

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL DANIEL FOX,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38414

FILED

DEC 04 2001

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

ORDER OF REMAND

This is an appeal from an amended judgment of conviction, pursuant to a guilty plea, of three counts of robbery with the use of a deadly weapon.

On February 20, 1996, appellant Joel Daniel Fox pleaded guilty to three counts of robbery with the use of a deadly weapon. At the sentencing hearing on April 23, 1996, the district court orally pronounced a sentence of two consecutive terms of 30 to 180 months in prison for each count of robbery with the use of a deadly weapon. The district court further ordered that Fox serve the sentences for each count consecutively. The district court entered a written judgment of conviction on May 30, 1996. The written judgment provided for sentences of 30 to 180 months on each count and that the sentence for each count would be consecutive to the other counts. But the written judgment did not include the equal and consecutive terms for the use of a deadly weapon that the district court had imposed at the sentencing hearing and that are required by NRS 193.165(1).

On May 21, 2001, the State filed a motion to clarify the judgment of conviction. The motion pointed out the discrepancy between the oral sentence pronounced and the written judgment of conviction with

01-20246

respect to the deadly weapon enhancement for each count. The district court reappointed the Clark County Public Defender to represent Fox in the proceedings. After a hearing, the district court granted the State's motion, finding that the failure to include the sentences for the deadly weapon enhancements in the written judgment of conviction was the result of a clerical error. The district court then entered an amended judgment of conviction, sentencing Fox to serve two consecutive terms of 36 to 180 months on each count. The amended judgment of conviction also provided that the sentences for each count are to be served consecutively to the sentences for the other counts.

Fox contends that the district court erred in granting the State's motion. He claims that the original judgment of conviction was "for concurrent time," and therefore he was entitled to "concurrent time" and the district court erred in amending the judgment of conviction. We disagree. To the extent that Fox believes that the original judgment of conviction provided for concurrent sentences, he is mistaken. The original judgment of conviction provided that the sentence for each count would be served consecutively to the sentence for the previous count. The amended judgment of conviction added the statutorily mandated equal and consecutive terms that the district court imposed for the deadly weapon enhancements at the sentencing hearing. In this respect, the district court exercised its authority to correct a clerical error in the judgment of conviction.¹


The State, however, concedes that there is an error in the amended judgment of conviction. At sentencing and in the original judgment of conviction, the district court imposed minimum terms of

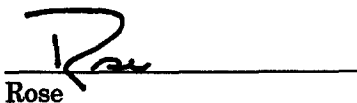
¹See NRS 176.565 ("Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.").

thirty months in prison on each count. The amended judgment of conviction imposes minimum terms of thirty-six months in prison on each count. There is no explanation for this change and it does not appear to be warranted to correct a clerical error. The correct minimum term for each count and the deadly weapon enhancements is thirty months.

For the reasons stated above, we

ORDER this matter REMANDED to the district court for proceedings consistent with this order.²


Shearing J.


Rose J.


Becker J.

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

²This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.