

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD RAY LAWSON, JR.,

No. 38211

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 11 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted murder with the use of a firearm and one count of mayhem. The district court sentenced appellant: for attempted murder, to a prison term of 96 to 240 months, with an equal and consecutive term for the use of a deadly weapon; and for mayhem, to a consecutive prison term of 48 to 120 months. The district court also ordered appellant to pay restitution in the amount of \$727,329.45.

Appellant contends that the conviction for both attempted murder and mayhem constitutes an impermissible double punishment for the same act. This court uses the Blockburger¹ test to determine whether two distinct statutory provisions proscribe the "same offense" such that prosecution for violation of each statute implicates the Double Jeopardy Clause.² The Blockburger test provides that "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not."³ As the United States Supreme Court has explained, the Blockburger test "inquires whether each offense contains an element not

¹Blockburger v. United States, 284 U.S. 299 (1932).

²See Brown v. State, 113 Nev. 275, 286, 934 P.2d 235, 242-43 (1997); Woofter v. O'Donnell, 91 Nev. 756, 760-61, 542 P.2d 1396, 1399 (1975).

³Blockburger, 284 U.S. at 304.

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contained in the other; if not, they are the 'same offence' and double jeopardy bars additional punishment and successive prosecution."⁴

In the instant case, appellant was charged for attempted murder for shooting the victim in the chest and charged with mayhem for shooting the victim in the lower legs, arms and thighs, which resulted in the amputation of one of the victim's fingers. Attempted murder and mayhem require proof of different elements.⁵ We therefore conclude that appellant's conviction and sentence on each of the counts does not violate the Double Jeopardy Clause. Having considered appellant's contention and concluded it is without merit, we


ORDER the judgment of conviction AFFIRMED.



Young J.



Agosti J.



Leavitt J.

cc: Hon. David R. Gamble, District Judge
Attorney General
Douglas County District Attorney
Derrick M. Lopez
Douglas County Clerk

⁴United States v. Dixon, 509 U.S. 688, 696 (1993).

⁵See NRS 200.010; NRS 193.330(1); NRS 200.280.