

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD D. VIGNOLO, SR. A/K/A
LEONARD DANIEL VIGNOLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44085

FILED

JAN 25 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence and motion for judgment on the pleadings. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On February 12, 1991, the district court convicted appellant, pursuant to a jury verdict, of first degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's direct appeal from his judgment of conviction.¹ The remittitur issued on May 27, 1992.

On October 26, 1993, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750, the district court declined to appoint counsel to represent appellant. On December 2, 1994,

¹Vignolo v. State, Docket No. 22223 (Order Dismissing Appeal, March 5, 1992).

after conducting an evidentiary hearing, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.²

On October 15, 1997, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 12, 1998, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.³

On March 16, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 7, 2004, the district court orally denied appellant's motion. On August 20, 2004, appellant filed a motion for judgment on the pleadings. The State opposed the motion for judgment on the pleadings. On September 14, 2004, the district court denied the motion for judgment on the pleadings. The district court subsequently entered a written order denying the motion to correct an illegal sentence on November 18, 2004. This appeal followed.

In his motion to correct an illegal sentence, appellant contended that the district court lacked "subject matter jurisdiction" to sentence appellant because the written stipulation waiving a penalty hearing and allowing the district court to impose the punishment was not signed by appellant. Appellant claimed that the law in effect at the time required a penalty hearing to be held on a charge of first degree murder.

²Vignolo v. State, Docket No. 26580 (Order Dismissing Appeal, June 27, 1995).

³Vignolo v. State, Docket No. 31856 (Order Dismissing Appeal, July 13, 2000).

Appellant further argued that the dismissal of one of the jurors violated his constitutional rights.

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 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. Appellant's sentence was facially legal.⁶ Appellant failed to demonstrate that the district court was without jurisdiction to impose the sentence; the district court was a competent court of jurisdiction. At the time appellant committed the crime and was tried, a separate penalty hearing was not required in a non-death penalty case.⁷ In the instant case, the record reveals that the death penalty was not sought. Thus, a separate penalty hearing was not required. The written stipulation waiving the penalty determination by the jury was signed by appellant's counsel, the district attorney, and the district court judge. The written stipulation was filed in open court and made a part of the record on appeal on November 9, 1990. Under the

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

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

⁶1977 Nev. Stat., ch. 598, § 5, at 1627-28.

⁷See Kazalyn v. State, 108 Nev. 67, 77, 825 P.2d 578, 584 (1992) receded from on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000); McCabe v. State, 98 Nev. 604, 655 P.2d 536 (1982).

circumstances present, appellant failed to demonstrate that the lack of his signature on the written stipulation rendered the written stipulation void, or otherwise, invalidated the district court's jurisdiction to sentence appellant. Finally, appellant's challenge to the dismissal of a juror fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court denying appellant's motion.

Turning to appellant's motion for judgment on the pleadings, we conclude that the district court did not err in denying appellant's motion. A motion for judgment on the pleadings pursuant to NRCP 12(c) was improperly sought in the criminal matter.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, C.J.
Becker

Rose, J.
Rose

Hardesty, J.
Hardesty

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Nancy M. Saitta, District Judge
Leonard D. Vignolo Sr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk