

IN THE SUPREME COURT OF THE STATE OF NEVADA

REGINALD CLARENCE HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43031

FILED

SEP 22 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
B/ *J. Ruben*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's third motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On July 15, 1998, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced him to serve a term of life in the Nevada State Prison with the possibility of parole in ten years. This court dismissed appellant's direct appeal.¹

On April 19, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On June 11, 2001, the district court denied the petition. This court affirmed the order of the district court on appeal.²

¹Howard v. State, Docket No. 32854 (Order Dismissing Appeal, August 11, 2000).

²Howard v. State, Docket No. 38108 (Order of Affirmance, January 15, 2003).

On July 24, 2001, appellant filed a proper person motion to correct an illegal sentence in the district court. On September 10, 2001, the district court denied the motion. No appeal was taken.

On January 13, 2003, appellant filed a second proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 6, 2003, the district court denied the motion. This court affirmed the order of the district court on appeal.³

On January 12, 2004, appellant filed a third proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 26, 2004, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that the district court was without jurisdiction to adjudicate him a habitual criminal because he was not properly charged. Specifically, he argued that the State's notice of intent to seek habitual criminal adjudication was improper because it did not charge the habitual criminal allegation as a "count," but rather set forth the habitual criminal allegation as a "notice of intention."

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.⁴ "A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to

³Howard v. State, Docket No. 41115 (Order of Affirmance, November 25, 2003).

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

challenge alleged errors in proceedings that occur prior to the imposition of sentence."⁵

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. This court previously considered and rejected appellant's challenge to his adjudication as a habitual criminal. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided a more detailed and precisely focused argument made upon reflection of the prior proceedings.⁶ Moreover, as a separate and independent ground to deny relief, the alleged error did not deprive the district court of jurisdiction. "[A]djudication under the habitual criminal statute constitutes a status determination and not a separate offense."⁷ A habitual criminal allegation is included in a charging document "merely to provide notice to the defendant that the state is seeking enhancement of penalty."⁸ This court has previously determined that appellant was provided with adequate notice of the State's intention to seek habitual criminal adjudication. Any alleged error in not labeling the habitual criminal allegation as a "count" does not warrant relief. Therefore, we affirm the order of the district court.

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


⁶See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).


⁷Schneider v. State, 97 Nev. 573, 575, 635 P.2d 304, 305 (1981); see also State v. Bardmess, 54 Nev. 84, 91, 7 P.2d 817, 818 (1932) (holding that a statement of a previous conviction does not charge an offense, but rather it is only the averment of a fact which may affect the punishment).

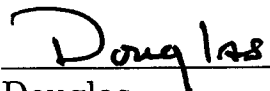
⁸Parkerson v. State, 100 Nev. 222, 224, 678 P.2d 1155, 1156 (1984).

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
Reginald Clarence Howard
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).