

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT FLOYD LATHAM,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40031

**FILED**

OCT 20 2003

ORDER OF REVERSAL AND REMAND

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

This is a proper person appeal from an order of the district court denying appellant Vincent Floyd Latham's motion for sentence clarification.

On June 27, 2001, the district court convicted Latham in Case No. CR01-1110, pursuant to a guilty plea, of one felony count of eluding a police officer. Latham had previously been convicted of the same crime and placed on probation in two prior cases (Case Nos. CR99-1383 and CR99-1969). Pursuant to plea negotiations with the State, Latham pleaded guilty to the offense charged in Case No. CR01-1110 and stipulated to the revocation of his probation in the two prior cases. In exchange, the State agreed not to object to the sentence in CR01-1110 "running concurrent to all pending cases including revocation proceedings."

At the sentencing hearing of June 27, 2001, the State specifically agreed that the sentence in Case No. CR01-1110 should "run concurrent to [Latham's] probation revocation cases." The district court revoked Latham's probation in Case Nos. CR99-1383 and CR99-1969 and sentenced Latham to serve a prison term of 2 to 6 years in Case No. CR01-1110 "to run concurrently" with the two underlying consecutive sentences of 1 to 4 years in the probation revocation cases.

On May 6, 2002, Latham filed a proper person motion for clarification of sentence in the district court. In his motion, Latham complained that the Nevada Department of Corrections (DOC) was incorrectly requiring him to serve the sentence imposed in Case No. CR99-1969 consecutively to the sentences imposed in Case Nos. CR99-1389 and CR01-1110. Latham attached to his motion a memorandum from the DOC informing Latham that:

It is our interpretation that Case No. CR01-1110 is the controlling sentence; Case No. CR99-1383 is to run concurrent to Case No. CR01-1110; and Case No. CR99-1969 is to run consecutive to the aforementioned case numbers. You must be made aware that one case cannot run consecutive AND concurrent to another case.

The district court did not conduct a hearing on the motion, and the record before this court contains no indication that the State filed an opposition. On July 9, 2002, however, the district court entered an order denying Latham's motion and stating in part:

The Court finds that the Nevada Department of Corrections interprets the sentencing in this case correctly: the sentence imposed by case CR01-1110 runs concurrently with the sentence imposed by case CR99-1383. The sentence imposed by Case No. CR99-1969 runs consecutively to the sentences imposed by the other two cases.

On July 18, 2002, Latham filed a motion for reconsideration/rehearing of the district court's order. On July 31, 2002, Latham's signed and dated a proper person notice of appeal, stating in relevant part:

Petitioner . . . hereby appeals to the Nevada Supreme Court, the judgment in the Motion for Reconsideration/Rehearing, entered . . . on or about the 9th day of July, 2002. This notice of appeal is timely filed pursuant to NRAP 4(b).

The district court entered a written order denying the motion for reconsideration/rehearing on August 1, 2002. Latham's notice of appeal was filed in the district court on August 2, 2002.

On May 1, 2003, this court entered an order directing the attorney general to file points and authorities addressing why this court should not reverse the district court's order of July 9, 2002, and remand this case to the district court with instructions to enforce the original terms of Latham's sentence. This court further directed the attorney general to discuss any legal authority supporting: (1) the position of the DOC, as quoted above; and (2) the district court's order denying Latham's motion for clarification.

On July 1, 2003, the attorney general filed a response to this court's order, arguing only that this court lacked jurisdiction to consider Latham's appeal. Because the response did not address the concerns previously specified by this court, on July 21, 2003, this court directed the attorney general to file a supplemental response. On September 4, 2003, the attorney general filed an additional response to this court's order, apparently conceding that Latham's sentence structure should reflect the sentence imposed in the original judgment of conviction.

We consider first the attorney general's contention that this court lacks jurisdiction to consider this appeal. Although the language in Latham's notice of appeal is arguably ambiguous regarding the precise determination he seeks to appeal, his intention to appeal from the district court's order of July 9, 2002, denying his motion for clarification, can be reasonably inferred from the text of the notice. Latham's notice of appeal was dated prior to the entry of the order denying the motion for reconsideration/rehearing, and contrary to the State's contention, it was filed well within the thirty-day appeal period provided by NRAP 4(b).

Additionally, Latham's notice of appeal specifically identified the order entered on July 9, 2002, as the object of the appeal, and the State has not specified any defect in the notice that has materially misled the State.<sup>1</sup>

We further conclude that the district court's order of July 9, 2002, is an appealable determination. Although no specific statutory authority authorizes an appeal from the denial of a motion for sentence clarification, this court has generally regarded the procedural label attached to a motion to be of little importance.<sup>2</sup> Here, the district court's order of July 9, 2002, appears to have altered the sentence originally imposed in the judgment of conviction. As noted above, Latham's judgment of conviction of June 27, 2001, clearly and unequivocally stated that Latham's sentence in Case No. CR01-1110 was "to run concurrently with the sentences imposed in CR99-1383 and CR99-1969." (Emphasis added.) The district court's order of July 9, 2002, however, endorsed the DOC's interpretation of Latham's sentence structure and specifically held that although the sentence in Case No. CR01-1110 was to run concurrently with the sentence imposed Case No. CR99-1383, "the sentence imposed by Case No. CR99-1969 runs consecutively to the

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<sup>1</sup>See Forman v. Eagle Thrifty Drugs & Markets, 89 Nev. 533, 536, 516 P.2d 1234, 1236 (1973) (the notice of appeal "should not be used as a technical trap for the unwary draftsman" and dismissal for lack of jurisdiction is not warranted "where the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice and where the defect has not materially misled the appellee"), overruled on other grounds by Garvin v. Dist. Ct., 118 Nev. \_\_\_, 59 P.3d 1180 (2002).

<sup>2</sup>See Nieto v. State, 119 Nev. \_\_\_, \_\_\_ n.1, 70 P.3d 747, 747 n.1 (2003) (citing Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996), limited in part on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000)).

sentences imposed by the other two cases.” (Emphasis added.) Therefore, because the district court order that is the object of this appeal appears to modify the sentence structure originally imposed by the judgment of conviction, we conclude that the order is an appealable determination.<sup>3</sup> In sum, we conclude that this court’s jurisdiction to consider this appeal on the merits has been properly invoked.

With respect to the merits of this appeal, the attorney general’s response of September 4, 2002, states in pertinent part:

[I]f this Court holds that Latham does have a right to appeal the district court’s order in this matter, Latham’s sentence structure should reflect the sentence imposed by the district court. The sentence imposed in the Judgment of Conviction states that the sentence in Case No. CR01-1110 is to run concurrently with the sentences imposed in Second Judicial Case Nos. CR99-1383 and CR99-1969.

The attorney general’s response also refers to language in NRS 176.035(2), previously quoted in this court’s order of May 1, 2003, providing that if a person “is a probationer at the time the subsequent felony is committed, the court may provide that the latter term of imprisonment run concurrently with any prior terms or portions thereof.” Thus, it appears that the attorney general has conceded that the DOC has incorrectly

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<sup>3</sup>See, e.g., Campbell v. District Court, 114 Nev. 410, 414 n.1, 957 P.2d 1141, 1143 n.1 (1998) (explaining that appellants had a speedy and adequate remedy by way of an appeal from amended judgments of conviction that altered the appellants’ original sentences); Passanisi v. State, 108 Nev. 318, 831 P.2d 1371 (1992); (discussing appealability of orders granting or denying motions to modify sentences); Dolby v. State, 106 Nev. 63, 787 P.2d 388 (1990) (court considered and reversed an order amending a sentence).


structured Latham's sentence so as to require him to serve the sentence in CR99-1969 consecutively to the sentence imposed in CR01-1110.

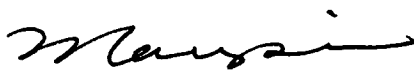
Under these circumstances, we reverse and remand the district court's order of July 9, 2002. On remand, the district court shall ensure that the terms of Latham's original judgment of conviction and sentence in Case No. CR01-1110 are enforced. Although Latham must serve the 1 to 4 year term in CR99-1969 consecutively to the 1 to 4 year term in CR99-1383, he should serve the sentence in CR99-1383 concurrently with the sentence in CR01-1110, and after he expires his sentence in CR99-1383, he may begin serving his sentence in CR99-1969 concurrently with any remaining unexpired term in CR01-1110.

Accordingly, we

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

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

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. James W. Hardesty, District Judge  
Vincent Floyd Latham  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk