

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM GARDNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44522

FILED

MAY 19 2005

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On March 11, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of offering, attempting, committing an unauthorized act relating to a controlled substance in violation of NRS 453.321 and one count of conspiracy to commit burglary in district court case number CR3741. The district court sentenced appellant to serve a term of twenty-eight to seventy-two months in the Nevada State Prison for the controlled substance count and a concurrent term of one year for the conspiracy count. No direct appeal was taken.

On December 27, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. On December 29, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence should be vacated because there was no proof of an actual controlled substance. Appellant relied upon this court's holding in Paige v. State,¹ which held that a conviction for offering to sell a controlled substance required existence of an actual controlled substance.

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

Our review of the record on appeal reveals that the district court did not err in denying this motion. Appellant's sentence was facially legal.⁴ There is no indication that the district court was without jurisdiction in this matter. Appellant entered a guilty plea to the offense involving a violation of NRS 453.321 and cannot challenge the validity of

¹116 Nev. 206, 995 P.2d 1020 (2000).

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)).

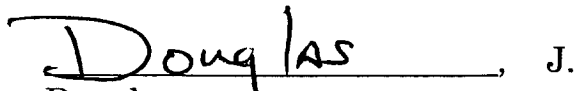
⁴See NRS 453.321(2)(a) (providing for a minimum term of not less than one year and a maximum term of not more than six years).

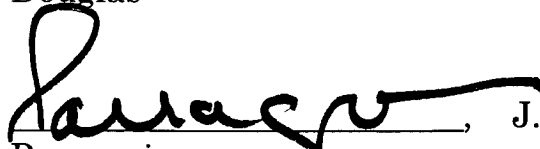
his guilty plea in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. John P. Davis, District Judge
William Gardner
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

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