

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK LICON A/K/A GORDON  
NELSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44870

FRANK LICON A/K/A GORDON  
NELSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44871

**FILED**

JUL 05 2005

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

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying appellant's motion to correct an illegal sentence and/or modify sentence. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On July 29, 2004, the district court convicted appellant, pursuant to guilty pleas, of one count of possession of a controlled substance in district court case number C196194 and one count of possession of a controlled substance in district court number C196190. The district court sentenced appellant to serve a term of 12 to 34 months in the Nevada State Prison for the conviction in district court case number C196194, to be served concurrently with the sentence imposed in district court case number C197353. The district court also sentenced appellant to serve a term of 12 to 34 months for the conviction in district court case

number C196190, to be served concurrently with the sentence imposed in district court case number C197353 and consecutive to the sentence imposed in district court case number C196194. Appellant did not file a direct appeal in either district court case.

On January 19, 2005, appellant filed a single proper person motion to correct an illegal sentence and/or modify sentence in district court case numbers C196194 and C196190. The State opposed the motion. On February 14, 2005, the district court entered orders denying appellant's motion. These appeals followed.

In his motion, appellant contended that the district court improperly ordered that his sentence in district court case number C196190 be run consecutive to the sentence in district court case number C196194. Appellant alleged that although the State agreed not to oppose a concurrent sentence in the plea agreement, at sentencing the judge stated that he was required by law to make the sentences consecutive.

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>1</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>2</sup> A motion to modify a sentence "is limited in scope to

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<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."<sup>3</sup> A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.<sup>4</sup>

Our review of the records on appeal reveals that the district court did not err in denying appellant's motion. The terms for appellant's sentences were facially legal.<sup>5</sup> Further, there is no indication that the district court was without jurisdiction. Finally, appellant failed to demonstrate that the district court relied upon any mistakes about his criminal record that worked to his extreme detriment.

To the extent that appellant argued that he was not properly awarded credit for time served, that claim falls outside the narrow scope of claims permissible in a motion to correct or modify sentence. Such a claim must be raised in a post-conviction petition for a writ of habeas corpus.<sup>6</sup>

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<sup>3</sup>Id., at 708, 918 P.2d at 324.


<sup>4</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

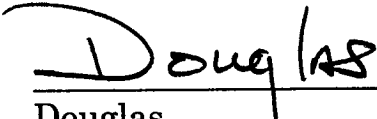
<sup>5</sup>See NRS 453.336; NRS 193.130(2)(e); NRS 176A.100(1)(b)(2).

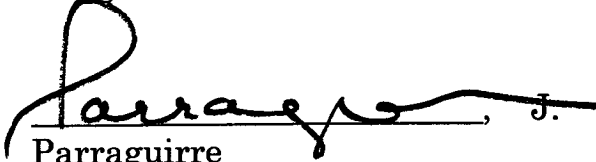
<sup>6</sup>See NRS 34.724(2)(c); NRS 34.738(1). Further, any claim challenging the effectiveness of counsel must be raised in a post-conviction habeas corpus petition. See NRS 34.724(2)(b); NRS 34.738(1). To be timely, a post-conviction petition for a writ of habeas corpus raising such a claim must be filed within one year after entry of the judgment of conviction. See NRS 34.726(1). We express no opinion as to whether petitioner could satisfy the procedural requirements of NRS chapter 34.

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>7</sup> Accordingly, we

ORDER the judgments of the district court AFFIRMED.<sup>8</sup>

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

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

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

cc: Hon. Nancy M. Saitta, District Judge  
Frank Licon  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>We 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.