

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES VERNON MORRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39759

FILED

MAR 24 2004

ORDER OF REVERSAL AND REMAND

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

This is a proper person appeal from an order of the district court denying a motion for sentence clarification.

On February 2, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon in district court case number C132454. The district court sentenced appellant to serve a term of 37 to 93 months in the Nevada State Prison for the robbery and an equal and consecutive term for the deadly weapon enhancement. Appellant was provided with 69 days of credit for time served.

On February 21, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon in district court case number C132815. The district court sentenced appellant to serve a term of 60 to 150 months in the Nevada State Prison for the robbery and an equal and consecutive term for the deadly weapon enhancement. The district court ordered that the sentence was to run concurrently with the sentence imposed in district court case number C132454.

On March 14, 2002, appellant filed a proper person motion for sentence clarification in the district court.¹ The State opposed the motion. Appellant filed a reply. On May 10, 2002, the district court denied the motion. This appeal followed.

In his motion, appellant argued that the Department of Corrections improperly recalculated his parole eligibility date and restructured his sentences after he began serving his sentences. Appellant argued that the Department of Corrections' new calculation and sentence structure delayed the date that he would be eligible for parole. Appellant sought an order explaining the recalculation and directing compliance with the sentence structure as originally imposed by the district court.

NRS 213.1213 provides:

If a prisoner is sentenced pursuant to NRS 176.035 to serve two or more concurrent sentences, whether or not the sentences are identical in length or other characteristics,

¹Appellant challenged the computation of time served in his motion. Thus, appellant's motion should have been filed as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(c). Appellant's motion was ultimately verified, served by mail on the Attorney General's Office and the Clark County District Attorney's Office, indicated the institution in which appellant was incarcerated and named the State of Nevada as the respondent. Further, appellant's motion was supported by specific facts and argument. Thus, we conclude that appellant's motion substantially complied with the requirements of NRS chapter 34, and we construe appellant's motion to be a post-conviction petition for a writ of habeas corpus. See Pangallo v. State, 112 Nev. 1533, 930 P.2d 100 (1996).

eligibility for parole from any of the concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole.

NRS 193.165(1) further requires that a deadly weapon enhancement be served consecutively to the primary offense. Thus, when appellant arrived at the prison, it is undisputed that the Department of Corrections calculated the sentence structure pursuant to NRS 213.1213 and NRS 193.165 to be:

60 to 150 cc 37 to 93 CS 60 to 150 cc 37-93.²

This sentence structure reflected the sentences as imposed in the judgments of conviction. This sentence structure, as determined by the Department of Corrections, indicated that the minimum period that appellant would have to serve in prison before being eligible for parole to the streets was 120 months. The controlling sentence was determined to be that imposed in district court case number C132815—60 to 150 months. However, after appellant expired the first term of 37 to 93 months, the Department of Corrections restructured his sentences and calculated a new parole eligibility date based upon the second term of 37 to 93 months.

Our preliminary review of the record on appeal revealed that the district court may have erroneously denied appellant's motion. It appeared from this court's review that the Department of Corrections

²This sentence structure is set forth in the affidavit submitted by the Correctional Case Records Manager for the Department of Corrections.

improperly restructured his sentences to determine a new parole eligibility date. Accordingly, this court directed the State to show cause why the order of the district court should not be reversed.

Having reviewed the State's response and all of the documents before this court, we conclude that the Department of Corrections improperly restructured his sentences to determine a new parole eligibility date, and thus, the district court erred in denying appellant's motion. In the simplest terms, the original sentencing structure, as set forth above, was correct and a new parole eligibility date should not have been calculated when appellant expired the first term of 37 to 93 months. There is no authority that prevented the second term of 37 to 93 months, upon expiration of the first term of 37 to 93 months, to run concurrently with the first term of 60 to 150 months until appellant was paroled on that term, and then to run concurrently with the second term of 60 to 150 months. Further, there is no authority permitting the Department to recalculate a new parole eligibility date and alter a sentencing structure absent a change of circumstances occurring after the original sentence structure was determined.³ Restructuring appellant's sentences created

³For example, a change of circumstances that may affect this calculation may be a new conviction after the original sentence structure has been determined. A change of circumstances would not be the expiration of one of the original terms pursuant to the original sentence structure. NRS 213.1213 does not require recalculation after the prison has already determined which term will require the longest period before parole eligibility. Notably NRS 213.1213 refers to a "sentence" in the singular and not multiple sentences.


at least a 20-month delay before appellant is eligible for parole to the streets and may have affected the expiration date for his consecutive sentences in district court case number C132815 because a prisoner does not begin to accrue credits towards a consecutive sentence until he begins to serve that sentence. Thus, we conclude that the Nevada Department of Corrections improperly recalculated appellant's parole eligibility date and misinterpreted NRS 193.165 and NRS 213.1213 to require recalculation because there was not a change of circumstances in the instance case.


The documents before this court indicate that appellant has been paroled to his last sentence—the second term of 60 to 150 months. The remedy thus sought by appellant would necessarily be a recalculation of his parole eligibility date to January 20, 2001, the date that appellant would have been eligible for an institutional parole had his sentences not been restructured. Under the extraordinarily unusual circumstances presented in this case, circumstances that are unlikely to be repeated, we reverse the order of the district court and remand this matter to the district court with instructions to order the Department of Corrections to amend their records to reflect that appellant will be eligible to appear before the parole board on January 20, 2006, five years from the date that appellant would have been eligible to receive an institutional parole absent the restructuring of appellant's sentences.⁴

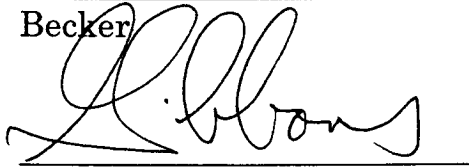
⁴The Department of Corrections should also be instructed to make any corrections in the credits earned to reflect a parole date of January 20, 2001.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and further briefing are unwarranted in this matter.⁵ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁶


_____, C.J.
Shearing


_____, J.
Becker


_____, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
James Vernon Morris
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that appellant is entitled only to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.