

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN L. SCOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45410 **FILED**

AUG 24 2009

WILHELM BLOOM
CLERK OF SUPREME COURT
BY *J. Ruben*
DEPUTY CLERK

ORDER AFFIRMING, DISMISSING IN PART AND REMANDING FOR
ENTRY OF CORRECTED
JUDGMENT OF CONVICTION

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence and decisions denying a motion for reconsideration and motion for relief from judgment. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On June 4, 2002, the district court convicted appellant, pursuant to a jury verdict, of one count of possession of a stolen vehicle (Count 1), two counts of possession of a debit or credit card without the cardholder's consent (Counts 2 and 3), and one count of failure to stop on signal of a police officer (Count 4). The district court adjudicated appellant a habitual criminal and sentenced appellant to serve the following terms in the Nevada State Prison: for Count 1, a term of life with the possibility of parole; for Count 2, a term of life with the possibility of parole, to run consecutively to Count 1; for Count 3, a term of life with the possibility of parole, to run concurrently to Count 2; and for Count 4, a term of life with the possibility of parole, to run consecutively to Count 3.

On appeal, this court reversed appellant's conviction for failure to stop on signal of police officer and affirmed his remaining convictions.¹ The remittitur issued on June 29, 2004. Appellant unsuccessfully sought post-conviction relief in a motion to correct an illegal sentence and a motion for a new trial.²

On April 18, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 28, 2005, the district court orally denied the motion, and on July 29, 2005, the district court entered a written order denying appellant's motion. Subsequent to the oral decision to deny his motion, appellant filed a motion for reconsideration and a motion for relief from judgment pursuant to NRCP 60. The district court orally denied these motions. This appeal followed.

In his motion to correct an illegal sentence, appellant contended that the district court exceeded its jurisdiction in imposing life sentences because life sentences exceeded the maximum terms of the controlling statutes for each of the primary offenses. Appellant claimed that there was not a count listed in the information that would have permitted a life sentence.

¹Scott v. State, Docket No. 39654 (Order Affirming in Part, Reversing in Part and Remanding, April 6, 2004).

²Scott v. State, Docket No. 43724 (Order of Affirmance, January 20, 2005); Scott v. State, Docket No. 41027 (Order of Affirmance, October 13, 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 was imposed in excess of the statutory maximum.³ "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.'"⁴

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. First, appellant raised a substantially similar claim on direct appeal and in his first motion to correct an illegal sentence.⁵ This court considered and rejected appellant's challenge to his habitual criminal adjudication. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument.⁶ Moreover, as a separate

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁵On direct appeal, appellant challenged his habitual criminal adjudication on the ground that the State had failed to amend the information to include a count of habitual criminality. In his first motion to correct an illegal sentence, appellant claimed that he should not have been adjudicated a habitual criminal because the information did not set forth a separate count of habitual criminality.

⁶See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

and independent ground to deny relief, appellant failed to demonstrate that the district court exceeded its jurisdiction in adjudicating him a habitual criminal and sentencing him to serve terms of life in prison. The record on appeal reveals that the State attached a notice of its intention to seek habitual criminal adjudication to the charging information, and the charging information was filed in the district court on December 17, 2001. "[A]djudication under the habitual criminal statute constitutes a status determination and not a separate offense."⁷ A habitual criminal allegation is included in a charging document "merely to provide notice to the defendant that the state is seeking enhancement of penalty."⁸ Any alleged error in not labeling the habitual criminal allegation as a "count" does not warrant relief. Therefore, we affirm the order of the district court denying appellant's motion.

In his motions for reconsideration and motion for relief from judgment pursuant to NRCPC 60, appellant essentially sought rehearing of the district court's decision to deny his motion to correct an illegal sentence.⁹ The right to appeal is statutory; where no statute or court rule

⁷Schneider v. State, 97 Nev. 573, 575, 635 P.2d 304, 305 (1981); see also State v. Bardmess, 54 Nev. 84, 91, 7 P.2d 817, 818 (1932) (holding that a statement of a previous conviction does not charge an offense, but rather it is only the averment of a fact which may affect the punishment).

⁸Parkerson v. State, 100 Nev. 222, 224, 678 P.2d 1155, 1156 (1984).

⁹A motion for relief from judgment pursuant to NRCPC 60 is not a proper vehicle to seek relief from a judgment entered in a criminal case.

continued on next page . . .

provides for an appeal, no right to appeal exists.¹⁰ No statute or court rule provides for an appeal from a motion for reconsideration or a motion for relief from judgment pursuant to NRCPC 60 filed in a criminal case. Accordingly, we conclude that this court lacks jurisdiction to consider this appeal to the extent that appellant sought to appeal from the denial of his motion for reconsideration and motion for relief from judgment pursuant to NRCPC 60.

Finally, in reviewing the record on appeal, it appears that the judgment of conviction requires correction. First, the judgment of conviction contains a clerical error—the judgment of conviction provides that the conviction was entered pursuant to a guilty plea. However, the record on appeal establishes that appellant's guilt was established by a jury trial. Second, it appears that the judgment of conviction has not been corrected to reflect that this court reversed appellant's conviction for Count 4, failure to stop on required signal of a police officer. We therefore conclude that this matter should be remanded to the district court for the limited purpose of correcting these errors.¹¹

... continued


Thus, we construe appellant's motion to be a successive motion for reconsideration.


¹⁰Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

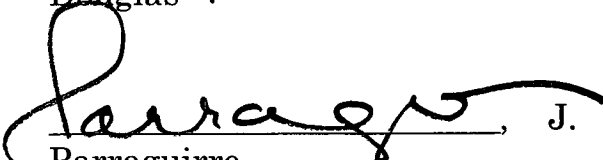
¹¹The corrected judgment of conviction should be forwarded forthwith to the Nevada Department of Corrections. See NRS 176.325; NRS 176.335.

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.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED AND this appeal DISMISSED IN PART AND REMANDED to the district court for proceedings consistent with this order.¹³

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. John S. McGroarty, District Judge
Steven L. Scott
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹³This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.