

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN SCOTT STEINBERG,

No. 36863

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

AUG 07 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from an amended judgment of conviction, pursuant to a guilty plea, of attempted burglary. The district court sentenced appellant to serve 12 to 48 months in prison. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

On June 13, 2000, the district court convicted appellant, pursuant to a guilty plea, of attempted burglary and sentenced appellant to serve 12 to 48 months in prison. The district court suspended execution of the sentence and placed appellant on probation for 3 years.

Approximately one month later, the State sought to revoke appellant's probation based on unrelated offenses that appellant had committed prior to sentencing, but of which the district court and the prosecutor were unaware at the time of sentencing. After some discussion regarding the district court's authority to revoke appellant's probation based on conduct that occurred before he was placed on probation, the

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district court determined that it could conduct a new sentencing hearing because the prior sentence was based on a mistake regarding appellant's record. The district court then conducted a new sentencing hearing and entered an amended judgment of conviction, which included the same prison sentence, but did not provide for probation.

Appellant contends that the district court lacked authority to amend the judgment of conviction. We agree.

As a general rule, the district court lacks jurisdiction to modify a sentence after a defendant has begun serving it.¹ 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."² This exception is based on the defendant's right to due process.³

¹Staley v. State, 106 Nev. 75, 79, 787 P.2d 396, 398 (1990).

²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); see also Campbell v. District Court, 114 Nev. 410, 413, 957 P.2d 1141, 1142-43 (1998); Passanisi v. State, 108 Nev. 318, 320, 831 P.2d 1371, 1372 (1992); Staley, 106 Nev. at 79-80, 787 P.2d at 398; State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).

³See District Court, 100 Nev. at 96-97, 677 P.2d at 1048-49.

We conclude that the district court in this case lacked jurisdiction to modify the sentence by amending the judgment of conviction. It is true that the mistaken assumption was related to appellant's criminal record. But the mistaken assumption did not work to appellant's extreme detriment, and the State does not have a due process right that was denied by the district court's decision to grant probation.⁴ Under the circumstances, the district court erred by conducting a new sentencing hearing and entering an amended judgment of conviction.

The appropriate action in this case would have been for the district court to go forward with the proceedings on the State's request that the court revoke appellant's probation. In this respect we agree with the Iowa Supreme Court's reasoning in State v. Darrin,⁵ that the trial court has discretion to revoke a defendant's probation if new and significant information is discovered after sentencing which, had it been known at the time of sentencing, would have led the trial court to deny probation. This is particularly true where the defendant had a part in concealing the information from the sentencing court.⁶ Here, however, the district court did not simply revoke appellant's probation and we cannot

⁴Cf. Staley, 106 Nev. at 80, 787 P.2d at 399.

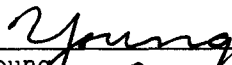
⁵325 N.W.2d 110, 112-13 (Iowa 1982).

⁶See id. at 113.


affirm the amended judgment of conviction, which was entered in excess of the district court's jurisdiction.

Because the district court was without jurisdiction to modify the sentence and enter an amended judgment of conviction, we

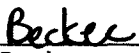
ORDER the amended judgment of conviction VACATED AND REMAND this matter to the district court for proceedings consistent with this order.



Young J.



Leavitt J.



Becker J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk