

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY PADILLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57799

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of misdemeanor possession of a controlled substance. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Appellant Anthony Padilla contends that the district court erred in denying his pretrial suppression motion by improperly considering information that did not appear within the search warrant declaration and by failing to find that the search warrant was defective because it did not contain a statement of probable cause. Based on these alleged errors, Padilla asserts that the search warrant was invalid, the fruits of the search should have been suppressed, the information should have been dismissed, and he was wrongfully convicted and sentenced.

The district court heard argument on Padilla's motion to suppress, determined that an evidentiary hearing was unnecessary, and denied the motion. Because Padilla failed to provide transcripts of the hearings on his suppression motion and motion for reconsideration, see Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) ("Appellant has the ultimate responsibility to provide this court with

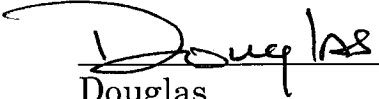
'portions of the record essential to determination of issues raised in appellant's appeal.'" (quoting NRAP 30(b)(3)); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."), we are unable to determine whether the district court made factual findings or review the district court's decision, see Somee v. State, 124 Nev. 434, 441-42, 187 P.3d 152, 158 (2008) ("Without an adequate record, this court cannot review a district court's decision to admit or suppress evidence."). Therefore, we decline to consider the merits of Padilla's claim that the district court improperly considered information that did not appear within the search warrant declaration.

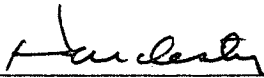
We conclude that Padilla's claim that the district court erred by failing to find that the search warrant was defective because it did not contain a statement of probable cause is without merit. The search warrant in this case was a telephonic warrant issued pursuant to NRS 179.045(2) and we have previously held "that a warrant issued pursuant to this subsection need not contain a statement of probable cause on the face of the warrant." State v. Gameros-Perez, 119 Nev. 537, 539, 78 P.3d 511, 512 (2003).

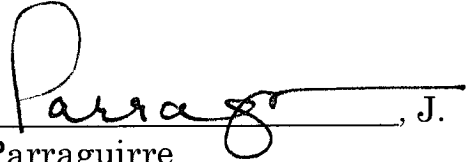
Padilla also contends that the judgment of conviction erroneously states that he was convicted pursuant to a guilty plea and suggests that this is a reversible error. We conclude that the error in the judgment of conviction is a clerical error, which does not warrant reversal of the conviction, but must be corrected following the issuance of our remittitur. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain

jurisdiction following an appeal until the supreme court issues its remittitur). Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Kathy A. Hardcastle, District Judge
Kossack Law Offices
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk