

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDRIK RAYMOND OSIPO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67336

FILED

MAY 20 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a second amended judgment of conviction for attempted sexual assault.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Fredrik Raymond Osipo was convicted of attempted sexual assault and the original judgment of conviction was entered on July 26, 2001. However, the original judgment of conviction did not impose the required special sentence of lifetime supervision. See 1997 Nev. Stat., ch. 451, § 85, at 1671. The district court then conducted a hearing regarding the error and ordered that the judgment of conviction be amended to reflect that lifetime supervision was imposed. An amended judgment of conviction was filed in open court on October 18, 2001, however it was not signed by the judge. See NRS 176.105(3); *Staley v. State*, 106 Nev. 75, 79, 787 P.2d 396, 398 (1990) (stating that a criminal “defendant begins to

¹This 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).

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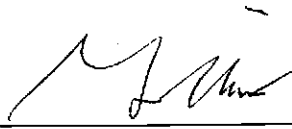
serve a sentence when the judgment of conviction is signed by the judge and entered by the clerk”), *overruled on other grounds by Hodges v. State*, 119 Nev. 479, 482-83, 78 P.3d 67, 69 (2003). Osipo did not attempt to appeal either judgment of conviction. After Osipo challenged imposition of lifetime supervision in a post-conviction petition for a writ of habeas corpus filed in January 2014, the district court concluded that there should be a signed judgment of conviction and that lifetime supervision was required as a matter of law. A second amended judgment of conviction was filed on December 30, 2014. This appeal follows.


Osipo asserts that amending his judgment of conviction, after his prison term has expired, to include lifetime supervision violated the Double Jeopardy Clause. Having reviewed the record on appeal, we affirm the second amended judgment of conviction. The special sentence of lifetime supervision was required when Osipo was convicted, and thus, it would have been an illegal sentence for the district court to sentence Osipo without imposing lifetime supervision. “The [district] court may correct an illegal sentence at any time.” *Edwards v. State*, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996) (quoting NRS 176.555). “[A] defendant has ‘no legitimate expectation of finality in an illegal sentence.’” *Miranda v. State*, 114 Nev. 385, 386, 956 P.2d 1377, 1378 (1998) (quoting *U.S. v. Garren*, 884 F.2d 427, 431 (9th Cir. 1989)). “To comply with the Double Jeopardy Clause of the Nevada Constitution, a district court may correct an illegal sentence by increasing its severity only when necessary to bring the sentence into compliance with the pertinent statute.” *Id.* at 387, 956 P.2d at 1378; *see also Bozza v. United States*, 330 U.S. 160, 166-67 (1947) (explaining that correction of an invalid sentence that increases the penalty does not violate the Double Jeopardy Clause of the U.S.


Constitution because “[t]he Constitution does not require that sentencing should be a game in which a wrong move by the judge means immunity for the prisoner”). “[A] correction that increases sentence severity is ‘necessary’ only when there is no other, less severe means of correcting the illegality.” *Miranda*, 114 Nev. at 387, 956 P.2d at 1378.

Here, the only means of correcting the illegal sentence was to impose the special sentence of lifetime supervision, which was the action performed by the district court. Therefore, the district court properly corrected Osipo’s judgment of conviction to ensure that lifetime supervision was imposed. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michelle Leavitt, District Judge
Fredrik Raymond Osipo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk