

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ROBERT ESTES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51140

FILED

AUG 18 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking appellant Michael Robert Estes' probation. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 3, 2007, Estes was convicted, pursuant to a guilty plea, of one count of unlawful taking of a vehicle. The district court sentenced Estes to 365 days flat time in the county jail,¹ ordered him to pay \$1,800 in restitution, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed three years. Estes did not pursue a direct appeal from the judgment of conviction and sentence.

¹See Haney v. State, 124 Nev. ___, ___, 185 P.3d 350, 352 (2008) ("A flat time sentence is a form of determinate sentencing . . . whereby the offender must serve the exact penalty imposed without the ability to earn credits, while incarcerated, towards early release.").

On December 3, 2007, the State filed a notice of intent to seek revocation of Estes' probation. The district court conducted a hearing and, on February 12, 2008, entered an order revoking Estes' probation and imposing the original sentence with 104 days credit for time served.² This timely appeal followed.

Estes contends that the district court erred by sentencing him to 365 days flat time. Estes argues that (1) no statute or rule allows for the imposition of a flat time sentence, and (2) the imposition of a flat time sentence is unconstitutional and violates the separation of powers doctrine.

This issue is not appropriately raised in this appeal from the order revoking probation, and thus, will not be addressed. This court has repeatedly stated that "claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings."³ Therefore, we conclude that Estes waived his


²At the revocation hearing, Estes admitted to violating conditions of his probation and stipulated to the revocation. Estes does not challenge the revocation determination on appeal.

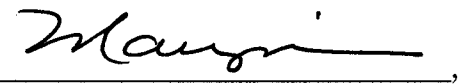
³See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

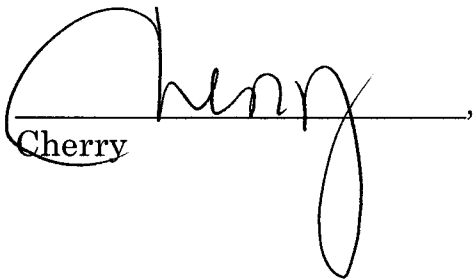
right to raise this issue by failing to pursue the matter in a direct appeal.⁴

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Maupin


_____, J.
Cherry

⁴In Haney, this court stated 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.” 124 Nev. at ___, ___, 185 P.3d at 352, 353. In Estes’ case, a motion to correct an illegal sentence, filed in the district court, would be the appropriate vehicle for him to challenge the legality of his sentence. See NRS 176.555; Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Michael Robert Estes
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk