the longest term among the concurrent counts for parole eligibility.<sup>6</sup> Because the terms for Counts 5 through 22 were imposed to run concurrently with Counts 1 through 4, the first term that Count 8 could be run concurrently with was Count 1, a term of 16 to 72 months. Because the term imposed


---

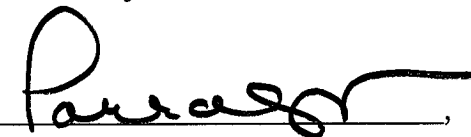
<sup>6</sup>See NRS 213.1213 (“If a prisoner is sentenced pursuant to NRS 176.035 to serve two or more concurrent sentences, whether or not the sentences are identical in length or other characteristics, eligibility for parole from any of the concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole.”).


in Count 8, a term of 32 to 144 months, was greater than the term imposed in Count 1, a term of 16 to 72 months, Count 8 was the controlling term for the first level in the sentence structure.<sup>7</sup> Therefore, appellant is required to serve the following consecutive terms of imprisonment: (1) a term of 32 to 144 months; (2) a term of 12 to 34 months; (3) a term of 12 to 36 months; and (4) a term of 32 to 144 months. As appellant failed to demonstrate that the sentence structure deviated from that imposed in the judgment of conviction, the district court properly determined that appellant was not entitled to the relief sought.

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.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

---

<sup>7</sup>See id.

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Chief Judge, Eighth Judicial District  
Hon. James A. Brennan, Senior Judge  
Arnold Keith Anderson  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk