IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. MONROY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40831

FILED

JUN 0 6 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of battery with the intent to commit a sexual assault. On December 12, 2002, the district court sentenced appellant Michael A. Monroy to serve a prison term of 12-84 months and ordered him to pay $1,742.60 in restitution. On December 17, 2002, prior to the entry of a written judgment of conviction, the State filed a motion requesting the district court to reconsider the sentence because the imposition of a 12-month minimum sentence fell below the statutory minimum sentence required and resulted in an illegal sentence.[1] On January 15, 2003, after hearing the arguments of counsel, the district court granted the State's motion and resentenced Monroy to serve a prison term of 24-84 months. The written judgment of conviction was filed on January 22, 2003.

[1]See NRS 200.400(4)(b) ("[a] person who is convicted of battery with the intent to commit sexual assault shall be punished . . . for a category B felony . . . for a minimum term of not less than 2 years and a maximum term of not more than 15 years"); see also NRS 193.130(1) ("a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute").

Monroy contends that the district court erred in correcting the illegal sentence by increasing his minimum sentence of 12 months to 24 months. Citing to Miranda v. State for support,[2] Monroy argues that a term of probation should have been imposed because "when a less severe alternative is available to correct an illegal sentence, that alternative must be chosen." We disagree with Monroy's contention.

Monroy's reliance on Miranda for support is mistaken. In Miller v. Hayes, this court held:

> [A] district judge's pronouncement of judgment and sentence from the bench is not a final judgment and does not, without more, oust the district court of jurisdiction over the defendant. Only after a judgment of conviction is "signed by the judge and entered by the clerk," as provided by NRS 176.105, does it become final and does the defendant begin to serve a sentence of imprisonment.[3]

The district court's oral pronouncement of a sentence remains subject to modification by the imposing judge until such time as a judgment is signed and entered by the clerk.[4] It is the written judgment that is controlling; the oral pronouncement is not the final and effective decision.[5]

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[2]114 Nev. 385, 387, 956 P.2d 1377, 1378 (1998).

[3]95 Nev. 927, 929, 604 P.2d 117, 118 (1979).

[4]See Bradley v. State, 109 Nev. 1090, 1094-95, 864 P.2d 1272, 1274-75 (1993) (holding that district court could modify original sentence, which had been orally pronounced without reference to consecutive or concurrent terms, to impose consecutive terms); see also Tener v. Babcock, 97 Nev. 369, 632 P.2d 1140 (1981) (a judge retains authority to reconsider a decision until such time as a written judgment is entered).

[5]See Bradley, 109 Nev. at 1094, 864 P.2d at 1275.

In this case, although the district court orally pronounced an illegal sentence on December 12, 2002, a judgment of conviction was not entered until January 22, 2003, and only after the hearing on the State's motion for reconsideration of the sentence when the sentence was corrected to comply with the relevant statute. Accordingly, because the district court modified the sentence to comply with the statute before entering the judgment of conviction, there was no error in this case.[6]

Having considered Monroy's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Steven B. Wolfson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[6]We also note that the written guilty plea agreement, signed by Monroy and filed in open court on September 30, 2002, stated that Monroy would be sentenced to a prison term of not less than 2 years and not more than 15 years.