IN THE SUPREME COURT OF THE STATE OF NEVADA

VERNON WESLEY NELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51002

FILED

JUL 03 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a "motion to have sentencing document corrected to reflect oral sentence pronouncement." Eighth Judicial District Court, Clark County; David B. Barker, Judge.

On March 24, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary while in possession of a deadly weapon (count 1), four counts of battery with the intent to commit a crime (counts 2, 3, 6, 9), one count of open or gross lewdness (count 4), one count of attempted sexual assault with a deadly weapon (count 5), one count of first-degree kidnapping with the use of a deadly weapon (count 7), one count of burglary (count 8), and three counts of sexual assault (counts 10, 11, 12). The district court sentenced appellant to serve terms in the Nevada State Prison as follows: (1) for count 1, a term of 36 to 156 months; (2) for count 2, a term of 36 to 156 months; (3) for count 3, a term of 36 to 156 months; (4) for count 4, a term of 12 months; (5) for count 5, two consecutive terms of 48 to 192 months; (6) for count 6, a term of 36 to 156 months; (7) for count 7, two consecutive terms of life with the possibility of parole after 5 years; (8) for count 8, a term of 24 to 96 months; (9) for count 9, a term of 36 to 156 months; (10) for count 10, a

term of life with the possibility of parole after 10 years; (11) for count 11, a term of life with the possibility of parole after 10 years; and (12) for count 12, a term of life with the possibility of parole after 10 years. The district court imposed count 8 to run consecutively to count 7 and the remaining terms to run concurrently with one another. This court affirmed the judgment of conviction on direct appeal.[1]

On December 3, 2007, appellant filed a proper person "motion to have sentencing document corrected to reflect oral sentence pronouncement" in the district court. The State opposed the motion. On January 14, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court at the sentencing hearing ordered the deadly weapon enhancement in count 7 to run concurrently with the primary offense in count 7. In support of his argument, appellant relies upon this statement by the district court:

> Count 7, First[-]Degree Kidnapping with Use of a Deadly Weapon, I'm going to impose a term of life with the possibility of parole; that parole eligibility will be at five years. I will similarly impose an equal and consecutive term of life with the possibility of parole at five years. Therefore the maximum term on that is of course life, as noted. Count 8—I'm sorry, that will run concurrent to Count 7 [sic].

Appellant argued that the sentence as pronounced in the sentencing hearing should control over the sentence imposed in the judgment of conviction.

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[1]Nelson v. State, Docket No. 42872 (Order of Affirmance, July 11, 2005).

NRS 176.565 provides, "Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders." Because of the nature of the relief sought in the motion, correction of the judgment to reflect the oral pronouncement, we conclude that appellant's motion should have been construed to be a motion to correct a clerical error.

Our review of the record on appeal reveals that the district court did not err in denying the motion. In reading the district court's statements in context, it is clear that the district court misspoke in her final statements in pronouncing the terms for count 7. Pursuant to the version of NRS 193.165 in effect at the time his offenses were committed, the deadly weapon was required to be an equal and consecutive term, and the district court correctly stated the second term, the deadly weapon enhancement term, would run consecutively to the term for the primary offense of first-kidnapping.[2] The statement regarding count 7 at the conclusion the paragraph was correctly identified by the court recorder in the transcript with a "[sic]" indicating a mistake in the statement, but that the court recorder intentionally transcribed the statement as spoken.[3] Further, "a district judge's pronouncement of judgment and sentence from the bench is not a final judgment . . . . Only after a judgment of conviction is 'signed by the judge and entered by the clerk,' as provided by NRS 176.105, does it become final and does the defendant begin to serve a

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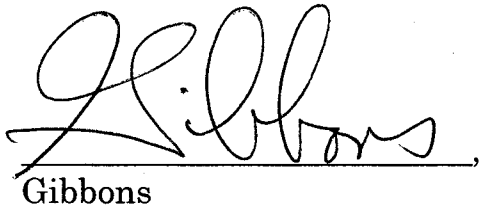
[2]1995 Nev. Stat., ch. 455, § 1, at 1431.

[3]Merriam Webster's Collegiate Dictionary 1088 (10th ed. 1994) (defining "sic" as "intentionally so written").

sentence of imprisonment."[4] Thus, any alteration from the oral pronouncement would not provide a basis for relief in the instant case. Therefore, we conclude that the district court did not err in denying the motion.

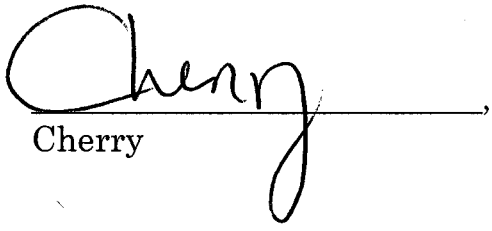
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]



_____, C.J.
Gibbons

_____, J.
Maupin



_____, J.
Cherry

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

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

[6]We 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. David B. Barker, District Judge
Vernon Wesley Nelson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk