

IN THE SUPREME COURT OF THE STATE OF NEVADA

TANIKO CURT SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45258

**FILED**

NOV 10 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On May 2, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder with the use of a deadly weapon, one count of attempted murder with the use of a deadly weapon, two counts of robbery with the use of a deadly weapon, and one count of attempted robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole and consecutive terms totaling sixty years. This court dismissed appellant's direct appeal.<sup>1</sup> The remittitur issued on December 22, 1998.

On October 30, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel or to order an evidentiary

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<sup>1</sup>Smith v. State, Docket No. 30243 (Order Dismissing Appeal, December 3, 1998).

hearing. On January 31, 2001, the district court denied appellant's petition on the ground that it was procedurally time-barred. This court affirmed the district court's order.<sup>2</sup>

On January 20, 2002, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant retained counsel, and counsel supplemented the petition. On July 10, 2002, after conducting a hearing, the district court denied the petition. This court affirmed the district court's order.<sup>3</sup>

On February 23, 2005, appellant filed a motion to correct an illegal sentence in the district court. The State opposed the motion. The district court denied the motion on May 18, 2005. This appeal followed.

In his motion, appellant made three contentions. First, appellant contended that the grand jury indictment against him was defective, that the district court was therefore without subject matter jurisdiction over his case, and, because the district court sentenced him without jurisdiction, his sentence was illegal. Second, appellant contended that because the written jury verdict did not specify the degree of the murder charge of which appellant was found guilty, the district court lacked jurisdiction to sentence him and the sentence was therefore illegal. Third, appellant contended the district court "lacked jurisdiction" to allow the prosecution to amend the indictment against appellant, and the sentence was therefore illegal.

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<sup>2</sup>Smith v. State, Docket No. 37387 (Order of Affirmance, November 20, 2001).

<sup>3</sup>Smith v. State, Docket No. 39860 (Order of Affirmance, April 10, 2003).

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 imposed was in excess of the statutory maximum.<sup>4</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>5</sup>

Based upon our review of the record on appeal, we conclude the district court did not err in denying appellant's motion. This court has already rejected appellant's arguments that his indictment was invalid, his jury verdict was invalid, and that the district court erred in allowing the prosecution to amend the indictment.<sup>6</sup> Appellant raised these claims again in this motion but phrased them in jurisdictional language to attempt to make them fit within the narrow focus of a motion to correct an illegal sentence. The doctrine of the law of the case prevents further litigation of these issues.<sup>7</sup>

Moreover, as a separate and independent ground for denial of the motion, it appears these claims do not implicate the jurisdiction of the district court. Jurisdiction over the subject matter is defined as the court's

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<sup>4</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

<sup>5</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>6</sup>Smith v. State, Docket No. 37387 (Order of Affirmance, November 20, 2001); Smith v. State, Docket No. 39860 (Order of Affirmance, April 10, 2003).

<sup>7</sup>Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

power to hear and determine cases of the general class or category to which the proceedings in question belong.<sup>8</sup> The Nevada district courts have original jurisdiction over all cases excluded by law from the original jurisdiction of the justice courts.<sup>9</sup> District courts therefore have jurisdiction over all felony criminal cases.<sup>10</sup> The jurisdiction of a court depends upon its right to decide a case, and never upon the merits of its decisions.<sup>11</sup> Jurisdiction is not dependent on the sufficiency of the pleadings,<sup>12</sup> the regularity of the proceedings,<sup>13</sup> or the correctness of the decision rendered.<sup>14</sup>

Our review of the record on appeal reveals that appellant was indicted on eight criminal felony counts. Pursuant to the state constitution's granting of jurisdiction to the district courts, the district court therefore had jurisdiction over appellant's case and sentencing. Accordingly, the district court did not err in denying appellant's motion to correct an illegal sentence.

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<sup>8</sup>Black's Law Dictionary 1425 (6th ed. 1990).

<sup>9</sup>See Nev. Const. art 6, §§ 4, 6.

<sup>10</sup>See NRS 4.370.

<sup>11</sup>Ex rel. Cameron v. District Court, 48 Nev. 198, 228 P. 617 (1924).

<sup>12</sup>Lemons v. Lemons, 373 N.E. 2d 544 (Ill. App. 1 Dist.) (1978).

<sup>13</sup>Id.

<sup>14</sup>Avco Corp. v. Aero Lodge No. 735, 390 U.S. 557 (1968).

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.<sup>15</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>16</sup>

Douglas, J.  
Douglas

Rose, J.  
Rose

Parraguirre, J.  
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge  
Taniko Curt Smith  
Attorney General  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>15</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>16</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.