

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL ARTHUR MOORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53227

FILED

DEC 03 2009

ORDER OF AFFIRMANCE

THACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *J. Chew*
DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Samuel Arthur Moore to serve a prison term of 48 to 120 months plus a consecutive term of 24 to 120 months for the deadly weapon enhancement.

Moore contends that the district court erred in failing to state on the record that it considered the factors identified in NRS 193.165(1) in determining the length of sentence to impose for the deadly weapon enhancement. We agree, however, we conclude that the error does not warrant reversal.

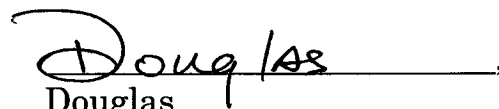
NRS 193.165(1) requires the district court to consider five enumerated factors when imposing a sentence for a deadly weapon enhancement. The district court is required to state on the record that it has considered these factors "in determining the length of the additional penalty." NRS 193.165(1). This court recently held that compliance with NRS 193.165(1) requires the district court to articulate findings on the

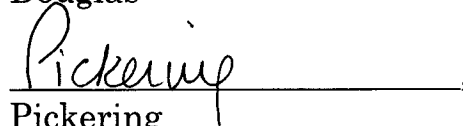
record with regard to each factor. Mendoza-Lobos v. State, 125 Nev. ___, ___ P.3d ___ (Adv. Op. No. 49, October 29, 2009).¹

Here, the district court failed to articulate findings on the record regarding the factors enumerated in NRS 193.165(1). Thus, the district court committed error. However, Moore did not object, and it is apparent that the district court exercised its discretion in determining the sentence for the enhancement because it imposed a different, and lesser, sentence for the enhancement than for the primary offense. And it does not appear from the record that the district court's failure to articulate findings regarding the enumerated factors had any bearing on its sentencing determination. Therefore, we conclude the error did not affect Moore's substantial rights and does not warrant reversal. Grey v. State, 124 Nev. ___, ___, 178 P.3d 154, 163 (2008); Valdez v. State, 124 Nev. ___, ___, 196 P.3d 465, 477 (2008). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


Parraguirre J.


Douglas J.


Pickering J.

¹The State contends that the separation-of-powers doctrine prohibits the Legislature from requiring a sentencing court to state on the record that it has considered the factors enumerated in NRS 193.165(1). In Mendoza-Lobos, we agreed with this contention, but nonetheless directed the district courts to comply with NRS 193.165(1) in its entirety. 125 Nev. at ___, ___ P.3d at ___ (Adv. Op. No. 49, at 10-11).

cc: Hon. Steven R. Kosach, District Judge
Edward T. Reed
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk