

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SETH ALLEN SCHOONOOVER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71847

FILED

JUN 16 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING IN PART AND REMANDING

Seth Allen Schoonoover appeals from a judgment of conviction, pursuant to a guilty plea, of eluding a police officer in a manner posing danger to person or property. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Following his guilty plea, the district court sentenced Schoonoover to serve 19-48 months in the Nevada Department of Corrections. Further, the district court ordered that upon his release, Schoonoover must resolve outstanding warrants issued in Oregon.¹ On appeal, Schoonoover argues the district court abused its discretion by ordering him to resolve the outstanding warrants as the statutory sentencing scheme does not authorize the imposition of such a condition following a prison sentence. We agree.²

¹We do not recount the facts except as necessary to our disposition.

²We reject the State's assertion that NRS 177.015(4) statutorily bars this claim. NRS 177.015(4) precludes a defendant from appealing from a final judgment resulting from a guilty plea "unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings." Further, *Franklin v. State*, 110 *continued on next page...*

“The sentencing judge is accorded wide discretion in imposing a sentence; absent an abuse of discretion, this court will not disturb the district court’s determination on appeal.” *Martinez v. State*, 114 Nev. 735, 737-38, 961 P.2d 143, 145 (1998). However, “[s]tatutory interpretation is a question of law subject to de novo review.” *State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).


Unlike NRS 176A.400(1), which affords district courts broad authority to set the terms and conditions of probation, NRS 176.033(1) permits a district court to set a period of confinement and order restitution and reimbursement for the costs of extradition. NRS 176.033(1) does not contain language permitting the district court to attach conditions following a sentence of confinement in state prison. Thus, the district court abused its discretion by exceeding the authority granted under NRS 176.033(1). Therefore, we vacate the outstanding warrant provision and remand for entry of an amended judgment of conviction. *Cf. Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998). Accordingly, we


...continued

Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled in part on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999), identifies “a challenge to the sentence imposed on constitutional or other grounds” as a claim that may be raised on direct appeal from a final judgment resulting from a guilty plea. Therefore, Schoonoover is not barred from raising this claim.

ORDER the judgment of conviction VACATED IN PART AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk