

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE,

Respondent,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 74227

FILED

AUG 15 2018

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

ORDER GRANTING PETITION

This is a petition for extraordinary relief seeking an order directing the district court to vacate Steven Floyd Voss' November 27, 1996, judgment of conviction entered in district court case number CR96-1581 and enter an amended judgment of conviction in compliance with a district court order entered on August 9, 2001, that granted Voss' postconviction petition in part and ordered a new sentencing hearing. We ordered the real party in interest to file an answer on behalf of respondent.

The real party informs this court that although the district court granted Voss' petition in part and ordered a new sentencing hearing, Voss has not been resentenced. The real party, however, opposes the granting of extraordinary relief because Voss' petition "makes no sense" and he is seeking a non-existent remedy, and the district court improperly ordered a new sentencing hearing. The real party further asserts laches as a defense, asserting that on the face of the petition Voss "does not want a

new sentencing hearing due to the passage of time” and Voss has acquiesced in the conditions by waiting 17 years without ever showing any interest in getting a new sentencing hearing.


Voss filed a reply addressing the real party’s arguments. He also filed two other documents. Among other things, Voss informs this court that on February 26, 2018, he served to completion and discharged the sentences imposed in the November 27, 1996, judgment of conviction entered in district court case number CR96-1581. Voss asserts that because he never received a new sentencing hearing, the only equitable relief available is to vacate the judgment of conviction entered in CR96-1581 and enter a judgment of acquittal.


The record clearly demonstrates the district court did not conduct a resentencing as required by the August 9, 2001, order granting Voss’ petition in part or enter an amended judgment of conviction. As a result, there is currently no valid judgment of conviction entered in CR96-1581.¹ Further, it appears Voss does not have a plain, speedy, and adequate remedy available to him. Accordingly, we conclude mandamus relief is warranted. See NRS 34.160; NRS 34.170. We disagree, however, that entry of a judgment of acquittal is appropriate because, in granting Voss’ petition in part, the district court did not find the conviction itself was invalid; rather, the district court only determined there were errors at sentencing. Instead, we conclude resentencing, as originally ordered in the August 9, 2001, order, and entry of an amended judgment of conviction is the relief

¹We note that although there is no valid judgment in CR96-1581, Voss has not been subject to illegal restraint because since 1998 he has also been held and been serving a concurrent prison term of life without the possibility of parole pursuant to a judgment of conviction entered in district court case number CR97-2077.

warranted. We reject the real party's assertion that laches should preclude granting relief because it is the State's responsibility, not the defendant's, to ensure a defendant is legally convicted and sentenced. *See State v. Loveless*, 62 Nev. 17, 24, 136 P.2d 236, 239 (1943). Further, we conclude that any challenge to the district court's decision to grant a new sentencing hearing was waived by the State's failure to challenge this decision on cross-appeal in Docket No. 38373. Therefore, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to resentence Voss and enter an amended judgment of conviction in CR96-1581.²


Silver, C.J.


Tao, J.


Gibbons, J.

cc: Chief Judge, Second Judicial District Court
Steven Floyd Voss
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²Voss shall be credited with all time he has served pursuant to the invalid judgment of conviction entered in CR96-1581.