IN THE SUPREME COURT OF THE STATE OF NEVADA

VERDELL ROBINSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38222

FILED

MAR 12 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND REMANDING IN PART

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of trafficking in a controlled substance, one count of possession of a controlled substance and two counts of unlawful use of a controlled substance. The district court adjudicated appellant a habitual criminal and sentenced him to a prison term of 25 years, with parole eligibility after 10 years.

Appellant contends that evidence that was procured as the result of a search warrant should have been suppressed. Specifically, appellant argues that the warrant is defective because it provides that it may be served any time, day or night, but the reason for the night-time service provision is not stated on the face of the warrant.

NRS 179.045(6) provides: "The warrant must direct that it be served between the hours of 7 a.m. and 7 p.m., unless the magistrate, upon a showing of good cause therefor, inserts a direction that it be served at any time." Contrary to appellant's argument, the statute does not

require that the warrant include the reason that it may be served day or night. The statute merely requires that the magistrate make a finding of good cause for allowing night-time service.[1] Appellant does not allege that the magistrate abused his discretion in finding good cause.

Moreover, we note that at the time of the search, appellant was on parole. One of the conditions of his parole was that appellant "agree[d] to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause." Appellant's parole officer was contacted by investigators of the North Central Nevada Narcotics Task Force prior to the search. After being apprised of the facts presented to the magistrate, appellant's parole officer authorized the investigators to conduct a search.

Based on the foregoing, we conclude that the district court did not err by admitting the evidence and that appellant's contention is therefore without merit.

Remand is nonetheless required, because the district court erred at sentencing. Specifically, the sentence set forth in the judgment of conviction provides for only one definite term: 10 to 25 years in prison. Appellant, however, was convicted of four offenses. Therefore, it appears

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[1]See Sanchez v. State, 103 Nev. 166, 169, 734 P.2d 726, 728 (1987).

that appellant was not sentenced to definite terms on each conviction.[2] This appears to have been the result of some confusion regarding the application of the habitual criminal statute. When the district court adjudicates a defendant as a habitual criminal, the habitual criminal statute allows for enhancement of the sentence for the substantive crimes charged.[3] Thus, in such cases, the district court uses the habitual criminal statute to determine the penalty to be imposed for the substantive crimes charged.[4] Moreover, our decision in Lisby v. State[5] does not stand for the proposition that when a defendant is adjudicated as a habitual criminal he may receive only one sentence regardless of the number of substantive crimes charged. Rather, Lisby simply stands for the proposition that a defendant may not receive a sentence for the substantive crime charged and a separate sentence for being a habitual criminal.[6] The district court's

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[2]See NRS 176.033(1)(b); NRS 176.035; Powell v. State, 113 Nev. 258, 264 n.9, 934 P.2d 224, 228 n.9 (1997).

[3]See NRS 207.010(1); Hollander v. State, 82 Nev. 345, 353, 418 P.2d 802, 806-07 (1966).

[4]Hollander, 82 Nev. at 353, 418 P.2d at 806-07.

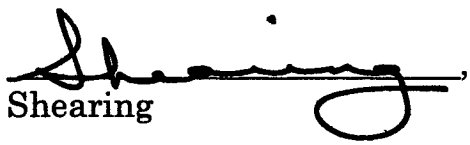
[5]82 Nev. 183, 414 P.2d 592 (1966).

[6]Id. at 189, 414 P.2d at 595-96; see also Staude v. State, 112 Nev. 1, 7, 908 P.2d 1373, 1377 (1996).

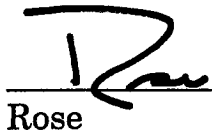
failure to specify a sentence for each of appellant's convictions must also be corrected.

For the reasons stated above, we

ORDER the judgment of conviction AFFIRMED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[7]



_____, J.
Shearing



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Rose

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Becker

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[7]Although this court has elected to file the appendix submitted, it is noted that it does not comply with the arrangement and form requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2); NRAP 30(c); NRAP 32(a). Specifically, the pages of the appendix are not numbered consecutively, the appendix does not have an alphabetical index, and not all the documents required by NRAP 30(b)(2) are contained in the appendix. Counsel is cautioned that failure to comply with the requirements for appendices in the future may result in the appendix being returned, unfiled, to be correctly prepared. See NRAP 32(c). Failure to comply may also result in the imposition of sanctions by this court. NRAP 3C(n).

cc: Hon. Robert W. Lane, District Judge
Attorney General/Carson City
Mineral County District Attorney
Karla K. Butko
Mineral County Clerk