IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN JACOBSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63293

FILED

NOV 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a no contest plea, of conspiracy to commit voluntary sexual conduct between a prisoner and another person. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

Appellant argues that he is innocent because "it is unconstitutional to prohibit sexual conduct between prisoners," *see* NRS 212.187, under *Lawrence v. Texas*, 539 U.S. 558 (2003), in which the Supreme Court determined that a Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual activity was unconstitutional because it intruded on the exercise of liberty interests protected by the Due Process Clause of the Fourteenth Amendment. We disagree. *Lawrence* did not concern the sexual conduct of prisoners. A prisoner's constitutional rights are limited by the fact of incarceration and by valid penological objectives, including deterrence of crime, prisoner rehabilitation, and institutional security. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987); *see Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989) (observing that a prison can limit access to constitutionally protected rights when those limits are necessary to further legitimate penal

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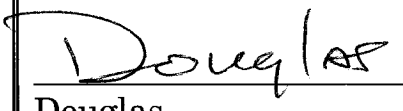
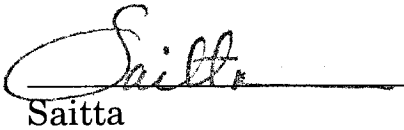
interests, so long as the limits do not substantially burden the prisoner's right to free exercise); *Sisneros v. Nix*, 884 F. Supp. 1313, 1324 (S.D. Iowa 1995) ("Prisoners' constitutional rights are 'significantly limited or substantially constrained in order to further legitimate objectives of the penal system,' especially in the interest of security." (quoting *Nichols v. Nix*, 810 F. Supp. 1448, 1455 (S.D. Iowa 1993))), *aff'd in part, reversed in part, and remanded*, 95 F.3d 749 (8th Cir. 1996). Appellant has provided no legal authority supporting his contention that the statutory prohibition against sexual conduct between prisoners is unconstitutional, thereby rendering him innocent of the offense to which he pleaded no contest. Because he has not demonstrated that relief is warranted, we

ORDER the judgment of conviction AFFIRMED.[1]

_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Saitta

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[1]Despite the parties' verification that the fast track statement and the fast track response comply with applicable formatting requirements, they do not. *See* NRAP 3C(h)(1). The fast track statement and the fast track response do not comply with NRAP 32(a)(5) because the typeface is not 14-point or larger. The fast track response does not comply with NRAP 32(a)(4) because the margins are not at least 1 inch on all four sides. Further, the fast track statement contains no citations to the record in violation of NRAP 28(e). We caution counsel that future failure to comply with the Nevada Rules of Appellate Procedure when filing briefs with this court may result in the imposition of sanctions. *See* NRAP 3C(n); NRAP 28(b).

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