

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAKE CALFEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51550

FILED

FEB 11 2009

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

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction, pursuant to a guilty plea, of possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge. The district court sentenced appellant Jake Calfee to serve a prison term of 12 to 36 months. The district court awarded Calfee 228 days credit for time served. The district court later granted the State's motion to correct an illegal sentence and entered an amended judgment of conviction in which it withdrew the 228 days credit for time served.

First, Calfee argues that the district court erred when it withdrew the award of credit for time served. He asserts that the withdrawal of credit effectively increased his minimum sentence from 12 months to 19 months, thus raising it to over 40 percent of his maximum sentence in violation of NRS 193.130(1).

A sentencing determination will not be disturbed on appeal absent an abuse of discretion by the district court. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). The district court must sentence a

person convicted of a felony to a minimum term and a maximum term of imprisonment within the limits of the applicable statute. NRS 193.130(1). “The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed.” Id. In addition, “whenever a sentence of imprisonment . . . is imposed, the court may order that credit be allowed against the duration of the sentence . . . for the amount of time which the defendant has actually spent in confinement before conviction, unless his confinement was pursuant to a judgment of conviction for another offense.” NRS 176.055(1). Further, “[t]he plain and unequivocal language of NRS 176.055(2)(b) prohibits a district court from crediting a parolee or probationer for time served on a subsequent offense if such offense was committed while on probation or parole.” Gaines v. State, 116 Nev. 359, 364, 998 P.2d 166, 169 (2000).

We conclude that this claim lacks merit. The district court’s sentence of 12 to 36 months was within statutory parameters. See NRS 202.360(1). Further, the minimum of 12 months is not more than 40 percent of the maximum of 36 months. Moreover, Calfee was not entitled to credit for time served in pretrial detention because he was serving a sentence of probation when he committed the instant crime, and, as his probation was revoked shortly after his arrest, his confinement was also pursuant to a judgment of conviction for another offense. In withdrawing the credit, the district court did not alter the term of imprisonment imposed in the instant case. Thus, the withdrawal of the credit did not impermissibly increase Calfee’s minimum sentence. Therefore, the

district court did not abuse its discretion in granting the State's motion to correct an illegal sentence and amending the judgment of conviction.

Second, Calfee contends that the district court's granting of the State's motion to correct an illegal sentence violated the Double Jeopardy Clause of the Nevada Constitution. Citing to Miranda v. State, 114 Nev. 385, 956 P.2d 1377 (1998), appellant argues that the withdrawal of credit unnecessarily increased the severity of Calfee's sentence.

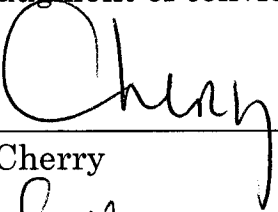
In Miranda, we stated that "[t]he Double Jeopardy Clause of the United States Constitution precludes courts from increasing a sentence when the defendant has a reasonable expectation that the sentence is final." Id. at 386, 956 P.2d at 1378. "However, a defendant has 'no legitimate expectation of finality in an illegal sentence.'" Id. (quoting U.S. v. Garren, 884 F.2d 427, 431 (9th Cir. 1989), opinion amended and superceded on other grounds on denial of rehearing, 893 F.2d 208 (9th Cir. 1989)).


We conclude that this claim also lacks merit. Granting the motion to correct an illegal sentence did not violate the Double Jeopardy Clause because it did not increase the severity of Calfee's sentence. Further, the district court did not err by withdrawing the credit for pretrial detention because there was no other less severe means of correcting the illegal sentence. As previously noted, Calfee's sentence was illegal because he was not entitled to credit against the instant sentence for time spent in pretrial detention. Therefore, the district court did not err by vacating the credit for time served because it was "necessary to

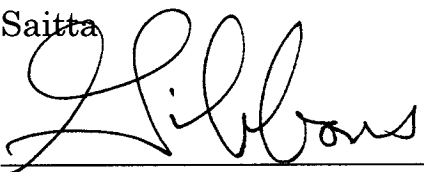
bring the sentence into compliance with the pertinent statute[s].” See Miranda, 114 Nev. at 387, 956 P.2d at 1378.

Having considered Calfee’s contentions and concluded that they are without merit, we

ORDER the amended judgment of conviction AFFIRMED.


_____, J.


_____, J.


_____, J.
Gibbons

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Law Office of Betsy Allen
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk