

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREG ROBERT LOBATO,

No. 37151

Appellant,

vs.

FILED

THE STATE OF NEVADA,

FEB 21 2001

Respondent.

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

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction, pursuant to a guilty plea, of two counts of burglary. The district court sentenced appellant to serve 12 to 65 months in prison for each count, suspended the sentence, and placed appellant on probation for 4 years. The original judgment of conviction did not specify whether the sentences were to be served concurrently or consecutively. After the district court revoked appellant's probation upon appellant's admission that he had violated conditions of his probation, the district court also amended the judgment of conviction to provide that the sentences are to be served consecutively.

Appellant contends that because the original judgment of conviction was silent with regard to concurrent or consecutive sentences, the sentences are deemed to be concurrent. Appellant further argues that the district court lacked jurisdiction to modify the judgment of conviction because appellant had already started serving the sentence.

NRS 176.035(1) provides that "whenever a person is convicted of two or more offenses, and sentence has been pronounced for one offense, the court . . . may provide that the sentences subsequently pronounced run either concurrently or consecutively with the sentence first imposed." But NRS 176.035(1) further provides that "if the court makes no order

with reference [to consecutive or concurrent sentences], all such subsequent sentences run concurrently." Here, the original judgment of conviction was silent as to the matter of consecutive or concurrent sentences. Thus, based on the original judgment of conviction, it would appear that the sentences must run concurrently pursuant to NRS 176.035(1).

As a general rule, "a district court lacks jurisdiction to suspend or modify a sentence after the defendant has begun to serve it."¹ Nonetheless, NRS 176.565 provides that "[c]lerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders."

Here, it appears that the district court simply corrected a clerical error arising from an oversight or omission. The comments by the district court, prosecutor and defense attorney at sentencing indicate that the district court intended to impose the sentence recommended by the Division of Parole and Probation, which called for consecutive sentences. The judgment of conviction, however, did not specifically mention that the sentences would be served consecutively. This apparent error was discussed at a probation revocation hearing approximately one year later; defense counsel did not object when the error was pointed out to the district court. Although the district court apparently intended to enter an amended judgment of conviction at that time, it instead filed an order reinstating appellant to probation, which specifically stated that the sentences are consecutive. The error in the original judgment of conviction

¹Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992).

was again discussed one year later at another revocation hearing. Defense counsel did not object when the district court indicated that it would enter an amended judgment of conviction.² Under the circumstances, it appears that the district court intended to impose consecutive sentences when it orally pronounced the sentence and that the omission of this requirement in the judgment of conviction was a clerical error. Accordingly, the district court had jurisdiction to correct the error at any time pursuant to NRS 176.565.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the amended judgment of conviction AFFIRMED.

Young, J.
Young

Rose, J.
Rose

Becker, J.
Becker

cc: Hon. John P. Davis, District Judge
Attorney General
Nye County District Attorney
Robert E. Glennen, III
Nye County Clerk

²We acknowledge that defense counsel filed a motion to reconsider after the district court entered the amended judgment of conviction. Therein, counsel raised the same arguments made in this appeal. Counsel did not address NRS 176.565 or discuss whether the omission in the judgment of conviction was a clerical error.