

IN THE SUPREME COURT OF THE STATE OF NEVADA


RUBEN PAUL PEREZ A/K/A ENRIQUE
ROCHA PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43892

FILED

MAR 07 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

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

On June 29, 1999, the district court convicted Perez, pursuant to a guilty plea, of conspiracy to commit murder with intent to promote, further, or assist a criminal gang (count I), and first-degree murder (count II). The district court sentenced Perez to serve two consecutive terms of 48 to 120 months in the Nevada State Prison for count I, and a consecutive term of life with the possibility of parole for count II. Perez did not file a direct appeal.

On July 2, 2004, Perez filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On August 17, 2004, the district court denied Perez's motion. This appeal followed.

In his motion, Perez contended that the criminal gang sentencing enhancement cannot be applied to a conviction for conspiracy.¹ Therefore, Perez argued, his sentence for conspiracy to commit murder with intent to promote, further, or assist a criminal gang is illegal.

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.² "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.'"³

Perez's claim that the criminal gang sentencing enhancement cannot be applied to a conspiracy conviction is outside the scope of a motion to correct an illegal sentence because it challenges the guilty plea. Perez's sentence fell within the range prescribed by the statutes under which he was convicted,⁴ and there is nothing in the record to suggest that the district court was without jurisdiction. Therefore, the district court did not err in denying Perez's motion.

¹See NRS 193.168.


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

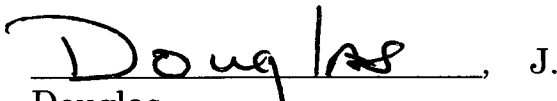
³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

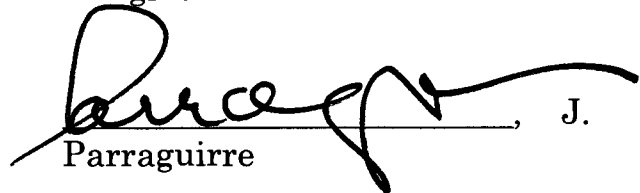
⁴See NRS 193.168; 199.480; 200.030.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Perez is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge
Ruben Paul Perez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that Perez has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Perez has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.