

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK WILLIAM ADKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79399-COA

FILED

MAY 27 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER OF AFFIRMANCE AND REMANDING TO
CORRECT THE JUDGMENT OF CONVICTION*

Frederick William Adkins appeals from an order of the district court denying a June 18, 2019, motion to correct an illegal sentence. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

In his motion, Adkins claimed his sentence consisting of consecutive terms of 10 to 25 years in prison was improper because such a sentence exceeds the permissible terms under the small habitual criminal enhancement.

The record demonstrates Adkins entered in a guilty plea agreement wherein he agreed to plead guilty to stop required upon signal of a police officer, assault, battery, false imprisonment, unlawful taking of a vehicle, and intimidating a witness. In the agreement, both parties agreed to stipulate that Adkins would be adjudicated as a habitual criminal and sentenced to serve 10 to 25 years under the large habitual criminal enhancement pursuant to NRS 207.010(1)(b)(3). The parties were free to argue whether the terms should be served consecutively or concurrently. At the sentencing hearing, the sentencing court found Adkins should be sentenced pursuant to the habitual criminal enhancement and found that a sentence under the large habitual criminal enhancement was appropriate. The parties argued as to whether Adkins should serve the terms

consecutively or concurrently. The sentencing court decided to follow the stipulation of the parties and sentenced Adkins to serve 10 to 25 years in prison pursuant to the large habitual criminal enhancement for to his convictions for count 1 (stop required upon a peace officer) and count 6 (intimidating a witness). The sentencing court also decided Adkins should serve count 6 consecutively to count 1.

Following the sentencing hearing, a judgment of conviction was entered and it contained the sentencing terms that the sentencing court pronounced at sentencing hearing, but it also contained a citation to NRS 207.010(1)(a) (sentencing range for the small habitual criminal enhancement) when it referred to Adkins' sentence as a habitual criminal. Later, the district court entered an amended judgment of conviction clarifying Adkins' consecutive terms, but it also contained a citation to NRS 207.010(1)(a). On direct appeal, the Nevada Supreme Court affirmed the judgment of conviction and specifically found "that the district court did not abuse its discretion in imposing consecutive sentences under the large habitual criminal statute." *Adkins v. State*, Docket No. 51160 (Order of Affirmance, December 11, 2008).

In his motion, Atkins contended that the reference to NRS 207.010(1)(a) in both judgments of conviction mean that the sentencing court intended to sentence him pursuant to the small habitual criminal enhancement and that his terms of 10 to 25 years are illegal because they are in excess of what is permitted by NRS 207.010(1)(a). However, based on the record, it is clear that the sentencing court imposed a sentence under the large habitual criminal enhancement pursuant to NRS 207.010(1)(b)(3) and that the judgments of conviction contained clerical errors when referencing the sentencing statute.

Because the record demonstrates that the district court imposed Adkins' sentence pursuant to NRS 207.010(1)(b)(3), Adkins'


sentence was not at “variance with the controlling sentencing statute.” *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). In addition, Adkins did not demonstrate the sentencing court lacked jurisdiction to impose the sentence. *See id.* Therefore, Adkins did not demonstrate that his sentence was illegal, and the district court properly denied his motion.

As explained previously, the original and the amended judgments of conviction both contain clerical errors regarding the sentencing statute. However, clerical errors “may be corrected by the court at any time.” NRS 176.565. Because the judgment of conviction is required to reference the correct sentencing statute, NRS 176.105(1)(c), the district court must enter another amended judgment of conviction correcting the clerical error and correctly referencing NRS 207.010(1)(b)(3) as the proper sentencing statute. We therefore remand this matter to the district court to correct the clerical error in the judgment of conviction. *See* NRS 176.565; *Ledbetter v. State*, 122 Nev. 252, 265, 129 P.3d 671, 680-81 (2006). Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court to correct the judgment of conviction.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
Frederick William Adkins
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk