

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE O'CONNOR BEARD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39738

FILED

NOV 05 2002

ORDER OF AFFIRMANCE

JANE DEB BLOOM  
CLERK OF SUPREME COURT  
*J. Richards*  
CLERK

This is an appeal from an amended judgment of conviction of one count of unlawful possession for the purpose of sale of a controlled substance (count II) and two counts of being an ex-felon in possession of a firearm (counts VI-VII).

Appellant George O'Conner Beard was originally convicted, pursuant to a jury verdict, of one count each of unlawful trafficking of a controlled substance (count I), unlawful possession of a controlled substance for the purpose of sale (count II), gross misdemeanor abuse and neglect of a child (count III), felony abuse and neglect of a child (count IV), and two counts of being an ex-felon in possession of a firearm (counts VI-VII). The district court sentenced Beard to serve multiple consecutive and concurrent prison terms. Beard appealed and this court reversed Beard's convictions for counts I, III, and IV and affirmed Beard's convictions for counts II, VI, and VIII.<sup>1</sup>

On March 18, 2002, Beard filed a motion to amend the judgment of conviction, requesting that the district court strike the counts

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<sup>1</sup>Beard v. State, Docket No. 32560 (Order Reversing in Part and Affirming in Part, August 16, 1999).

reversed by this court and run all the sentences for the remaining counts concurrently with one another. The State responded, opposing Beard's request that the remaining sentences should run concurrently. After hearing arguments from counsel, the district court entered an amended judgment striking counts I, III, and IV and resentencing Beard for counts II, VI, and VII. The district court sentenced Beard to serve a prison term of 19 to 48 months for count II, a consecutive prison term of 28 to 72 months for count VI, and a prison term of 28 to 72 months for count VII to run concurrently to count VI and consecutively to count II. Beard appealed.

Beard contends that the district court violated his double jeopardy rights by increasing his sentences after he had begun serving them. In particular, Beard argues that the consecutive sentences imposed in the amended judgment of conviction were improper because Beard was originally sentenced to serve concurrent time. We conclude that Beard's contention lacks merit.

"Generally, a district court lacks jurisdiction to suspend or modify a sentence after the defendant has begun to serve it."<sup>2</sup> A district court may, however, correct an illegal sentence or a clerical error in a judgment of conviction at any time.<sup>3</sup>

In the instant case, the record reveals that the district court did not increase Beard's sentences in ordering counts VI and VII to run consecutively to count II. At the hearing on Beard's motion, the district court noted that it was not increasing Beard's sentences from those

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<sup>2</sup>Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992).

<sup>3</sup>See NRS 176.555; NRS 176.565.

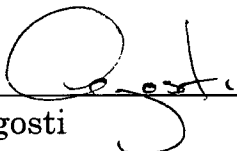
originally imposed, and that there was “absolutely no doubt in [its] mind that [it originally] intended to make those two [counts] consecutive.” In fact, at the original sentencing hearing, the district court expressly stated that “Count 6 and 7 to be served consecutive to counts 1, 2, 3, and 4.” Although the original judgment of conviction fails to state that count VII should run consecutively to count II, that was clearly the intent of the district court. We therefore conclude that the omission of that statement from the original judgment of conviction was merely a clerical error, which may be corrected by the district court at any time. Accordingly, the district court did not err in entering the amended judgment of conviction.

Having considered Beard’s contention and concluded that it lacks merit, we

ORDER the amended judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

cc: Hon. John P. Davis, District Judge  
Steve E. Evenson  
Robert E. Glennen III  
Attorney General/Carson City  
Nye County District Attorney/Tonopah  
Nye County Clerk