

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL ADAM GEORGE NEREZ, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58932

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Indabau*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of attempted kidnapping with the use of a deadly weapon and conspiracy to commit kidnapping with the use of a deadly weapon.¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

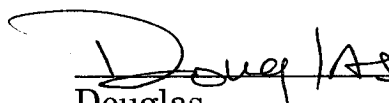
Appellant Manuel Adam George Nerez, III contends that the lengthy prison terms imposed by the district court constitute cruel and unusual punishment. We review a district court's sentencing decision for abuse of discretion. Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 490

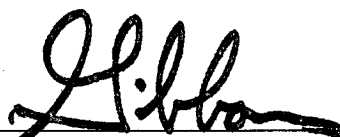
¹To the extent that the State claims that the notice of appeal was untimely filed, this claim lacks merit. The judgment of conviction was entered on August 19, 2009, and the notice of appeal was filed in the district court on September 8, 2009, within the relevant appeal period. See NRAP 4(b)(1)(A). The district court clerk did not transmit the notice to this court until August 4, 2011, see NRAP 3(g)(1), but the clerk's delay does not affect the timeliness of the notice of appeal, see NRAP 4(b)(1)(A) (notice of appeal must be filed with district court clerk within 30 days).

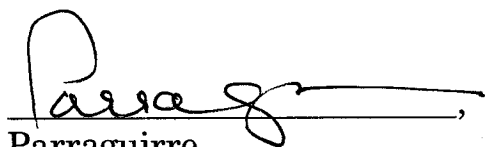
(2009). Here, the district court sentenced Nerez to multiple concurrent and consecutive prison terms totaling 48 to 120 months. Nerez has not shown that the district court relied on impalpable or highly suspect evidence, see Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976), the relevant statutes are unconstitutional, see Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996), or his sentence falls outside the parameters of the relevant statutes, see NRS 193.165(1); NRS 193.330(1)(a)(2); NRS 199.480(1)(a); NRS 200.330, and we are not convinced that the sentences are unreasonably disproportionate to the gravity of his offenses as to violate the constitutional proscriptions against cruel and unusual punishment, see Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion); Blume, 112 Nev. at 475, 915 P.2d at 284. However, the district court erred by applying the deadly weapon sentencing enhancement to Nerez's conspiracy conviction. See Moore v. State, 117 Nev. 659, 663, 27 P.3d 447, 450 (2001) (holding that the deadly weapon sentencing enhancement cannot apply to a conviction for conspiracy). Therefore, we conclude that Nerez's sentence must be reversed in part and the case remanded to the district court so that it can vacate the deadly weapon enhancement that it applied to the conspiracy conviction and enter an amended judgment of conviction.² For these reasons, we

²The district court shall enter the amended judgment of conviction after we have issued our remittitur. 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).

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Robert W. Lane, District Judge
Carl M. Joerger
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

³Although we filed the fast track statement and appendix submitted by Nerez, they fail to comply with the Nevada Rules of Appellate Procedure. The fast track statement referred to matters in the record without specific citation to the appendix, see NRAP 3C(e)(1)(C); Smith v. Emery, 109 Nev. 737, 743, 856 P.2d 1386, 1390 (1993), and the appendix did not include the judgment of conviction and other required documents, see NRAP 3C(f)(2); NRAP 30(b)(2). Counsel for Nerez is cautioned that the failure to comply with the briefing requirements may result in the fast track statement and appendix being returned, unfiled, to be correctly prepared, NRAP 32(e), and the imposition of sanctions, NRAP 3C(n).