IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVIN J. ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42089

FILED

JUN 11 2004

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Melvin Adams' motion for clarification of sentence structure.

On July 11, 2003, the district court convicted Adams, pursuant to a guilty plea, of 5 counts of burglary, 2 counts of robbery, and 1 count of attempted robbery. The district court sentenced Adams to a term of 16 to 72 months in the Nevada State Prison for each count of burglary, a term of 26 to 120 months for each count of robbery, and a term of 16 to 72 months for the count of attempted robbery. The district court imposed the terms for 3 counts of burglary and the 2 counts of robbery to run consecutively, and imposed the terms for the remaining counts to run concurrently. No direct appeal was taken.

On July 30, 2003, Adams filed a motion for clarification of sentence structure. The State filed a response. The district court conducted a hearing on Adams' motion. Adams was not present at the hearing. On August 29, 2003, the district court entered an order denying Adams' motion. This appeal followed.

In his motion for clarification of sentence structure, Adams claimed that the judgment of conviction was not correct.[1] Adams contended that the district court stated during the sentencing hearing that he would be sentenced to a total of 8 to 32 years in the Nevada State Prison, whereas the sentence imposed in the judgment of conviction is for a total of 8 to 38 years. This court has previously held that "an oral pronouncement of a sentence remains modifiable by the imposing judge until such time as it is signed and enter by the clerk."[2] Because Adams' sentence did not become final until the district court entered its written judgment of conviction, we conclude that the district court did not err in denying Adams' motion.

In his notice of appeal, Adams challenged the constitutionality of the ex parte hearing on his motion to clarify sentence. He specifically claimed that he had a constitutional right to be present at the hearing. This court has previously observed that:

> [t]he right to be present is rooted in the Confrontation Clause and the Due Process Clause of the Federal Constitution. The confrontation aspect arises when the proceeding involves the presentation of evidence. The due process aspect has been recognized only to the extent that a fair and just hearing would be thwarted by the defendant's absence. The right to be present is

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[1]Adams did not argue that the sentences were illegal. To this end, he specifically stated in his motion that "[t]he defendant did not want to file any frivolous motions (to correct illegal sentence) or writs (habeas corpus), because the defendant believes that this matter can handled on the preliminary level."

[2]Bradley v. State, 109 Nev. 1090, 1095 864 P.2d 1272, 1275 (1993), citing Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979).

> subject to harmless error analysis. The defendant must show that he was prejudiced by the absence.[3]

Based on our review of the record on appeal, we have determined that Adams' motion to clarify sentence structure did not involve the presentation of evidence, and that Adams failed to demonstrate that he was prejudiced as a result of his absence from the hearing. As such, we conclude that Adams' constitutional claim is without merit.

Having reviewed the records on appeal and for the reasons set forth above, we conclude that Adams is not entitled to relief and that briefing and oral argument are unwarranted.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Douglas

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

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[3]Kirksey v. State, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996) (internal citations omitted).

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