

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES STURGIS, JR.,

No. 35502

Appellant,

vs.

FILED

THE STATE OF NEVADA,

NOV 21 2000

Respondent.

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's motion to correct an illegal sentence.

Appellant was originally convicted, pursuant to a jury verdict, of one count of second degree kidnapping. The district court sentenced appellant to a prison term of 72 to 180 months, as reflected by the judgment of conviction, entered on October 15, 1996. On December 12, 1997, appellant filed a motion to correct his sentence, arguing that the transcript of the sentencing hearing reflected a sentence of 72 to 120 months. On December 22, 1997, the district court entered a corrected judgment of conviction, nunc pro tunc, imposing a prison term of 72 to 120 months.

On January 22, 1999, appellant filed a motion to correct an illegal sentence. Appellant argued that the sentence was illegal because the minimum term exceeded forty percent of the maximum term. See NRS 193.130(1). Appellant

therefore sought to have the district court reduce the minimum term to 48 months. The State opposed the motion. After a hearing on the motion, the district court entered an order denying the motion, rescinding the judgment entered on December 22, 1997, and reinstating the original judgment entered on October 15, 1996.

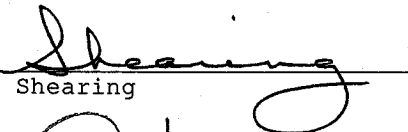
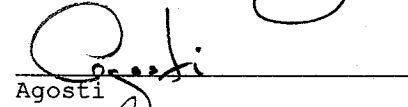
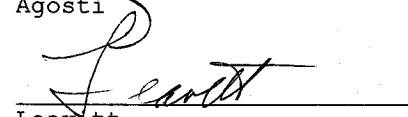
Appellant contends that the district court erred by denying his motion. Specifically, appellant argues that the oral pronouncement of the district court takes precedence over the original written judgment, and that the State is barred by the doctrine of laches from objecting to the corrected judgment entered on December 22, 1997. Finally, appellant argues that the Double Jeopardy Clause of the United States Constitution precludes increasing his sentence because he had a reasonable expectation that his sentence (as stated in the December 22, 1997, judgment of conviction) was final. We disagree.

The sentence contained in the corrected judgment of conviction was unquestionably illegal. NRS 176.555 allows the district court to "correct an illegal sentence at any time." Moreover, the district court made a specific factual finding that the sentence pronounced at the sentencing hearing was 72 to 180 months, and that the transcript was erroneous. That finding is supported by the record. We therefore conclude that the district court properly exercised its discretion in

rescinding a judgment that contained an illegal sentence that was based on a clerical error.

Having considered appellant's contention and concluded it is without merit, the order of the district court is affirmed.

It is so ORDERED.

 _____ Shearing	J.
 _____ Agosti	J.
 _____ Leavitt	J.

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Mark L. Sturdivant
Washoe County Clerk