

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK LEE WILLIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83070-COA

**FILED**

NOV 17 2021

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

*ORDER OF AFFIRMANCE*

Frank Lee Willis appeals from a corrected judgment of conviction reducing credit for time served under NRS 176.055(2)(b). Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Willis was arrested on the charge of possession of a controlled substance, a category E felony.<sup>1</sup> At the time of his arrest and when he entered into his guilty plea agreement, Willis was on parole for two separate Nevada convictions. At the sentencing hearing, the district court acknowledged that Willis was on parole at the time of his arrest and asked a representative from the Division of Parole and Probation how many days credit for time served Willis should be given in this sentence. The parole and probation representative responded that Willis had 63 days credit. The district court then entered a judgment of conviction sentencing Willis to a term of 19-48 months in the Nevada Department of Corrections to run consecutive with the sentence he was currently serving. Willis was also given 63 days credit for time served.

While structuring Willis's sentence, NDOC realized it could not do so without violating NRS 176.055(2)(b). So, NDOC sent a letter to the district court, defense counsel, and the Washoe County District Attorney's

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

Office asking for additional information on the sentence structure. After receiving NDOC's letter, the district court, sua sponte, filed a corrected judgment of conviction reducing the award of 63 days credit for time served.

Willis now appeals, arguing that the district court erred by issuing the corrected judgment of conviction. We disagree.

The Nevada Legislature has declared that if a defendant is convicted of a second crime while the defendant was on parole for a previous Nevada conviction, the defendant is not eligible for any credit on the second sentence for the time spent in confinement that is within the period of the prior sentence. NRS 176.055(2)(b). The Nevada Supreme Court has interpreted this statute to "prohibit[] a district court from crediting a parolee or probationer for time served on a subsequent offense if such offense was committed while on probation or parole." *Gaines v. State*, 116 Nev. 359, 364, 998 P.2d 166, 169 (2000).

In this case, the record indicates that Willis was paroled two months prior to his arrest for possession of a controlled substance in this case. Thus, there is no dispute as to Willis's status as a parolee being sentenced on a subsequent offense in this case. Moreover, because he is a parolee being sentenced on a subsequent conviction, the district court was prohibited from giving him credit for time served on this case and the parole and probation representative misadvised the court. *See Gaines*, 116 Nev. at 364, 998 P.2d at 169. Therefore, the district court initially erred by crediting Willis 63 days in his possession of a controlled substance judgment of conviction.

It is axiomatic that district courts have inherent authority to correct a facially illegal sentence. *Edwards v. State*, 112 Nev. 704, 707-08, 918 P.2d 321, 324 (1996) (internal quotation marks and emphasis omitted).

That inherent authority stems from NRS 176.555, which states “[t]he court may correct an illegal sentence at any time.” Here, the letter from NDOC put the district court, Willis and the State on notice that Willis’s sentence violated Nevada law and no one requested a hearing. As a result, under NRS 176.555, it was within the district court’s inherent authority to enter a corrected judgment of conviction rectifying its previous error in Willis’s sentence structure. *Edwards*, 112 Nev. at 707-08, 918 P.2d at 324.

Next, the Nevada Rules of Appellate procedure do not allow litigants to raise new issues for the first time in a reply brief. *LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014) (citing NRAP 28(c)). Here, Willis’s fast track statement raises a single issue, should he be given 63 days credit for time served? Yet, his amended reply brief raises additional issues such as: whether the corrected judgment of conviction violate his due process rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, whether he had a right to rely on the finality of the original judgment of conviction, and whether the actions of NDOC violate the separation of powers doctrine the Nevada Constitution. Therefore, because Willis raises these new arguments in his amended reply brief, we do not consider them.

Accordingly, we

ORDER the corrected judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge  
Karla K. Butko  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk