



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
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Aug 25 2021 07:25 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Steven D. Grierson  
Clerk of the Court

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Court Division Administrator

August 25, 2021

Elizabeth A. Brown  
Clerk of the Court  
201 South Carson Street, Suite 201  
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. CRAIG ALLEN RODGERS

**S.C. CASE: 83301**

D.C. CASE: C-16-314359-1

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written Order, dated August 17, 2021, enclosed is a certified copy of the Order Denying Defendant's Motion to Modify and/or Correct Illegal Sentence filed August 24, 2021 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,  
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", with a long horizontal flourish extending to the right.

Heather Ungermann, Deputy Clerk

1 ODM

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

Case No. C-16-314359-1

6  
7 Plaintiff,

Dept. No. XXII

8 Vs.

9 CRAIG RODGERS aka CRAIG ALLEN  
10 RODGERS, #1680324

11 Defendant.

12 ORDER DENYING DEFENDANT'S MOTION TO MODIFY AND/OR CORRECT  
13 ILLEGAL SENTENCE

14 This matter concerning Defendant CRAIG RODGERS' Motion to Modify and/or Correct  
15 Illegal Sentence filed April 27, 2021 came on for hearing before Department XXII of the Eighth  
16 Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN JOHNSON  
17 presiding; Plaintiff THE STATE OF NEVADA appeared by and through its attorney, STEVEN  
18 ROSE, Chief Deputy District Attorney; and Defendant CRAIG RODGERS made no appearance.<sup>1</sup>  
19 Having reviewed the papers and pleadings on file herein, noted the STATE made no oral argument  
20 and submitted its argument on the papers given MR. RODGERS' non-appearance, this Court makes  
21 the following Findings of Fact and Conclusions of Law:  
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24  
25 <sup>1</sup>MR. RODGERS appeared remotely at the first hearing scheduled May 20, 2021; the first hearing was  
26 continued to June 24, 2021 as, given MR. RODGER'S failure to serve a copy or provide notice of the motion's filing,  
27 THE STATE OF NEVADA filed an Opposition as soon as it discovered it had been filed which occurred just a day  
28 before the scheduled hearing. Neither the Court nor MR. RODGERS had an opportunity to review it. This Court had  
previously granted MR. RODGERS' motion to appear by telephone or video conference, a method he had taken  
advantage at the May 20, 2021 hearing. This Court specifically noted within its May 15, 2021 Order, MR. RODGERS  
was responsible to arrange such appearance by telephone or video conference. He failed to make such arrangements for  
the June 24, 2021 hearing.

## **FINDINGS OF FACT AND PROCEDURAL HISTORY**

1  
2       **1.**       By way of Information filed April 22, 2016, Defendant CRAIG RODGERS was  
3 charged with committing the following crimes:

4           Count 1       Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm  
5                           (Category B Felony in violation of NRS 200.481)

6           Count 2       False Imprisonment with Use of a Deadly Weapon (Category B Felony in  
7                           violation of NRS 200.460)

8           Count 3       First Degree Kidnapping with Use of a Deadly Weapon Resulting in  
9                           Substantial Bodily Harm (Category A Felony in violation of NRS 200.310,  
                              200.320, 193.165)

10          Count 4       Mayhem with Use of a Deadly Weapon (Category B Felony in violation of  
11                           NRS 200.280, 193.165)

12          Count 5       Robbery (Category B Felony in violation of NRS 200.380)

13       This matter was scheduled and continued for trial eight (8) times, and ultimately, on the second day  
14       of the eighth setting, MR. RODGERS pled to committing the charges contained in the Second  
15       Amended Information filed August 6, 2019, to wit: (1) Second Degree Kidnapping (Category B  
16       Felony in violation of NRS 200.310, 200.330), (2) Robbery (Category B Felony in violation of NRS  
17       200.380) (3) Mayhem (Category B. Felony in violation of NRS 200.280) and (4) Pandering  
18       (Category C Felony in violation of NRS 201.300.1). MR. RODGERS was not only arraigned and  
19       canvassed by the Court within respect to his guilty plea, but also, he entered into and signed a nine-  
20       page Guilty Plea Agreement filed in open Court on August 6, 2019.  
21

22       **2.**       Of significance here, the parties agreed MR. RODGERS would be sentenced that day  
23       (August 6, 2019), utilizing the Pre-Sentence Investigation Report (PSI) dated almost one year  
24       earlier, August 23, 2018. At that time, the Court was apprised of one inaccuracy concerning an  
25       arrest date of April 20, 2001; it was identified as a conviction of possession of marijuana on page 4  
26       of the PSI when it should have been noted as being treated under NRS 453.3363. MR. RODGERS  
27  
28

1 had actually received an honorable discharge from probation and the 2001 case had been dismissed.  
2 The STATE requested the 2001 conviction be stricken from the PSI, which the Court accorded  
3 pursuant to the decision, Stockmeier v. State Board of Parole Commissioners, 127 Nev. 243, 255  
4 P.3d 209 (2011). This Court adjudged MR. RODGERS guilty of committing the offenses to which  
5 he pled guilty. In addition to ordering he pay certain fees, this Court sentenced MR. RODGERS to  
6 serve:

7  
8 As to Count 1, a maximum of 180 months with a minimum parole eligibility of 48 months;

9 As to Count 2, a maximum of 60 months with a minimum parole eligibility of 24 months,  
10 consecutive to the sentence imposed as to Count 1;

11 As to Count 3, a maximum of 60 months with a minimum parole eligibility of 24 months,  
12 concurrent to the sentence imposed as to Count 2; and

13 As to Count 4, a maximum of 60 months with a minimum parole eligibility of 24 months,  
14 concurred to the sentence imposed as to Count 3.

15 The aggregate total sentence was a maximum 240 months with a minimum of 72 months. MR.  
16 RODGERS was also accorded 1,218 days credit for time served.

17  
18 **3.** On August 20, 2019, this Court held another hearing to address other Stockmeier  
19 issues. Pursuant to the parties' agreement, Section 2 of the PSI was stricken, as had the 2001  
20 conviction identified in page 4 on August 6, 2019. Further, Section IX, entitled "Plea Negotiations"  
21 on page 7 was stricken as such reflected previous negotiations. Count I listed under Section X  
22 entitled "Recommendations" was also stricken. This Court also ordered corrections to MR.  
23 RODGERS' Social Security number identified in the PSI. The Court ordered the PSI to be amended  
24 to reflect the aforementioned information stricken and/or changed.

25  
26 **4.** MR. RODGERS has moved this Court to modify "and/or correct illegal sentence." In  
27 his view, this Court based its sentences upon the inaccuracies contained in the PSI, and thus, MR.  
28

1 RODGERS' constitutional right to due process was violated. MR. RODGERS believes he was  
2 entitled to a "new" PSI rather than use of the "old" one issued about one year prior.

3 **CONCLUSIONS OF LAW**

4 1. Generally, a district court lacks jurisdiction to suspend or modify a sentence after the  
5 defendant has begun to serve it. *See* NRS 176A.400(3); *also see* Passanisi v. State, 108 Nev. 318,  
6 322, 831 P.2d 1371, 1373 (1992), *overruled on other grounds*, Harris v. State, 130 Nev. 435, 329  
7 P.3d 1371 (2014). However, the Nevada Supreme Court has made exceptions to this rule when a  
8 lower court has made "a mistake in rendering a judgment which works to the extreme detriment of  
9 the defendant." Passanisi, 108 Nev. at 322, 831 P.2d at 1373. "[N]ot every mistake or error which  
10 occurs during sentencing gives rise to a due process violation. The cases implicitly recognize...a  
11 due process violation arises only when the errors result in 'materially untrue' assumptions about a  
12 defendant's record. ...[T]hese considerations represent an appropriate jurisdictional limit to the  
13 correction or modification of a defective sentence by a district court." Id., 108 Nev. at 323, 831 P.2d  
14 at 1373-1374, *quoting* State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048-1049 (1984).  
15 Thus, it is clear the district court has jurisdiction to modify a defendant's sentence if (1) the court  
16 actually sentenced the defendant based on a materially false assumption of fact that worked to  
17 defendant's extreme detriment and (2) the particular mistake at issue was of the type that would rise  
18 to the level of a violation of due process. Passanisi, 108 Nev. at 323, 831 P.2d at 1374.

19 2. MR. RODGERS has made two alternate motions: one to modify his sentence, and the  
20 other, to correct an illegal sentence. A motion to modify a sentence is limited in scope to those  
21 based on mistaken assumptions about a defendant's criminal record that works to the defendant's  
22 extreme detriment. Motions to correct illegal sentences address only the facial legality of a  
23 sentence. Edward v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). An "illegal sentence"  
24 defined by NRS 176.555 is "one 'at variance with the controlling sentencing statute,' or 'illegal' in  
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26  
27  
28

1 the sense that the court goes beyond its authority by acting without jurisdiction or imposing a  
2 sentence in excess of the statutory maximum provided. ...” *Id.*, quoting Allen v. United States, 495  
3 A.2d 1145, 1149 (D.C. 1985), in turn, quoting Prince v. United States, 432 A.2 720, 721 (D.C.  
4 1981) and Robinson v. United States, 454 A.2d 810, 813 (D.C. 1982). A motion to correct an illegal  
5 sentence “presupposes a valid conviction and may not, therefore, be used to challenge alleged errors  
6 in proceedings that occur prior to the imposition of sentence.” *Id.* A motion to correct an illegal  
7 sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time;  
8 such a motion cannot, however, be used as a vehicle for challenging the validity of a judgment of  
9 conviction or sentence based on alleged errors occurring at trial or sentencing. *Id.*

11       3. Within his motion, MR. RODGERS argues the Pre-Sentence Investigation Report  
12 (PSI) was riddled with errors, although he pointed to only one that would be concerning under the  
13 Passanisi and Edwards decisions, to wit: mistaken assumption about MR. RODGERS’ criminal  
14 record. There is no question the 2001 felony drug conviction listed on page 4 of the PSI was  
15 erroneously as MR. RODGERS actually received an honorable discharge from probation and the  
16 charge was dismissed. However, this issue was addressed by the parties, and ultimately, the PSI’s  
17 erroneous notation was stricken by the Court before sentence was rendered. In addition, this Court  
18 placed a specific notation within the Judgment of Conviction the PSI’s listed notation was inaccurate  
19 and stricken. Thus, if there were a mistaken assumption about MR. RODGERS’ criminal record, it  
20 certainly did not work to his extreme detriment. The other errors identified by MR. RODGERS as  
21 contained within the PSI did not relate to his criminal history.

24       4. This Court also notes, because of his claims of inaccuracies within the PSI, it also  
25 continued the matter for two weeks for the STATE to discuss them with MR. RODGERS. A  
26 hearing was held before the Court to deal with those alleged errors. Notably, the STATE agreed to  
27 most, if not all of the proposed changes by MR. RODGERS, and the Court ordered the corrections to  
28

1 be made or entries stricken. Suffice it to say, the errors identified by MR. RODGERS that were  
2 contained in the PSI did not work to his “extreme detriment.” Accordingly, this Court denies MR.  
3 RODGERS’ motion as it seeks to modify his sentence.

4       **3.** This Court also denies MR. RODGERS’ motion as it seeks to correct an “illegal”  
5 sentence. The sentence imposed was not illegal; it fell within the perimeters of the punishment  
6 range for the crimes charged—and those to which MR. RODGERS pled guilty. Notwithstanding  
7 that premise, the Guilty Plea Agreement specified the parties were jointly recommending an  
8 aggregate sentence of a minimum of six (6) to a maximum of twenty (20) years to be served in  
9 prison. *See* page 1 of the PSI. This Court sentenced MR. RODGERS to precisely the terms for which  
10 he bargained, i.e. a minimum of six (6) to a maximum of twenty (20) years. The sentence imposed  
11 was not in excess of the statutory maximum provided and it was not facially illegal.  
12

13       Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,  
14

15       **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant CRAIG  
16 RODGERS’ Motion to Modify and/or Correct Illegal Sentence filed April 27, 2021 is denied.

17       Dated this 24th day of August, 2021

18       

19       \_\_\_\_\_  
20 SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
21       90B 567 26AB E82C  
22       Susan Johnson  
23       District Court Judge

24       August 25, 2021



26       CERTIFIED COPY  
27       ELECTRONIC SEAL (NRS 1.190(3))  
28

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 State of Nevada

CASE NO: C-16-314359-1

7 vs

DEPT. NO. Department 22

8 Craig Rodgers  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/24/2021

15 ANITA Harrold .

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