

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHANON SOMEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59009

FILED

JUN 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of four counts of attempted murder with the use of a deadly weapon to promote, further, or assist a criminal gang and two counts of carrying a concealed weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Chanon Somee's sole contention is that the district court violated the prohibition against double jeopardy by imposing a harsher punishment for attempted murder counts 1, 3, and 4 than it imposed in his original judgment of conviction. We disagree.

We review Double Jeopardy Clause claims de novo. Davidson v. State, 124 Nev. 892, 896, 192 P.3d 1185, 1189 (2008). Because Somee's original judgment of conviction was reversed and his case was remanded for a new trial, Somee v. State, 124 Nev. 434, 446, 187 P.3d 152, 161 (2008), the district court was free to impose a greater sentence upon reconviction so long as the new sentence was lawful, not the product of vindictiveness, and the reasons for the greater sentence affirmatively appear on the record, North Carolina v. Pearce, 395 U.S. 711, 719-26 (1969), overruled in part on other grounds by Alabama v. Smith, 490 U.S.

794 (1989); see also Monge v. California, 524 U.S. 721, 730 (1998); Bullington v. Missouri, 451 U.S. 430, 438 (1981); United States v. DiFrancesco, 449 U.S. 117, 135 (1980); Holbrook v. State, 90 Nev. 95, 98, 518 P.2d 1242, 1244 (1974).

Even assuming the district court imposed a greater sentence, there is no double jeopardy. The district court based its decision on the parties' stipulation, imposing a prison term of 5 to 20 years plus a consecutive term of 5 to 20 years for each count of attempted murder with the sentences for the counts to run concurrently. In addition to falling within the parameters of the relevant statutes, it is precisely the sentence that the parties stipulated to in their plea agreement. See NRS 193.165(1); NRS 193.168(1); NRS 193.169(1); NRS 193.330(1)(a)(1); NRS 200.030(4), (5) (murder is a category A felony). Accordingly, we conclude that the district court did not violate the prohibition against double jeopardy, and we

ORDER the judgment of conviction AFFIRMED.



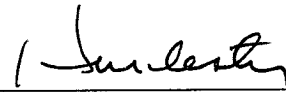
Saitta

J.



Pickering

J.



Hardesty

J.

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk