

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEANETTE FAYE SADOSKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40803

FILED

JUN 06 2003

ORDER OF REVERSAL AND REMAND

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

This is an appeal from a district court order denying appellant Jeanette Faye Sadoski's motion to correct an illegal sentence.

On June 8, 2000, Sadoski was convicted, pursuant to a guilty plea, of attempted theft. The district court adjudged her guilty of a gross misdemeanor, sentenced her to serve a jail term of 12 months, suspended execution of the sentence, and placed Sadoski on probation for an indeterminate period not to exceed 3 years.

On June 27, 2000, the State filed a notice of intent to seek revocation of Sadoski's probation. At the probation revocation proceeding held on July 19, 2000, the district court learned that, between the date of entry of Sadoski's plea and the date of her sentencing hearing, Sadoski had been charged with an additional, separate criminal offense of which the court had been unaware at the time of sentencing. Based on this information, the district court conducted a "resentencing" hearing, and on November 21, 2000, entered an amended judgment of conviction, adjudging Sadoski guilty of a felony and resentencing her to serve a prison

term of 12 to 32 months. The execution of this modified, enlarged sentence was also suspended, and Sadoski was again placed on probation for a period not to exceed 3 years.

On October 17, 2001, the State filed a notice of intent to seek revocation of Sadoski's probation. After conducting a probation revocation proceeding, the district court revoked Sadoski's probation. On November 15, 2001, the district court ordered Sadoski to begin serving the revised prison sentence imposed in the amended judgment of conviction of November 21, 2000. Sadoski appealed the order revoking probation, contending that the district court lacked jurisdiction to amend the judgment of conviction. This court dismissed the appeal, concluding that Sadoski's contention should be raised in the district court in the first instance in a post-conviction proceeding.¹

On October 30, 2002, Sadoski filed a proper person motion in the district court "to correct an illegal sentence."² The State opposed the motion. Sadoski filed a proper person reply to the State's opposition. Additionally, with the assistance of retained counsel, Sadoski filed a

¹Sadoski v. State, Docket No. 38916 (Order Dismissing Appeal, July 25, 2002).

²We note that Sadoski's claim that the district court lacked jurisdiction to amend the judgment of conviction falls within the limited scope of a motion to correct an illegal sentence. See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996) (defining an illegal sentence to include instances where the sentencing court lacked jurisdiction).

supplemental reply to the State's opposition. After hearing arguments from counsel, the district court denied the motion on January 16, 2003. This appeal followed.

Sadoski contends that the district court lacked jurisdiction to amend the judgment of conviction.³ Although the State opposed the motion to correct an illegal sentence in the proceedings below, the State now appears to concede that the district court lacked authority to amend the judgment of conviction to impose a harsher sentence. Indeed, the State's fast track response acknowledges: "under current Nevada statutory and case law, a district court loses jurisdiction to resentence a defendant once the judgment is signed by the court and filed with the clerk unless the sentence violated the due process rights of the defendant." We agree with the parties that the district court lacked jurisdiction to resentence Sadoski and to amend the judgment of conviction to impose a harsher felony sentence.

This court has recognized that, generally, the district court lacks jurisdiction to modify a sentence after a defendant has begun serving it.⁴ However, there are certain circumstances in which a district court

³Sadoski also claims that the resentencing proceeding violated the Double Jeopardy Clauses of the United States and Nevada Constitutions. In light of our conclusion that the district court lacked jurisdiction to resentence Sadoski, we need not address Sadoski's claim involving double jeopardy.

⁴Staley v. State, 106 Nev. 75, 79, 787 P.2d 396, 398 (1990).

may modify, suspend or otherwise correct a sentence that is within statutory limits. In particular, the district court has jurisdiction to modify, suspend or otherwise correct a facially legal sentence where that sentence is "based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."⁵ This limited exception is based on the defendant's right to due process.⁶ Notably, "the State [is] not denied due process by the district court's failure to sentence [a defendant] to longer prison terms."⁷

In this case, the district court sentenced Sadoski to a gross misdemeanor based on a mistaken assumption about her criminal record. However, because that mistaken assumption did not work to Sadoski's extreme detriment, the district court lacked jurisdiction to conduct a new sentencing hearing and amend the judgment of conviction to impose a felony conviction with a harsher sentence. Accordingly, we conclude that the district court erred in denying Sadoski's motion to correct an illegal sentence. The district court should have granted Sadoski's motion to correct, vacated the amended judgment of conviction filed on November

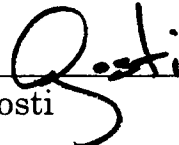
⁵Edwards, 112 Nev. at 708, 918 P.2d at 324 (emphasis added); see also Campbell v. District Court, 114 Nev. 410, 413, 957 P.2d 1141, 1142-43 (1998); Passanisi v. State, 108 Nev. 318, 320, 831 P.2d 1371, 1372 (1992); Staley, 106 Nev. at 79-80, 787 P.2d at 398; State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).


⁶See District Court, 100 Nev. at 96-97, 677 P.2d at 1048-49.


⁷Staley, 106 Nev. at 80, 787 P.2d at 399.

21, 2000, and reinstated the original sentence imposed pursuant to the initial gross misdemeanor conviction.⁸ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁹


_____, C.J.
Agosti


_____, J.
Shearing


_____, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Oswaldo E. Fumo
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸We note that the district court acted within its discretion in revoking Sadoski's probation.

⁹In light of this disposition, we vacate our prior order of February 14, 2003, granting a stay pending appeal.