

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIMMY EARL DOWNS A/K/A JIMMIE  
EARL DOWNS A/K/A JAMES  
ROBINSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40247

FILED

APR 10 2003

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

ORDER OF AFFIRMANCE AND REMAND FOR CORRECTION OF THE  
JUDGMENT OF CONVICTION

This is a proper person appeal from an order of the district court denying appellant's motion for amended judgment of conviction to clarify and correct an illegal sentence.

On December 18, 1999, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, one count of grand larceny and one count of robbery. The district court sentenced appellant to serve consecutive terms totaling two hundred and sixty-four months with minimum parole eligibility after fifty-eight months in the Nevada State Prison. The district court awarded appellant five hundred and eighty-seven days of credit for time served. This court affirmed appellant's conviction on direct appeal.<sup>1</sup>

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<sup>1</sup>Downs v. State, Docket No. 35460 (Order of Affirmance, August 10, 2001). This court's order of affirmance appears to contain an error. The order states that the sentences for each count were imposed to run concurrently. However, the judgment of conviction clearly states that the terms for each count were imposed to run consecutively.

On May 6, 2002, appellant filed a proper person motion for amended judgment of conviction to clarify and correct an illegal sentence in the district court. The State opposed the motion. Appellant replied to the State's opposition. On September 17, 2002, the district court denied appellant's motion. This appeal followed

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.<sup>2</sup> "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"<sup>3</sup>

First, appellant claimed that the Nevada Department of Corrections improperly structured his sentences. Specifically, he argued that the Nevada Department of Corrections improperly determined that only one of his terms in the instant case would be run concurrently to his two concurrent terms of life imposed in district court case number C150891.<sup>4</sup> Appellant requested that the district court amend the judgment of conviction in the instant case to reflect that all three of his terms in the instant case were imposed to run concurrently with the terms in district court case number C150891. Based upon our review of the

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<sup>2</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

<sup>3</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>4</sup>The judgment of conviction in district court case number C150891 provided that the concurrent life terms imposed in that case would run concurrently "with defendant's other sentence."

record on appeal, we conclude that the district court did not err in denying this claim. This claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence.<sup>5</sup> Further, any ambiguity in the language in the judgment of conviction in district court case number C150891 should be challenged within that case.

Second, appellant claimed that the Nevada Department of Corrections failed to apply his presentence credit of five hundred and eighty-seven days to each of the consecutive terms in the instant case. We conclude that the district court did not err in denying this claim. Again, this claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence.<sup>6</sup> Moreover, as a separate and independent ground to deny relief, we conclude that appellant's claim lacked merit. Appellant was not entitled to have the credit applied to each consecutive term of imprisonment imposed in the instant judgment of conviction; the credits in the instant case were properly applied to the ultimate sentence imposed in the instant case.<sup>7</sup>

Third, appellant claimed that consecutive sentences for his grand larceny and robbery counts violated double jeopardy as multiple punishments for the same transaction. This court considered and rejected on direct appeal appellant's argument that his convictions for grand

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<sup>5</sup>See NRS 34.724(2)(c) (providing that a post-conviction petition for a writ of habeas corpus "[i]s the only remedy available to an incarcerated person to challenge the computation of time that he has served pursuant to a judgment of conviction.").

<sup>6</sup>See *id.*

<sup>7</sup>See NRS 176.055(1); Kuykendall v. State, 112 Nev. 1285, 926 P.2d 781 (1996).

larceny and robbery violated double jeopardy. The doctrine of the law of the case prevents further litigation of this matter and cannot be avoided by a more detailed and precisely focused argument.<sup>8</sup>

Fourth, appellant claimed that the sentence he received for grand larceny, a term of sixteen to seventy-two months, exceeded the statutory maximum term of sixty months.<sup>9</sup> The State conceded that the sentence imposed exceeded the maximum sentence permitted. The district court directed the State to prepare an amended judgment of conviction correcting the illegal sentence. However, the record on appeal does not contain an amended judgment of conviction correcting the sentence for grand larceny, nor does the record reflect that a written amended judgment of conviction has in fact been entered.<sup>10</sup> Thus, we remand this matter to the district court for the limited purpose of entering an amended judgment of conviction correcting the term imposed for grand larceny.

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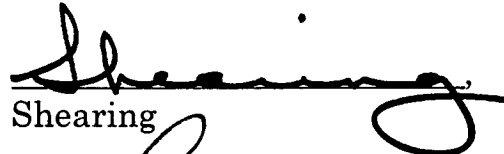
<sup>8</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

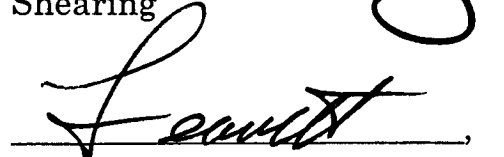
<sup>9</sup>NRS 205.220(1)(a) (providing that a person commits grand larceny when the person intentionally steals the personal goods owned by another person with a value of \$250 or more); NRS 205.222(2) (providing that it is a category C felony if the value of the property involved in a grand larceny offense is less than \$2,500); 1997 Nev. Stat., ch. 314, § 1, at 1178 (“A category C felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years [sixty months].”).

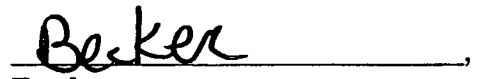
<sup>10</sup>It appears that on July 3, 2002, the district court orally pronounced that the sentence for grand larceny should be amended to reflect a term of twelve to thirty months. However, as stated above, the record before this court does not contain an amended judgment of conviction reflecting the corrected sentence for grand larceny.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that briefing and oral argument are unwarranted.<sup>11</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED AND REMAND this matter to the district court for the limited purpose of entering an amended judgment of conviction.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. John S. McGroarty, District Judge  
Jimmy Earl Downs  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>11</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).