

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRK JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45192

FILED

JUL 22 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 dismissing a motion to vacate, correct or set aside a sentence. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On August 12, 2004, the district court convicted appellant, pursuant to a guilty plea, of two counts of larceny from the person and one count of larceny from the person with the victim being over the age of sixty-five. The district court sentenced appellant to serve four consecutive terms of twelve to thirty-six months in the Nevada State Prison. No direct appeal was taken.

On March 14, 2005, appellant filed a proper person motion to vacate, correct or set aside a sentence in the district court. The State filed a motion to dismiss the motion. On April 12, 2005, the district court dismissed appellant's motion. This appeal followed.

In his motion, appellant contended that he received ineffective assistance of counsel in the prior proceedings. Appellant further claimed that the court exceeded its jurisdiction when it determined that he was guilty of conduct that he neither admitted to nor was convicted by a jury

beyond a reasonable doubt. Appellant requested the imposition of concurrent sentences.

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.¹ "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.'"²

Our review of the record on appeal reveals that the district court did not err in dismissing the motion. Appellant's sentence was facially legal, and the record does not support appellant's claim that the district court was without jurisdiction.³ Appellant entered a guilty plea to the offenses of larceny from the person and larceny from the person with the victim being over the age of sixty-five years. Thus, the district court properly applied the elderly victim enhancement. To the extent that appellant was seeking habeas corpus relief, we conclude that the district court properly determined that appellant's motion was not in substantial compliance with NRS 34.735. Appellant further failed to demonstrate that modification of his sentence was appropriate.⁴ Therefore, we affirm the order of the district court.

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


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

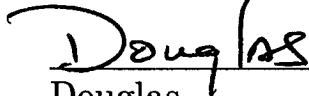
³See NRS 205.270(1)(a); NRS 193.167.

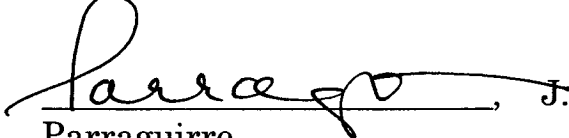
⁴See Edwards, 112 Nev. at 708, 918 P.2d at 324.

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. Joseph T. Bonaventure, District Judge
Kirk Johnson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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