IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD PAVON, JR. A/K/A EDWARD PAVON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53450

FILED

SEP 25 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a corrected judgment of conviction. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

On December 3, 2008, appellant Edward Pavon, Jr., was convicted, pursuant to a guilty plea, of being an ex-felon in possession of a firearm. The district court sentenced Pavon to serve a prison term of 12-30 months to run concurrently with the sentence imposed in district court case number C79-692 and gave him credit for 496 days time served. In district court case number C79-692, Pavon was convicted of first-degree murder and sentenced to life in prison with the possibility of parole. Pavon was out on parole at the time of the instant offense. The district court subsequently requested briefing by the parties after the State objected to the legality of Pavon's sentence. The district court conducted a hearing and, on January 29, 2009, found that the court entered an illegal

sentence by awarding Pavon credit for time served and ordering the sentence to run concurrently with the sentence imposed in district court case number C79-692. See NRS 176.055(2)(b); NRS 176.035(2). On March 4, 2009, the district court entered a corrected judgment of conviction, ordered the sentence to run consecutively to the sentence imposed in district court case number C79-692, and denied Pavon credit for time served. This timely appeal followed.

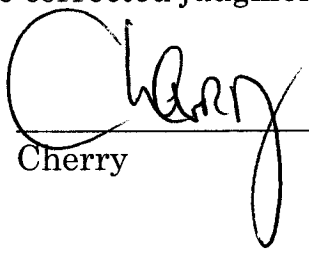
Despite acknowledging that NRS 176.035(2) provides otherwise, Pavon contends that a sentencing court "must be authorized" to impose a concurrent sentence when a defendant is convicted of a felony offense while out on parole for an earlier felony offense. Pavon notes that the legislature amended NRS 176.035(2) in 1987 to allow for the imposition of a concurrent sentence if the defendant is a probationer at the time the subsequent felony offense is committed. See 1987 Nev. Stat. ch. 271, § 1(2), at 592. Nevertheless, citing to pre-amendment case law, Adams v. Warden, 97 Nev. 171, 173, 626 P.2d 259, 260 (1981), Pavon argues that "there is no principal distinction between a probationer and a parolee for purposes of NRS 176.035(2)." In other words, Pavon seems to be asking this court to find that the legislature did not have the authority to amend NRS 176.035(2) in 1987 and distinguish parolees from probationers and, therefore, the district court should reinstate his original sentence. We disagree.

Initially, we note that the district court may correct an illegal sentence at any time. NRS 176.555. The original sentence in this case was per se illegal. There was no other, less severe means of correcting the illegality; therefore, the district court did not err by ordering that the sentence run consecutive to the sentence imposed in district court case number C79-692 and vacating the credit for time served in order to bring the sentence into compliance with the pertinent statutes. See Miranda v. State, 114 Nev. 385, 387, 956 P.2d 1377, 1378 (1998).

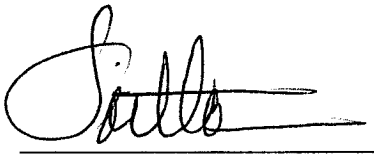
Additionally, Pavon has not provided any persuasive argument or relevant authority in support of his unstated but implied contention that NRS 176.035(2) is unconstitutional in violation of the Equal Protection Clause of the United States Constitution. U.S. Const. amend. XIV, § 1. The legislature chose to distinguish between parolees and probationers for purposes of NRS 176.035(2), and Pavon has failed to argue, let alone demonstrate, that they represent a suspect class requiring more than a rational basis for the distinction. See Gaines v. State, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000). Further, we reject Pavon's implication that there is no rational basis for distinguishing between parolees and probationers for purposes of NRS 176.035(2). We specifically note their respective treatment by the original sentencing courts—based on any number of factors, a determination was made allowing probationers to avoid initial incarceration whereas parolees were denied that opportunity.

Therefore, having considered Pavon's contention and concluded that it is without merit, we

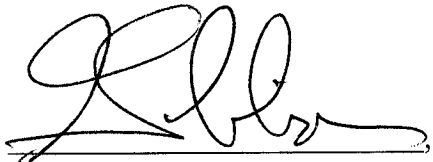
ORDER the corrected judgment of conviction AFFIRMED.[1]



_____, J.
Cherry



_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Law Offices of John E. Oakes
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[1]Although this court has elected to file the appendix submitted by Pavon, we note that it fails to comply with the requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2); NRAP 30(c). Specifically, the appendix submitted by Pavon is not paginated sequentially and does not contain an alphabetical index. Counsel for Pavon is cautioned that failure to comply with the appendix requirements in the future may result in it being returned, unfiled, to be correctly prepared, NRAP 32(c), and may also result in the imposition of sanctions by this court, NRAP 3C(n).