

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICIO V. WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44352

FILED

JUN 08 2005

W. B. BLODS
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence and motion to modify sentence.¹ Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On November 15, 1995, the district court convicted appellant, pursuant to an Alford² plea, of one count of attempted robbery, victim sixty-five years of age or older. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.³

¹The notice of appeal also indicates that appellant is appealing from the denial of his motion for the appointment of counsel and motion for transcripts. Because of the timing of the orders denying these motions, they are intermediate to the motion to correct illegal sentence and motion to modify sentence. We conclude that the district court did not abuse its discretion in denying these motions.

²North Carolina v. Alford, 400 U.S. 25 (1970).

³Williams v. State, Docket No. 32511 (Order Dismissing Appeals, July 2, 1998).

On June 17, 2003, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. The district court denied the motion on July 1, 2003. Appellant did not file an appeal.

On September 3, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On November 4, 2003, the district court denied appellant's petition. Appellant did not file an appeal.

On February 20, 2004, appellant filed a proper person motion for relief from his judgment of conviction in the district court. The State opposed the motion. On June 25, 2004, the district court denied appellant's motion. Appellant did not file an appeal.

On September 30, 2004, appellant filed a proper person motion to correct an illegal sentence and motion to modify sentence in the district court. The State opposed the motion. On December 13, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court improperly adjudicated him a habitual criminal because: (1) his sentence was already being enhanced under NRS 193.167; (2) Judge McGroarty did not have jurisdiction to sentence him because Judge Lehman accepted his plea; (3) his 1982 and 1983 convictions were over ten years old at the time of sentencing and could not be considered for the purposes of habitual criminal adjudication; and (4) the district court did not determine that it was just and proper for him to be adjudicated a habitual criminal. Appellant further argued that his plea was unknowingly entered because the district court did not adequately canvass him regarding his plea.

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 A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."⁶ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁷

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. The term for appellant's sentence was facially legal.⁸ Further, there is no indication that the district court was without jurisdiction. Finally, appellant's claims fell outside of the narrow scope of claims permissible in a motion to modify sentence. Thus, the district court did not err in denying appellant's motion.

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)).

⁶Id.

⁷Id. at 708-09 n.2, 918 P.2d at 325, n.2.

⁸See 1985 Nev. Stat. ch. 544, § 1 at 1643-44 (providing that every person convicted of any felony, who has previously been convicted of a felony three times, shall be punished by life imprisonment, with or without the possibility of parole).

In his motion, appellant also noted that he had filed a prior motion to correct an illegal sentence on June 17, 2003, and "his motion went in front of Judge Hardcastle, Mrs. Hardcastle was [Williams'] attorney during his court proceeding in this case, [and] Judge Hardcastle should have excused herself, due to a conflict of interest."

Our review of the district court minutes indicates that Judge Hardcastle verbally denied appellant's first motion to correct an illegal sentence on July 1, 2003. Assuming the minutes are correct, we conclude that Judge Hardcastle should not have conducted any hearing or had any involvement in appellant's case because she had previously served as appellant's defense counsel.⁹

Nonetheless, we conclude that appellant cannot demonstrate prejudice from Judge Hardcastle's minimal participation in the matter. First, the record reflects that appellant filed a motion to withdraw the motion that was apparently considered by Judge Hardcastle. Second, the record reflects that Judge Hardcastle never entered a written order denying the motion. Under Tener v. Babcock¹⁰ and Miller v. Hayes,¹¹ a ruling is not final until the entry of a written order. Third, Judge McGroarty subsequently entered a final written order rejecting appellant's contentions respecting the illegal sentence on the merits. Under these circumstances, the record reveals no prejudice to appellant because Judge Hardcastle never rendered a final enforceable decision in the matter, and to the extent she may have participated minimally, the record reflects that

⁹See Code of Judicial Conduct Canon 3E(1)(b).

¹⁰97 Nev. 369, 632 P.2d 1140 (1981).

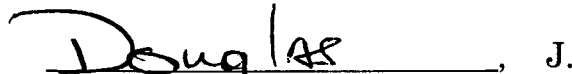
¹¹95 Nev. 927, 604 P.2d 117 (1979).

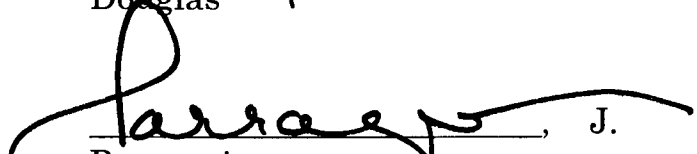
her participation had no effect or impact on subsequent decisions in the case by Judge McGroarty.

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.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹³


Maupin


Douglas


Parraguirre

cc: Hon. John S. McGroarty, District Judge
Patricio V. Williams
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹³We have reviewed all documents that appellant 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 appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.