

SUPREME COURT OF NEVADA

Mason v. State

2016 NV 42 (Nev. 2016) · No. 67830 · Decided June 16, 2016

SUMMARY

The Nevada Supreme Court held that, under NRS 176.035(1), a district court must pronounce the aggregate minimum and maximum terms of imprisonment when imposing consecutive sentences for offenses committed on or after July 1, 2014. The court affirmed Mason’s convictions and sentences but remanded for correction of the judgment of conviction to include the aggregate terms, nunc pro tunc to the original sentencing date.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam; Hardesty, J.; Saitta, J.; Pickering, J.
JURISDICTION	Nevada
DECIDED	June 16, 2016
DOCKET	67830
DISPOSITION	remanded
PROCEDURAL POSTURE	Appeal from a judgment of conviction entered after a jury verdict for battery with a deadly weapon, assault with a deadly weapon, and being a felon in possession of a firearm.
STANDARD OF REVIEW	Plain-error review for the unpreserved instructional-error claim; statutory interpretation and review of sentencing compliance for the aggregate-sentence issue.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential.
PARTIES	Quinzale Mason v. The State of Nevada

TOPICS

- sentencing
- criminal procedure
- statutory interpretation
- appellate procedure
- plain meaning rule

PRACTICE AREAS

- criminal procedure
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether NRS 176.035(1) required the district court to pronounce the aggregate minimum and maximum terms of imprisonment when imposing consecutive sentences for offenses committed on or after July 1, 2014.
2. Whether the district court plainly erred by instructing the jury on transferred intent with respect to the battery count.

HOLDINGS

1. When imposing consecutive sentences for offenses committed on or after July 1, 2014, the district court has a mandatory duty under NRS 176.035(1) to pronounce the aggregate minimum and maximum terms of imprisonment in the judgment of conviction.
2. The transferred-intent instruction did not constitute plain error affecting Mason's substantial rights because it did not relieve the State of its burden to prove willful use of force or violence, the jury was properly instructed on battery and willfulness, and sufficient evidence supported the conviction.

KEY QUOTATIONS

“For offenses committed on or after July 1, 2014, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment.” (2)

“The district court's mandatory duty under NRS 176.035(1) to pronounce the aggregate terms of imprisonment in the judgment of conviction is of significant importance.” (2-3)

FACTUAL BACKGROUND

In August 2014, Mason fired several shots at a man outside an apartment building. The shots missed the man, but a ricochet struck and injured a nearby girl. A jury convicted Mason of battery with a deadly weapon as to the girl, assault with a deadly weapon as to the man, and being a felon in possession of a firearm.

PROCEDURAL HISTORY

Mason was convicted in the Second Judicial District Court of Washoe County. The district court imposed a 3-to-10-year term for battery, a consecutive 2-to-5-year term for assault, and a concurrent 2-to-5-year term for being a felon in possession of a firearm. On appeal, Mason challenged the failure to pronounce the aggregate minimum and maximum terms of the consecutive sentences and challenged the transferred-intent jury instruction. The Nevada Supreme Court affirmed the judgment of conviction but remanded for correction of the judgment.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The district court must correct the judgment of conviction to include the aggregate minimum and maximum terms of the consecutive sentences required by NRS 176.035(1). The corrected judgment must be entered nunc pro tunc to the original sentencing date of March 17, 2015. The judgment of conviction and individual sentences are affirmed.

CASES CITED

- Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)

OPINION

PER CURIAM.

132 Nev., Advance Opinion 42. IN THE SUPREME COURT OF THE STATE OF NEVADA QUINZALE MASON, No. 67830 Appellant, vs. THE STATE OF NEVADA, FILED Respondent. JUN 16 2016 CIE K. LINDEtAAN CIIEKIOE SIIRRE.MEcertiR DEP CLERK Appeal from a judgment of conviction, pursuant t A jury verdict, of battery with a deadly weapon, assault with a deadly Weapon, and being a felon in possession of a firearm.

Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge. Affirmed and remanded with instruction. Jeremy T. Bosler, Public Defender, and John Reese Petty, Chief Deputy Public Defender, Washoe County, for Appellant. Adam Paul Laxalt, Attorney General, Carson City; Christopher J. Hicks, District Attorney, and Joseph R. Plater, Deputy District Attorney, Washoe County, for Respondent.

BEFORE HARDESTY, SAITTA and PICKERING, JJ. OPINION PER CURIAM: In this opinion, we address the mandatory duty of the district court judges under NRS 176.035(1) to pronounce the aggregate minimum SUPREME COURT OF NEVADA (0) 1947A kr 18831 and maximum terms of imprisonment when imposing consecutive sentences for offenses committed on or after July 1, 2014. Appellant Quinzale Mason fired several shots at another male outside an apartment building in August 2014; the bullets missed the male but a ricochet from one of the bullets hit and injured a girl nearby.

Following a jury trial, Mason was convicted of battery with a deadly weapon as to the girl (count 1), assault with a deadly weapon as to the male (count 2), and being a felon in possession of a firearm (count 3). The district court imposed a prison term of 3 to 10 years for count 1, a consecutive prison term of 2 to 5 years for count 2, and a concurrent prison term of 2 to 5 years for count 3.

On appeal, Mason argues that the district court erred at sentencing by failing to pronounce the aggregate minimum and maximum terms of imprisonment as required by statute.' NRS 176.035(1) provides in relevant part, "For offenses committed on or after July 1, 2014, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment."

Here, the district court imposed consecutive sentences for 'Mason's remaining contention—that the district court plainly erred in instructing the jury on the doctrine of transferred intent with respect to the battery count—lacks merit.

The instruction did not relieve the State of its burden to prove that Mason willfully used force or violence upon the victim, the jury was properly instructed on the elements of battery and the definition of "willful," and sufficient evidence was adduced at trial to support the battery conviction. See NRS 200.481(1)(a).

Accordingly, Mason fails to demonstrate plain error affecting his substantial rights. See *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (applying plain error analysis to unpreserved claims of instructional error). • SUPREME COURT OF NEVADA 2 by 1947A e offenses committed after July 1, 2014, but failed to state the minimum and maximum aggregate terms of imprisonment.

The district court's mandatory duty under NRS 176.035(1) to pronounce the aggregate terms of imprisonment in the judgment of conviction is of significant importance. The Legislature placed this statutory duty on district courts in an effort to simplify the sentence structure and, in turn, promote confidence in the criminal justice system and reduce confusion as to when an inmate is eligible for parole to the street.

See Hearing on S.B. 71 Before the Assembly Judiciary Comm., 77th Leg. 5-6 (Nev., April 19, 2013). Whereas previously inmates had to be paroled from or expire a sentence before beginning to serve the next consecutive sentence, the effect of aggregating consecutive sentences is that inmates will now serve the minimum time for the total consecutive sentences before being eligible for a parole hearing.

Id. Thus, the aggregation of consecutive sentences is a necessary step for the district court to take to apprise all parties, as well as the Department of Corrections and the public, as to when an inmate is actually eligible for parole.

Accordingly, we conclude that it was error for the district court not to aggregate the sentences in the judgment of conviction but that error does not warrant a new sentencing hearing as it does not affect the sentences imposed for each offense.

Because Mason's arguments fail to demonstrate that his convictions or sentences are infirm, we affirm the judgment of conviction. However, we remand for the district court to correct the judgment of SUPREME COURT OF NEVADA 3 (0) 1947A 0112(9D conviction to include the aggregate minimum and maximum terms of his consecutive sentences as required by NRS 176.035(1).

2 J. Hardesty J. Saitta tz, Pickering, J. 2The corrected judgment of conviction should be entered
nunc pro tunc to the original sentencing date of March 17, 2015. SUPREME COURT OF
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