

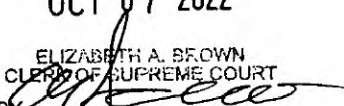
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84343-COA

FILED

OCT 07 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Gary Walker appeals from a judgment of conviction, entered pursuant to a guilty plea, of voluntary manslaughter with the use of a deadly weapon and attempted sexual assault. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Walker raises claims challenging his sentencing proceedings and sentence. In response, the State argues Walker waived his right to appeal his sentence in his guilty plea agreement. Walker contends the waiver should not apply because he only waived his right to appeal his “conviction” and, thus, challenges to his sentence are outside the scope of the waiver. Written guilty plea agreements are subject to general contract principles. *State v. Crockett*, 110 Nev. 838, 842, 877 P.2d 1077, 1079 (1994). Therefore, we must construe the guilty plea agreement from its plain language and enforce it as written. *See Burns v. State*, 137 Nev., Adv. Op. 50, 495 P.3d 1091, 1097 (2021).

The appeal-waiver provision in the guilty plea agreement states Walker “unconditionally waiv[ed] [his] right to a direct appeal of this conviction, *including* any challenge based upon reasonable constitutional,

jurisdictional or other grounds that challenge the legality of the proceedings *as stated in NRS 177.015(4).*” (Emphases added.) NRS 177.015(4) refers to appeals from “a final judgment,” and a final judgment in a criminal case is a judgment of conviction that comports with NRS 176.105. *See Slaatte v. State*, 129 Nev. 219, 221-22, 298 P.3d 1170, 1171 (2013) (concluding that a judgment of conviction was not a final judgment and thus not appealable, because it did not comply with NRS 176.105). Because NRS 176.105(1)(c) requires that a judgment of conviction include the sentence, Walker’s waiver of the right to appeal his conviction necessarily included a waiver of his right to appeal his sentence. Therefore, Walker’s claims are within the scope of the waiver.

However, we recognize that Walker was sentenced to a single term of 8 to 20 years in prison for voluntary manslaughter with the use of a deadly weapon. The sentencing range for voluntary manslaughter is 1 to 10 years. NRS 200.080. The sentencing range for the attendant deadly weapon enhancement is also 1 to 10 years. *See NRS 193.165(1), (2)(a).* “[T]he penalty for a primary offense and the enhancement penalty imposed pursuant to NRS 193.165 are separate and distinct” *Nev. Dep’t of Prisons v. Bowen*, 103 Nev. 477, 481, 745 P.2d 697, 699 (1987); *see NRS 193.165(1)* (providing the penalty for a deadly weapon enhancement is “in addition to the term of imprisonment prescribed by statute for the crime”). Therefore, Walker’s sentence for voluntary manslaughter is illegal and we reverse that sentence. Further, we order the district court, upon remand, to resentence Walker on the count of voluntary manslaughter with the use

of a deadly weapon.¹ See NRS 176.555 (“The court may correct an illegal sentence at any time.”). Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹In light of our disposition, we cannot address whether enforcing Walker’s prospective waiver would work a miscarriage of justice. See *Burns*, 137 Nev., Adv. Op. 50, 495 P.3d at 1100.

²We are confident that the district court will, as required by *Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 508 (2009), articulate specific factual findings regarding each factor enumerated in NRS 193.165(1) in support of the deadly weapon enhancement when resentencing Walker.