

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DUANE COLVIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74058-COA

FILED

NOV 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Duane Colvin appeals from a third amended judgment of conviction. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Colvin argues his right against double jeopardy was violated when the district court sentenced him to serve his term for coercion consecutive to his term for lewdness with a child under the age of 14 following his successful direct appeal. The record reveals Colvin was initially convicted of first-degree kidnapping (count 1); lewdness with a child under the age of 14 (count 2); 10 counts of child abuse, neglect, or endangerment (counts 13 to 22); and coercion (count 23). The district court sentenced Colvin to serve sentences totaling life without the possibility of parole. When the district court initially imposed the sentence for coercion, the district court ordered Colvin to serve it consecutively to count 22.

Colvin appealed from the judgment of conviction and the Nevada Supreme Court affirmed Colvin's convictions for first-degree kidnapping, lewdness with a child under the age of 14, and coercion. *Colvin v. State*, Docket No. 65724 (Order Affirming in Part, Reversing in Part, and Remanding, December 23, 2016). However, the Nevada Supreme Court

reversed all of Colvin's convictions for child abuse, neglect, or endangerment. Upon remand, the State declined to further pursue the child abuse, neglect, or endangerment charges. The district court then entered a second amended judgment of conviction removing the convictions for counts 13 to 22, but did not otherwise alter Colvin's convictions or sentences.


Subsequently, the Nevada Department of Corrections requested clarification as to whether the district court intended for Colvin to serve his sentence for the coercion count (count 23) consecutive to or concurrently with his sentence for lewdness with a child under the age of 14 (count 2). Colvin argued his right against double jeopardy barred the district court from directing him to serve the coercion count consecutively to the lewdness count because it would improperly increase his punishment following a successful appeal. The district court concluded Colvin should serve the coercion count consecutively to the lewdness count because it did not increase his sentence as the sentence for that count had initially been imposed to run consecutively to the count preceding it.

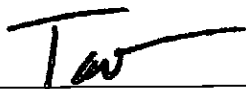
Following a review of the record, we conclude Colvin is not entitled to relief. "When a court is forced to vacate an unlawful sentence on one count, the court may not increase a lawful sentence on a separate count." *Wilson v. State*, 123 Nev. 587, 594, 170 P.3d 975, 979 (2007) (quotation marks omitted). Further, the district court is not permitted to increase the minimum terms on any remaining counts or restructure the relationship between the remaining counts to increase a defendant's minimum sentence. *Id.* at 597, 170 P.3d at 979.


Here, the district court did not increase the minimum terms on any of Colvin's remaining counts and did not restructure the relationship

between the remaining counts so as to increase Colvin's minimum sentence. The record plainly demonstrates the district court did not alter Colvin's minimum terms and imposed the same sentence structure for the remaining counts as in the initial judgment of conviction. Therefore, we conclude Colvin fails to demonstrate the district court violated his double jeopardy rights. Accordingly, we

ORDER the third amended judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk