

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALAN EDWARD GOLDSTEIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75011

FILED

AUG 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER VACATING AMENDED JUDGMENT
OF CONVICTION AND REINSTATING ORIGINAL
JUDGMENT OF CONVICTION*

Alan Edward Goldstein appeals from an amended judgment of conviction. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Goldstein argues the district court lacked jurisdiction to enter an amended judgment of conviction altering his sentence after he had already begun serving that sentence. Goldstein also argues the district court erred by altering his sentence with an amended judgment of conviction without conducting a hearing concerning the amendment. In its answering brief, the State concedes the district court committed error by entering the amended judgment of conviction.

On September 11, 2017, the district court conducted a sentencing hearing in this matter and orally sentenced Goldstein to serve 12 to 32 months in prison for his offense of attempted unlawful use of a controlled substance. The district court also credited Goldstein with 32 days of presentence credits. On September 19, 2017, the district court entered a judgment of conviction reflecting the orally pronounced sentence and presentence credits.

Without conducting a hearing, on December 28, 2017, the district court entered an amended judgment of conviction removing the 32 days of presentence credits. The district court stated in the amended judgment of conviction that Goldstein was not entitled to the presentence credits for this conviction because he was under supervision for another offense when he committed this crime.

We agree with the parties that the district court erred by entering the amended judgment of conviction. As a general rule, the district court lacks jurisdiction to modify a sentence after a defendant has begun serving it. *Staley v. State*, 106 Nev. 75, 79, 787 P.2d 396, 398 (1990), *overruled on other ground by Hodges v. State*, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003); *see also Miller v. Hayes*, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979) (stating a defendant begins serving his sentence “after a judgment of conviction is signed by the judge and entered by the clerk.” (internal quotation marks omitted)).

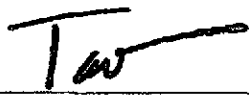
However, there are limited circumstances in which a district court may modify, suspend, or otherwise correct a sentence that is within statutory limits. In particular, the district court has jurisdiction to modify, suspend or otherwise correct a facially legal sentence where that sentence is “based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment.” *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); *see also Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 413, 957 P.2d 1141, 1142-43 (1998); *Staley*, 106 Nev. at 79-80, 787 P.2d at 398. This exception is based on the defendant’s right to due process. *See State v. Eight Judicial Dist. Court*, 100 Nev. 90, 96-97, 677 P.2d 1044, 1048-49 (1984).

We conclude that the district court in this case lacked jurisdiction to modify the sentence by amending the judgment of conviction. While the record is not entirely clear as the district court did not conduct a hearing concerning the amended judgment of conviction, it appears the district court had a mistaken assumption related to Goldstein's criminal record which led it to initially award Goldstein presentence credits. However, the mistaken assumption did not work to Goldstein's extreme detriment, his sentence was facially legal, and the State does not have a due process right that was denied by the district court's decision to award presentence credits to Goldstein. *Cf. Staley*, 106 Nev. at 80, 787 P.2d at 399. Under the circumstances in this case, the district court was without jurisdiction to modify Goldstein's sentence and enter the amended judgment of conviction. Because the district court was without jurisdiction to modify Goldstein's sentence, the December 28, 2017, amended judgment of conviction must be vacated and the September 19, 2017, judgment of conviction must be reinstated. Accordingly, we

ORDER the December 28, 2017, amended judgment of conviction VACATED, and ORDER the September 19, 2017, judgment of conviction reinstated.

 _____, C.J.

Silver

 _____, J.

Tao

 _____, J.

Gibbons

cc: Hon. Kimberly A. Wanker, District Judge
Daniel E. Martinez
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk