

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERICK MCKINNEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62928

FILED

DEC 16 2013

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of accessory to first-degree murder. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

Appellant Derick McKinney contends that the district court erred by allowing the Division of Parole and Probation to withdraw one of its two sentencing recommendations during the sentencing hearing because there is no statutory authority allowing such an action. McKinney's contention assumes that the Division made two separate sentencing recommendations. The district court, however, appears to have concluded that the Division made only one recommendation. And McKinney fails to demonstrate error with regard to that conclusion because the addendum to the presentence investigation report (PSI) containing the alleged second recommendation is not included in his appendix. See NRAP 3C(e)(2)(C); NRAP 30(b)(3) (appellant's appendix shall include all "portions of the record essential to determination of issues raised in appellant's appeal").

Further, even assuming that the Division made two separate sentencing recommendations, McKinney fails to demonstrate reversible error.¹ The Division is expressly authorized to prepare a PSI, including a sentencing recommendation, “before the imposition of sentence or the granting of probation.” NRS 176.135(3); NRS 176.145(1)(g). Implicit in this express grant of authority is the ability, prior to the imposition of sentence, to amend or delete a recommendation. *See Stockmeier v. State*, 127 Nev. ___, ___, 255 P.3d 209, 213 (2011) (where the Division lacked any post-sentencing duties related to a PSI, it lacked the implied authority to amend a PSI post-sentencing). Accordingly, we

ORDER the judgment of conviction AFFIRMED.²

	<u>Pickering</u> , C.J.	
	Pickering	
<u>Hardesty</u> , J.		<u>Cherry</u> , J.
Hardesty		Cherry

¹In light of this conclusion, we need not address appellant’s remaining contention.

²Although we filed the fast track briefs submitted by the parties, they do not comply with the Nevada Rules of Appellate Procedure. Neither brief utilizes 14-point or larger font or has footnotes in the same size font as the body of the brief as required by NRAP 32(a)(5). *See NRAP 3C(h)(1)* (requiring fast track filings to comply with the formatting requirements of NRAP 32(a)(4)-(6)). The fast track statement lacks any citation to the record in support of its assertions, *see NRAP 3C(e)(1)(C)*, and the fast track appendix does not contain all required transcripts, *see NRAP 30(b)(1)*. The fast track response does not have margins of at least 1-inch on all four sides. *See NRAP 32(a)(4)*. Counsel for the parties are cautioned that future failure to comply with all applicable rules may result in the imposition of sanctions. *See NRAP 3C(n)*.

cc: Hon. Richard Wagner, District Judge
Pershing County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk