

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT ALAN FLETCHER,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

No. 44418

SCOTT ALAN FLETCHER,  
Appellant,

vs.


THE STATE OF NEVADA,  
Respondent.

No. 44419

**FILED**

NOV 17 2005

ORDER OF AFFIRMANCE

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

These are proper person appeals from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus and motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On December 28, 1976, the district court convicted appellant, pursuant to a guilty plea in district court case number C34186, of one count 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. No direct appeal was taken.

On December 28, 1976, the district court also convicted appellant, pursuant to a guilty plea in district court case number C31965, of one count 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, to be served consecutive to the sentence imposed in C34186. The district court entered an amended judgment of conviction on May 20, 1986, which awarded appellant with 614 days' credit. No direct appeal was taken.

On July 12, 2004, appellant filed a post-conviction petition for a writ of habeas corpus in C34186. The State opposed the petition, arguing the petition was untimely filed. Moreover, the State specifically pleaded laches. Appellant filed a reply.<sup>1</sup> Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On July 22, 2004, appellant filed a motion to correct an illegal sentence in C31965. The State opposed the motion and appellant filed a reply. On November 4, 2004, the district court denied appellant's petition and motion. These appeals followed.<sup>2</sup>

Appellant filed his petition more than twenty-seven years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>3</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>4</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>5</sup>

In an attempt to excuse his procedural defects, appellant argued that he was actually innocent of the murder he pleaded guilty to in C34186, and prison alliances and intimidation prevented him from raising this claim earlier. Appellant stated that receipt of an exculpatory letter dated November 5, 2001, from a co-defendant in C34186, changed his circumstances and allowed him to finally raise his claim of actual

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<sup>1</sup>The reply was filed on October 6, 2004, in C31965.

<sup>2</sup>Appellant is proceeding in proper person on appeal.

<sup>3</sup>See NRS 34.726(1).

<sup>4</sup>See id.

<sup>5</sup>See NRS 34.800(2).

innocence. Appellant explains that it took several years from receipt of the letter to obtain his legal file and consult an attorney regarding possible relief available to him.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition. Appellant failed to demonstrate that an impediment external to the defense prevented him from complying with the procedural requirements of NRS chapter 34.<sup>6</sup> Appellant further failed to demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice because appellant failed to demonstrate that he was actually innocent of the offense.<sup>7</sup> Finally, appellant failed to overcome the presumption of prejudice to the State.

To the extent that appellant's petition can be construed as a motion to withdraw his guilty plea, we conclude that the motion was subject to the equitable doctrine of laches, the State would suffer prejudice by having to proceed at this time and appellant failed to demonstrate that he was actually innocent.<sup>8</sup> To the extent that appellant's petition could be construed as a motion to correct an illegal sentence, appellant's claim fell outside of the scope of claims permissible in a motion to correct an illegal

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<sup>6</sup>See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>7</sup>See Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); Mazzan v. Warden, 112 Nev. 838, 848, 921 P.2d 920, 922 (1996); see also Murray v. Carrier, 477 U.S. 478, 496 (1986).

<sup>8</sup>See Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000).

sentence.<sup>9</sup> Accordingly, we affirm the order of the district court denying appellant's petition.

In his motion to correct an illegal sentence, appellant contended that his sentence in C31965 is improper because absent the conviction in C34186 he would not have received life without the possibility of parole in C31965 and he would not have received consecutive sentences. Appellant asserted that because he is actually innocent of the charges in C34186, he should be resentenced in C31965 and given an opportunity for parole. Appellant also claimed that a charge for a third murder, which was dismissed, negatively affected his sentence.

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.<sup>10</sup> "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.'"<sup>11</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claim fell outside of the scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal,<sup>12</sup> and there is no

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<sup>9</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996)

<sup>10</sup>Id.

<sup>11</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>12</sup>See 1975 Nev. Stat. ch. 740, § 1, at 1580-81.

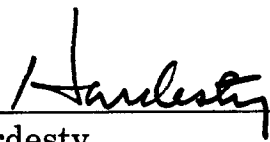
indication that the district court was without jurisdiction. To the extent that appellant's motion may be construed as a motion to modify a sentence, we conclude that the district court did not err in denying relief. Appellant failed to demonstrate that, when sentencing appellant, the district court made a material mistake about his criminal record that worked to his extreme detriment.<sup>13</sup> Accordingly, we conclude that the district court did not err in denying appellant's motion.

Having reviewed the records 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.<sup>14</sup> Accordingly, we

ORDER the judgments of the district court AFFIRMED.

 \_\_\_\_\_, J.

Maupin  
 \_\_\_\_\_, J.  
Gibbons

 \_\_\_\_\_, J.  
Hardesty

cc: Hon. Michelle Leavitt, District Judge  
Scott Alan Fletcher  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>13</sup>See Edwards, 112 Nev. 704, 918 P.2d 321.

<sup>14</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).