

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACOB JAMES MORGAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39024

FILED

MAY 13 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant Jacob James Morgan to serve two consecutive prison terms of 24-120 months, and ordered him to pay restitution in the amount of \$469.00 jointly and severally with his co-defendant.

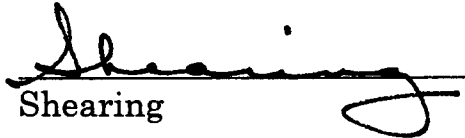
Morgan's sole contention on appeal is that the district court abused its discretion in imposing a consecutive sentence for the deadly weapon enhancement pursuant to NRS 193.165. More specifically, Morgan argues that eyewitness testimony was insufficient to support the sentence enhancement. We disagree with Morgan's contention.

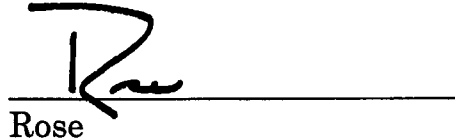
Our review of the plea canvass, written plea memorandum, and sentencing transcript reveals that the district court did not err in applying the deadly weapon sentencing enhancement. Morgan admitted to using a "silver colored handgun" during the commission of the robbery, and at no point during the proceedings below did he object to or retract this factual admission. NRS 193.165(1) removes the sentencing discretion from the district court and mandates the imposition of an equal and consecutive sentence for the use of a deadly weapon during the

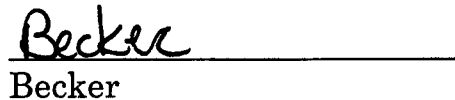
commission of a crime. Furthermore, by entering a nolo contendere plea, Morgan waived any right to appeal from events occurring prior to the entry of his plea.¹

Therefore, having considered Morgan's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Jerome Polaha, District Judge
Attorney General/Carson City
Washoe County District Attorney
Kenneth E. Lyon III
Washoe District Court Clerk

¹See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).