

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD STEVEN BEVERLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45547

FILED

SEP 16 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 denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On January 13, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit burglary (a gross misdemeanor), two counts of burglary, one count of attempted burglary, and one count of possession of burglary tools (a gross misdemeanor). The district court adjudicated appellant a habitual criminal for the three felony counts and sentenced appellant to serve three consecutive terms of sixty to one hundred and ninety months in the Nevada State Prison and concurrent terms of one year each for the other counts. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on October 17, 2000. Appellant

¹Beverly v. State, Docket No. 35526 (Order Dismissing Appeal, September 21, 2000).

unsuccessfully sought post-conviction relief in a post-conviction petition for a writ of habeas corpus.²

On May 16, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. Appellant also filed a motion for the appointment of counsel. The State opposed the motion. On June 8, 2005, the district court denied appellant's motion. This appeal followed.³

In his motion, appellant contended that his rights had been violated because the State did not produce or provide the district court with copies of five judgments of conviction used to adjudicate appellant a habitual criminal and the district court did not conduct a hearing on the issue of habitual criminal treatment. Appellant further argued that the district court exceeded its jurisdiction in sentencing him without proof of the prior convictions.

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.⁴ "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to

²Beverly v. State, Docket No. 38267 (Order of Affirmance, August 21, 2002).

³To the extent that appellant appealed from the decision to deny his motion for the appointment of counsel, we conclude that the district court did not abuse its discretion in denying appellant's motion for the appointment of counsel.

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

challenge alleged errors in proceedings that occur prior to the imposition of sentence."⁵

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant failed to demonstrate that the district court lacked jurisdiction in this case.⁶ The alleged errors complained about are not the type of errors that may be addressed in a motion to correct an illegal sentence.⁷ Moreover, as a separate and independent ground to deny relief, appellant's claim that the State failed to produce copies of the prior judgments of conviction is belied by the record on appeal. The record on appeal contains a memorandum filed by the State in district court prior to the sentencing hearing. Attached to the memorandum are six exhibits containing documents relating to the prior convictions. Therefore, we affirm the order of the district court.

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

⁶See Nev. Const. art. 6, § 6 ("The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts."); NRS 4.370(3) ("Justices' courts have jurisdiction of all misdemeanors and no other criminal offenses except as otherwise provided by specific statute.").

⁷See Edwards, 112 Nev. at 708, 918 P.2d at 324 ("A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot, however, be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing"). Emphasis added.

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.⁸ Accordingly, we

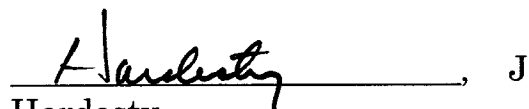
ORDER the judgment of the district court AFFIRMED.⁹

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Lee A. Gates, District Judge
Lloyd Steven Beverly
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We 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.