

Damon L. Campbell
71683
P.O. Box 1989
Ely, Nevada 89301
In Proper Person

FILED

OCT 04 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Melissa Keller
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMON CAMPBELL,
Appellant,

vs.

ERIKA BALLOU,
District Court Judge,
Eighth Judicial District
Department XXIV
Appellee.

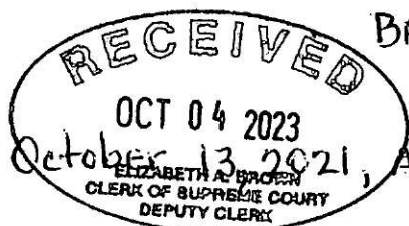
Case No. 86265 - COA

MOTION FOR RECONSIDERATION

COMES NOW, Appellant, Damon Campbell, in pro per,
requesting this Court to reconsider its decision on September
18, 2023.

BRIEF HISTORY

On October 13, 2021, Appellant/Defendant filed a Motion



23-32733

for Modification of Sentence and Jail Time Credits.

On October 26, 2021, the State filed its Opposition To Defendant's motion for modification of sentence and jail time credits.

On November 3, 2021, the District Court issued its Order Denying Defendant's Motion To Modify Sentence And Jail Time Credits. However, Directed an Amended Judgment of Conviction.

A. This Court has overlooked and misapprehended that the material fact in the record of Appellant's claim the trial court erred in its determination of jail time credits and appellate counsel was ineffective for failing to object to the miscalculation of jail time credits, stating that Appellant did not raise these claims in his previous motion for modification of sentence and jail time credits. NRAP 40(c)(2)(A).

Appellant believes this Court inadvertently overlooked the documentation before the Court. Attached hereto are documentation proving Appellant did in fact present his argument and claim in relation to his jail time credits. Exhibit A - State's Opposition To Defendant's Motion For Modification of Sentence And Jail Time Credits; Exhibit B - State's Opposition To Defendant's Motion For Request For Resentencing Hearing; Exhibit C - Order Denying Defendant's Motion To Modify Sentence And Jail Time Credits. All providing clear language that Appellant did in

fact bring forth a claim of trial court error in its determination of his jail time credits. However, Appellant is a prisoner, and during transfers from facility to facility and cell searches, Appellant's original copy of his motion to the lower court has been misplaced, lost, or destroyed. Thus, he cannot unfortunately provide a copy for this Court.

B, This Court has overlooked, misapplied, and failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case. NRAP (c)(2) (B).

A motion to correct an illegal sentence may only challenge the "facial legality" of the sentence. A motion to correct an illegal sentence "presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence." EDWARDS v. STATE, 112 Nev. 704, 708 (1996) (quoting Robinson v. United States, 454 A.2d 810, 813 (D.C. 1982)). A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal "at any time." EDWARDS, 112 Nev. at 708.

Appellant is not challenging his conviction or any pretrial or trial errors. I am only attacking the facial legality and illegality of the restitution aspect of the sentence imposed. Restitution is acknowledged by this Court as a fundamental aspect of sentencing as held in MARTINEZ v. STATE, 115 Nev. 9, 12-13, 974 P.2d 133, 135

(1999); SLAATE v. STATE, 298 P.3d 1170-71 (2013) ([a] judgment of conviction that imposes a restitution obligation but does not specify its terms is not a final judgment...). There are clear statutory and due process violations that constitute address otherwise Appellant's conviction remains unfinal. This claim was brought forth to the lower court.

C. This Court has overlooked, misapplied, and failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case NRAP (c) (2)(B) and overlooked and misapprehended the material fact in the record. NRAP (c) (2)(A).

Restitution under NRS 176.033 is a part of sentencing and when being sentenced the court "must make reference" to the statute in which the punishment is being applied upon a conviction. MARTINEZ v. STATE, 115 Nev. at 12-13; COLLIER v. BAYER, 408 F.3d at 1282 (9th Cir. 2005 (Nev.)). This claim was brought forth to the lower court.

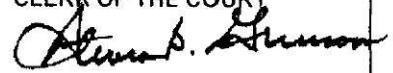
For the aforementioned reasons this Court should reconsider its prior decision.

Respectfully submitted,


Daman Campbell, pro per

EXHIBIT A

EXHIBIT A



1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: 00C169550

12 DAMON LAMAR CAMPBELL,
13 #1196647

DEPT NO: XXIV

14 Defendant.

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR MODIFICATION OF**
16 **SENTENCE AND JAIL TIME CREDITS**

17 DATE OF HEARING: 11/03/2021
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Opposition to Defendant's Motion For
22 Modification Of Sentence And Jail Time Credits.

23 This Opposition is made and based upon all the papers and pleadings on file herein, the
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if
25 deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

Pursuant to his Judgement of conviction, Defendant was sentenced on January 14, 2002 with 541 days credit time served. He claims he was entitled to 546 days as of January 18, 2002. It seems that Defendant got an extra day.

"The defendant begins to serve the sentence when a judgment of conviction is signed by the judge and entered by the clerk." Staley v. State, 106 Nev. 75, 79, 787 P.2d 396, 398 (1990)(*overruled on other grounds by* Hodges v. State, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003)). The district court's authority to modify a sentence that a defendant has already begun to serve is based on the due process rights of the defendant, and "not every mistake or error which occurs during sentencing gives rise to a due process violation." State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048-49 (1984); Staley, 106 Nev. at 79. In fact, if a sentence is within statutory limits, the court cannot modify the sentence unless based upon materially untrue assumptions or mistakes which work to the extreme detriment of the defendant. Staley, 106 Nev. at 79-80. While Defendant claims there were mistakes in the PSI, he does not identify the mistakes. Moreover, he fails to provide any evidence of any mistake.

The only legal claim is that the names of the victims were not identified in the Judgment of conviction.¹ The State does not have the PSI, but the two victims were Alberto Martinez (deceased) and Carlos Villanueva (surviving). The PSI should identify for whom the restitution was directed. The State has no objection if the Court wants to update the JOC to reflect the victims entitled to the restitution.

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¹ He also clearly does not understand what joint and several liability is.

1 CONCLUSION

2 Based upon the foregoing, Defendant's motion should be denied with the exception of
3 identifying the victims entitled to restitution.

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5 DATED this 26th day of October, 2021.

6 Respectfully submitted,

7 STEVEN B. WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10 BY /s/ Marc DiGiacomo
11 MARC DIGIACOMO
12 Chief Deputy District Attorney
13 Nevada Bar #006955
14
15

16 CERTIFICATE OF MAILING

17 I hereby certify that service of the above and foregoing was made this 26th day
18 of October, 2021 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

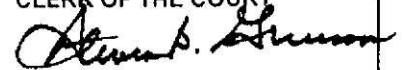
19 Damon Campbell #71683
20 Warm Springs Correctional Center
21 3301 E. 5th Street
22 Carson City, NV 89701

23 BY: /s/ Stephanie Johnson
24 Secretary for the District Attorney's Office
25
26
27

28 00F12572X/MD/sj/MVU

EXHIBIT B

EXHIBIT B



OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAMON LAMAR CAMPBELL,
#1196647

Defendant.

CASE NO: 00C169550
DEPT NO: XXIV

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR REQUEST FOR
RESENTENCING HEARING**

DATE OF HEARING: DECEMBER 22, 2021
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for Request for Resentencing Hearing.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 POINTS AND AUTHORITIES

2 On October 13, 2021, Defendant Damon Campbell ("Defendant") filed a Motion for
3 Modification of Sentence and Jail Time Credits, in which he alleged that at sentencing he did
4 not receive all of the presentence credit for time served to which he believed he was entitled.
5 He also complained that the names of the victims were not identified in his Judgment of
6 Conviction. On November 3, 2021, this Court denied Defendant's claim that he did not receive
7 sufficient presentence credit, and determined that 541 days was the correct amount of
8 presentence credit. The Court did determine that the Judgment of Conviction would be
9 amended to reflect that restitution in this case will be paid to Victims of Crime. The Order
10 denying the Motion was filed on November 8, 2021.

11 On November 30, 2021, Defendant filed the instant Motion for Request for
12 Resentencing Hearing. Therein, he expresses a belief that he is to be "resentenced" in this case
13 and requests that he be transported to the Court for a resentencing hearing. Defendant is
14 obviously mistaken, as his sentence is in no way being modified, nor has this Court scheduled
15 a resentencing hearing. This Court merely ordered a correction to a clerical mistake in the
16 Judgment of Conviction, as permitted under NRS 176.565. This Court may file an Amended
17 Judgment of Conviction to correct such a mistake without holding an additional hearing. Thus,
18 no hearing is warranted, and there is no need to schedule one or transport Defendant.

19 CONCLUSION

20 For the foregoing reasons, the State respectfully requests that Defendant's Motion for
21 Request for Resentencing Hearing be denied.

22 DATED this 14th day of December, 2021.

23 Respectfully submitted,

24 STEVEN B. WOLFSON
25 Clark County District Attorney
Nevada Bar #001565

26 BY /s/ Karen Mishler
27 KAREN MISHLER
28 Chief Deputy District Attorney
Nevada Bar #013730

///

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 14th day of December, 2021 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Damon Campbell #71683
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

BY: /s/ Stephanie Johnson
Secretary for the District Attorney's Office

00F12572X/KM/sj/MVU

EXHIBIT C

EXHIBIT C

Alvin S. Linn
CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
AGNES M. BOTELHO
Chief Deputy District Attorney
Nevada Bar #11064
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff.

-vs-

CASE NO: 00C169550

DAMON LAMAR CAMPBELL,
#1196647

DEPT NO: XXIV

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO MODIFY SENTENCE AND
JAIL TIME CREDITS**

DATE OF HEARING: November 03, 2021
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 3rd day of November, 2021, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through AGNES M. BOTELHO, Chief Deputy District Attorney, and the Court having heard the arguments of counsel, based on the pleadings and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Motion to Modify Sentence and Jail
2 Time Credits, shall be, and it is DENIED; 541 DAYS was the correct amount of credit
3 Defendant received; DIRECTED an Amended Judgment of Conviction be prepared to reflect
4 Restitution be paid to Victims of Crimes.

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6 Dated this 8th day of November, 2021

7 

8 STEVEN B. WOLFSON
9 Clark County District Attorney
10 Nevada Bar #001565

9C9 AD0 2EDA FF13
Erika Ballou
District Court Judge

11 BY /s/ AGNES M. BOTELHO
12 AGNES M. BOTELHO
13 Chief Deputy District Attorney
Nevada Bar #11064

14 CERTIFICATE OF SERVICE

15 I certify that on the 8th day of November, 2021, I mailed a copy of the foregoing Order

16 to:

17 DAMON LAMAR CAMPBELL, BAC #71683
18 WARM SPRINGS CORRECTIONAL CENTER
19 P. O. BOX 7007
WARM SPRINGS, NEVADA 89702

20
21 BY /s/ J. HAYES
22 Secretary for the District Attorney's Office

23
24
25
26
27 00F12572X/jh/MVU
28

CERTIFICATE OF SERVICE

I, Damon Campbell, hereby certify pursuant to
FRCP 5(b) that on this 2nd day of October, 2023, I did serve a
true and correct copy of the foregoing, Motion for Reconsideration

by giving it to a prison guard at Ely State Prison to deposit in the U.S. Mail,
sealed in an envelope, postage pre-paid, addressed to the following:

Signed,

Damon Campbell
71683

Ely State Prison
P.O. Box 1989
Ely, Nevada 89301