

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMAHL PATTERSON,  
Appellant,  
vs.  
GREGORY SMITH, WARDEN,  
Respondent.

No. 60758

**FILED**

DEC 12 2012

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> First Judicial District Court, Carson City; James Todd Russell, Judge.


In his petition filed on December 21, 2011, appellant claimed that the Nevada Department of Corrections had structured his sentences incorrectly. Having reviewed the record on appeal, we conclude that substantial evidence supports the decision of the district court to deny relief and that the district court did not err as a matter of law. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). We therefore affirm

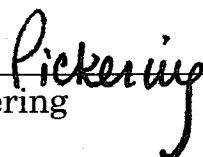
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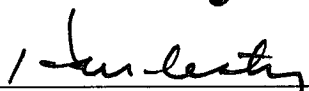
<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

the denial of the petition for the reasons stated in the attached district court order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. James Todd Russell, District Judge  
Jamahl Patterson  
Attorney General/Carson City  
Carson City Clerk

1 Case No. 08 CR 00058 1B

2 Dept. No. 1

REC'D & FILED

2012 APR 11 AM 10:10

ALAN GLOVER  
CLERK

BY Alan Glover  
DEPUTY

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6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR CARSON CITY**

8 -000-

9 JAMAHL PATTERSON, #90886

10 Petitioner,

11 vs.

12 GREGORY SMITH, WARDEN,

13 Respondent.

**ORDER**

14  
15 This matter comes before the Court on Petitioner's Petition for Writ of Habeas Corpus  
16 filed on December 21, 2011. An Answer was filed on March 7, 2012. A Request to Submit was  
17 filed the same date.

18 **I. FACTS AND PROCEDURAL HISTORY**

19 A Judgement of Conviction was filed May 1, 2006, in Case No. 06-00149C, in the First  
20 Judicial District Court of the State of Nevada, in and for Carson City, in which the Petitioner was  
21 found guilty of Leaving the Scene of an Accident (Hit & Run) Involving Injury. The Petitioner  
22 was sentenced to a minimum of twenty-six (26) months to a maximum of one hundred twenty  
23 (120) months and imposed a fine of \$2000. ("2006 Case").

24 While in the custody of the Nevada Department of Corrections serving his sentence in the  
25 2006 case, the Petitioner escaped from Stewart Conservation Camp, on April 16, 2007. While  
26 on escape status he committed the crime of Attempted Invasion of the Home in Washoe County.  
27 ("2007 Case").

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1 A Judgment of Conviction was filed on December 13, 2007, in Case No. CR07-1518, in  
2 the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, in  
3 which the Petitioner was found guilty of Attempted Invasion of the Home. The Petitioner was  
4 sentenced to a minimum of twelve (12) months to a maximum of thirty-six (36) months to run  
5 consecutive with the sentence imposed in the 2006 case, Case No. 06-00149C. Additionally, this  
6 sentence was to run consecutive with any other sentence the Petitioner was obligated to serve.

7 A Judgment of Conviction was filed October 21, 2008, in Case No. 08 CR 00058 IB, in  
8 the first Judicial District Court of the State of Nevada, in and for Carson City, in which the  
9 Petitioner was found guilty of Escape. ("2008 Case"). The Petitioner was sentenced to a  
10 minimum of twelve (12) months to a maximum of sixty (60) months. This sentence was to run  
11 consecutive to the 2006 case, Case No. 06-00149C.

12 Therefore, both the 2007 and 2008 Judgments of Conviction specifically required the  
13 sentenced imposed by each respective Judgment of Conviction run consecutive with the 2006  
14 case. The Petitioner claims in his Petition that NDOC has unlawfully run his current 2008  
15 sentence consecutive to the 2007 case. Petitioner asserts that the sentence imposed in the 2008  
16 case was to be run concurrent with the sentence imposed in the 2007 case. The Petitioner further  
17 argues, in the alternative, that if his 2007 and 2008 sentences were to run consecutive, that this  
18 Court should now modify his sentence in the 2008 case and provide that the 2008 sentence run  
19 concurrent with the 2007 sentence.

20 On December 4, 2008, the Petitioner filed a Motion with this Court requesting  
21 clarification whether the 2008 case was being run consecutively or concurrently with the 2007  
22 case. On December 15, 2008 the Office of the Attorney General filed a Response to the  
23 Petitioner's Motion. In his Response, the Deputy Attorney General declared the Petitioner's  
24 Motion moot, pursuant to his belief that the 2008 case and 2007 case were already running  
25 concurrent to one another, and not consecutive. The Deputy Attorney General based his  
26 reasoning on NRS 176.035(1), which states:

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1 Except as otherwise provided in subsection 2, whenever a person is convicted  
2 of two or more offenses, and sentence has been pronounced for one offense,  
3 the court in imposing any subsequent sentence may provide that the sentences  
4 subsequently pronounced run either concurrently or consecutively with the  
5 sentence first imposed. Except as otherwise provided in subsections 2 and 3,  
6 if the court makes no order with reference thereto, all such subsequent  
7 sentences run concurrently.

8 Based on this Court not addressing specifically whether the 2008 case and 2007 case were  
9 to be run concurrently or consecutively, when the Court had the discretion to do so, the Deputy  
10 Attorney General concluded, under NRS 176.035(1) that the sentences were to be run  
11 concurrently. Furthermore, the Deputy Attorney General concluded that the provisions of NRS  
12 176.035(2), mandating concurrent sentences when a subsequent felony is committed by a person  
13 already serving a sentence for a prior felony, did not apply to this case. NRS 176.035(2) provides:

14 Except as otherwise provided in this subsection, whenever a person under  
15 sentence of imprisonment for committing a felony commits another crime  
16 constituting a felony and is sentenced to another term of imprisonment for the  
17 felony, the latter term must not begin until the expiration of all prior terms.

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19 The Deputy Attorney General concluded NRS 176.035(2) did not apply to this matter based  
20 on the case, *Forbes v. State*, 96 Nev. 17 (1980). In *Forbes*, the Court held that a sentencing court  
21 has discretion to run a sentence for escape concurrent or consecutive to the defendant's original  
22 sentence when the defendant was not under a term of imprisonment at the time he escaped. *Id.* at  
23 18 (emphasis added). The defendant in *Forbes* escaped from a hospital while in custody, awaiting  
24 trial. In this case, the Deputy Attorney General in 2008, stated in his Response that because the  
25 Judgment of Conviction in the 2007 case was entered after the crime of escape was committed,  
26 under *Forbes*, the provisions of NRS 176.035(2) did not apply. (Emphasis added).

27 Presumably, the Deputy Attorney General in 2008 misunderstood the holding of the *Forbes*  
28 case as allowing the sentencing court to exercise discretion with regards to imposing a consecutive  
or concurrent sentence if, when the defendant escaped from custody, he was not serving a sentence  
for the later crime(s) but was instead serving a sentence for another, prior crime. Because in 2007,  
at the time of the escape, the Petitioner was not serving time for the 2007 case, the Deputy Attorney  
General concluded that the Court maintained discretion and was not required to run the sentences  
consecutively, pursuant to NRS 176.035(2). Under the Deputy Attorney General's reasoning

1 because the Court was not required to run the 2007 and 2008 sentences consecutively under NRS  
2 176.035(2), and did not specifically state in its Judgment of Conviction whether the 2007 and 2008  
3 sentences were to be run consecutively or concurrently, under NRS 176.035(1), the sentences ran  
4 concurrently. Based on this representation, the Petitioner's Motion was thus denied as moot by this  
5 Court on December 16, 2008.

6 **II. DISCUSSION**

7 The Petitioner's 2007 and 2008 sentences are to run consecutively. This Court's 2008  
8 Judgment of Conviction did not need to provide whether the 2007 and 2008 sentences were to be  
9 run consecutively or concurrently because the Court's discretion with regards to that issue was  
10 removed by NRS 176.035(2). Based on prevailing Nevada law, the Court may not modify the  
11 terms of the Petitioner's sentence.

12 Under NRS 176.035(2), when a defendant, already under a term of imprisonment, commits  
13 a subsequent felony for which he is sentenced to another term of imprisonment, all prior terms of  
14 imprisonment must be served before the defendant may serve the term of imprisonment for the  
15 subsequent offense. NRS 176.035(2) thus removes a court's discretion, provided for in NRS  
16 176.035(1), in determining whether multiple sentences may be run concurrently or consecutively.  
17 Felonies committed by a defendant while incarcerated and serving a term of imprisonment for  
18 another crime may not be run concurrently.

19 The Deputy Attorney General's understanding of the holding in the *Forbes* case in 2008  
20 was misguided. The defendant in *Forbes* was not under a term of imprisonment at the time of his  
21 escape from custody. He was merely in custody, awaiting trial. In this case, the Petitioner was  
22 serving a term of imprisonment for the 2006 case at the time he committed the crime of escape. In  
23 this situation, NRS 176.035(2) explicitly removes the trial court's discretion with regards to  
24 running sentences concurrent or consecutive, and mandates that they run consecutive. This Court's  
25 2008 Judgment of Conviction specified that the 2008 sentence was to run consecutive to the 2006  
26 sentence. This Court did not address whether to run the 2008 sentence consecutive or concurrent  
27 with the 2007 sentence, which was not an error because its discretion was removed by statute.


1 Generally, a district court may not modify the terms of a sentence after the defendant has  
2 begun serving it. *Staley v. The State of Nevada*, 106 Nev. 75 (1990), NRS 176.185(4). Exceptions  
3 to this rule may be made when a court makes a mistake in judgment that works to the extreme  
4 detriment of the defendant, based on his due process rights. *Id.* at 79. The defendant begins to  
5 serve a sentence when a judgment of conviction is signed by the judge. *Id.*

6 As an alternative argument, the Petitioner requests that this Court modify the 2008 sentence  
7 to run concurrently with the 2007 sentence. However, the law with regards to this area is  
8 unequivocal. This Court may not modify the terms of the 2008 sentence after the Judgement of  
9 Conviction was signed unless the original sentence was mistaken and this mistake worked to the  
10 extreme detriment of the Petitioner. This Court's original 2008 sentence, which effectively ran the  
11 2008 sentence consecutive to the 2007 and 2006 sentences, was correct, pursuant to NRS  
12 176.035(2). Based on the absence of mistake by the Court in the 2008 sentencing, the potential  
13 detriment to the Petitioner need not be addressed.

14 **III. JUDGMENT**

15 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is DENIED  
16 pursuant to NRS 176.035(2), which requires the 2007 and 2008 sentences run consecutively.

17 DATED this 10<sup>th</sup> day of April, 2012.

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20 JAMES T. RUSSELL  
21 District Judge  
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