

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENN DOOLIN

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

Docket No. 80223

Direct Appeal from Order Denying Defendant's Motion to Modify Sentence
and Amended Order Denying Defendant's Motion to Modify Sentence
Eighth Judicial District Court
The Honorable Kathleen Delaney, District Judge
District Court No. C-12-284106-1

APPELLANT'S FAST TRACK STATEMENT

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ROUTING STATEMENT

"Rule 17: Division of Cases Between the Supreme Court and the Court of Appeals." Subsection (b) of Rule 17 provides that certain cases shall "presumptively" be heard and decided by the court of appeals. "Postconviction appeals that involve a challenge to the computation of time served under a judgment of conviction, a motion to correct an illegal sentence, or a motion to modify a sentence" NRAP 17(b)(4).

This matter does involve a motion to modify a sentence. Accordingly, this case is presumptively assigned to the Court of Appeals. This case should, however, be reviewed and decided by the Nevada Supreme Court.

The matters raised also present a principle issue of statewide public importance. NRAP 17 (a)(12). This case presents a novel issue in the law, namely whether a District Court can entertain the modification of a jail sentence imposed consecutive to a served prison sentence. As this issue will likely appear more often in the future as society reevaluates the merit of the imposition of long prison sentences for non-violent crimes, defendants should be able to raise requests for a modification of sentence that a District Court can consider. This Court must intercede when lower courts interpret its jurisdictional directives to a broader degree than the underlying decisions warrant, leading to a waste of resources. Moreover,

"[the Nevada Supreme Court] may exercise its discretion to grant mandamus relief where an important issue of law requires clarification." *Redeker v. Eighth Judicial District Court*, 122 Nev. 164, 166, 127 P.3d, 520, 522 (2006) (citing *State v. Dist. Ct. (Epperson)*, 120 Nev. 254, 258, 89 P.3d 663, 665-66 (2004)).

1. **Name of party filing this fast track statement:** Glenn Miller Doolin

2. **Name, law firm, address, and telephone number of attorney submitting this fast track statement:**

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3. **Name, law firm, address, and phone number of appellate counsel if different from trial counsel:**

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4. **Judicial district, county, and district court docket number of lower court proceedings:** Eighth Judicial District, County of Clark, District Court Case Number C-12-284106-1

5. Name of judge issuing decision, judgment, or order appealed from:

The Honorable Kathleen Delaney

6. Length of trial. If this action proceeded to trial in the district court, how many days did the trial last? N/A

7. Conviction(s) appealed from: This appeal is from the Order Denying Defendant's Motion to Modify Sentence (as to Count 2-Possession of Burglary Tools (Gross Misdemeanor) of the Judgment of Conviction (Plea of Guilty) filed April 26, 2013.

8. Sentence for each count: COUNT 1—GRAND LARCENY AUTO, Defendant sentenced under the Small Habitual Criminal Statute to a minimum of SIXTY (60) months and a maximum of ONE HUNDRED FIFTY (150) months in the Nevada Department of Corrections; as to COUNT 2—defendant was sentenced to TWELVE (12) months in the Clark County Detention Center to run consecutive to count 1 with zero days credit for time served.

9. Date district court announced decision, sentence, or order appealed from: November 6, 2019

10. Date of entry of written judgment or order appealed from: November 18, 2019 and February 5, 2020

(a) If no written judgment or order was filed in the district court, explain

the basis for seeking appellate review: N/A

11. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the court: N/A

(a) Specify whether service was by delivery or by mail: N/A

12. If the time for filing the notice of appeal was tolled by a post-judgment motion,

(a) specify the type of motion, and the date of filing of the motion: N/A

(b) date of entry of written order resolving motion: N/A

13. Date notice of appeal filed: December 9, 2019 (and Supplemental Notice of Appeal filed February 6, 2020)

14. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b), NRS 34.560, NRS 34.575, NRS 177.015, or other: NRAP 4(b)

15. Specify statute, rule or other authority which grants this court jurisdiction to review the judgment or order appealed from: NRS 177.015(3).

16. Specify the nature of disposition below, e.g., judgment after bench trial, judgment after jury verdict, judgment upon guilty plea, etc.: Order Denying Motion to Modify Sentence imposed by Judgment upon guilty plea.

17. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal (*e.g.*, separate appeals by co-defendants, appeal after post-conviction proceedings) :

Doolin v. State, Post-Conviction/Proper Person, 72189-COA, Judgment Affirmed 9/13/17. Remittitur issued 10/10/17

Doolin v. State, Post-Conviction/Proper Person, 73698-COA, Judgment Affirmed 12/13/18; Petition for Rehearing 1/29/19, Order Denying Petition for Rehearing 2/26/19, Remittitur 3/16/19

18. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants) : N/A

19. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues you intend to raise in this appeal: Appellate counsel is unaware of any pending cases which raise the same issues as the instant appeal.

...

20. Procedural history. Briefly describe the procedural history of the case (provide citations for every assertion of fact to the appendix, if any, or to the rough draft transcript): Appellant Glenn Doolin was charged in an Amended Information filed November 6, 2012 with 1 count of Grand Larceny Auto and 1 count of Possession of Burglary Tools. APP 1-3. Doolin entered into a Guilty Plea Agreement which was filed January 7, 2013. APP 8-18. The Judgment of Conviction was filed May 26, 2013. APP 38-39.

On October 10, 2019, Mr. Doolin filed a Motion to Modify Sentence. APP 40-49. The State filed their Response October 14, 2019. APP 50-53.

The hearing for the motion was continued several times until November 6, 2019 at the State's request. APP 72-81. The Order Denying Motion to Modify Sentence was filed November 18, 2019. APP 82-83. The Notice of Appeal was filed December 9, 2019. APP 84-85. As the Order Denying Motion to Modify Sentence did not reflect the Court's reasoning or ruling, Mr. Doolin filed a Motion to Correct Order Pursuant to NRS 178.552 and Request for Order Shortening Time. App. 86-111. The State filed State's Response to Defendant's Motion to Correct Order Pursuant to NRS 178.552 on February 6th, 2020. APP 112-113. The District Court corrected the order that was filed in error on November 18th, 2019, *nunc pro tunc*. App 118-119.

21. **Statement of facts.** Briefly set forth the facts material to the issues on **appeal:** In this case, Glenn Doolin plead straight-up to the two charges he faced, grand larceny auto and possession of burglary tools for taking an orange rental scooter from “Scooter Up!,” using a screwdriver to start the vehicle. APP 8-18. A security guard at the Bible Federal Building observing these acts, notified Metro who then arrested Mr. Doolin. The court imposed a habitual criminal sentence on Mr. Doolin and then ran the gross misdemeanor sentence for possession of burglary tools consecutive to the felony sentence. APP 38-39.

When Mr. Doolin was near the expiration of his felony sentence he arranged for his reentry into society. He secured housing at Samaritan House and lined up a job with Creative Cabinetry, LLC, which was later confirmed when counsel spoke to the directory of Samaritan House and the owner of Creative Cabinetry. ROA 44.

Counsel entered a Motion to Modify Sentence on Mr. Doolin’s behalf on October 10th, 2019, while he was still serving his prison sentence at NSP and had yet to serve a day on the gross misdemeanor run consecutive to the prison sentence. The motion filed on Mr. Doolin’s behalf took account of the guiding case law and relied upon studies performed since the time of Mr. Doolin’s incarceration and the present to argue that the court made its sentencing decision based upon “materially untrue” assumptions of fact that worked to Mr. Doolin’s extreme detriment. ROA

42. Specifically, the motion argued that numerous studies find that long, punitive sentences for low level offenses such as the property crime at issue in this case are actually counterproductive to fighting crime or rehabilitating the convicted. Moreover, counsel argued that the court still had the authority to modify the gross misdemeanor sentence as Mr. Doolin had yet to serve a day of it and since the time of sentencing had been in prison, a penal institution with no ability to house an inmate under the authority of a gross misdemeanor conviction. ROA 63. The State argued that since Mr. Doolin had begun to serve his sentence, i.e., the felony portion that sent him to NSP, the judge had lost jurisdiction to consider his claims.

The Court sided with the state, finding that it had no jurisdiction to consider Mr. Doolin's claims. The Court, however, also expressed that if it had jurisdiction to consider Mr. Doolin's claims, it found his arguments meritorious and would "find them very compelling and likely a basis to grant the motion." ROA 79.

22. Issues on appeal. State concisely the principal issue(s) in this appeal: Whether the district court abused its discretion when it held it lacked the jurisdiction to modify the gross misdemeanor sentence Mr. Doolin had yet to serve a day on because he had served over 6 years in prison and therefore had begun to serve his sentence under the meaning of NRS 176.1853 and *Passanisi v. State*, 108 Nev. 318 (1992), et al?

23. Legal argument, including authorities.

Although Mr. Doolin has served part of his sentence, the habitual offender enhanced grand-larceny, at the time the motion to modify his sentence was made, he had served no time whatsoever on the gross misdemeanor sentence he was asking the court to modify. By statutory authority, Mr. Doolin has not been serving his gross misdemeanor sentence in the prison. This is so because the prison in which he is housed has no legal authority to hold him for the gross misdemeanor sentence he has yet to serve. Although the court's sentencing of Mr. Doolin began when the judgement of conviction filed in this case, he has yet to serve a single day of time on the gross misdemeanor ran consecutive to the sentence he has been serving since 2013. *See Miller v. Hayes*, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979). Accordingly, the court has the authority to modify the sentence on the gross misdemeanor charge that Mr. Doolin has yet to serve time on.

Moreover, the *Passanisi* case specifically contemplates that when the court made a mistake in rendering a judgment that works to the extreme detriment of the defendant, the rule generally denying the court jurisdiction to change the sentence does not apply. *Passanisi v. State*, 108 Nev. 318, 323, 831 P.2d 1371, 1374 (1992). As the court in this case found that it would likely find Mr. Doolin's arguments meritorious if it had the jurisdiction to hear them, the court erred in deciding that it

lacked the jurisdiction to hear the matter. As Mr. Doolin was making a claim under *Passanisi* that the court sentenced Mr. Doolin under material untrue assumptions the general rule that the court lacks jurisdiction once the defendant started serving his sentence does not apply to the circumstances of the case. Moreover, the district court abused its discretion when it applied the incorrect legal standard to the issue of whether it could modify Mr. Doolin's sentence. This error also prejudiced Mr. Doolin's substantial rights because the district court otherwise held it was likely to grant his motion for release but for the court's misapprehension of its jurisdiction.

24. Preservation of issues. State concisely how each enumerated issue on appeal was preserved during trial. If the issue was not preserved, explain why this court should review the issue: This is an appeal from a motion to modify sentence. *See* NRAP 17(b)(4). The issue raised here was preserved as it was raised below.

25. Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest? Yes. If so, explain: If District Courts are convinced that they lack jurisdiction to modify a gross misdemeanor or misdemeanor sentence run after a prison sentence then the holding of *Passanisi* is rendered meaningless. Moreover, given the relatively short nature of gross

misdemeanor and misdemeanor sentences, this issue is likely to evade judicial review.

Dated: February 10, 2020

/s/ W. JEREMY STORMS

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VERIFICATION

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This fast track statement has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font of the Times New Roma style;

2. I further certify that this fast track statement complies with the

page- or type-volume limitations of NRAP 3C(h)(2) because it is either:

Proportionately spaced, has a typeface of 14 points or more, and contains 2193 words; or

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement, or failing to raise material issues or arguments in the fast track statement, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information and belief.

Dated: February 10, 2020

/s/ W. JEREMY STORMS

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on 2/10/2020, a copy of the Appellant's Fast Track Statement and Appendix was served as follows:

BY ELECTRONIC FILING TO

District Attorney's Office
200 Lewis Ave., 3rd Floor
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Nevada Attorney General
100 N. Carson St.
Carson City NV 89701

/s/ W. JEREMY STORMS

W. Jeremy Storms