

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM SCOTT MANCIANO,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 45692

FILED

OCT 27 2005

ORDER OF AFFIRMANCE

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

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

On May 13, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree arson, three counts of attempted murder and one count of maiming or disfiguring another person's animal. The district court sentenced appellant to serve terms totaling five hundred fifty-two months with parole eligibility after one hundred and twenty-two months in the Nevada State Prison. The district court also sentenced appellant to pay restitution in the amount of \$77,250.00. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on September 28, 1999.

¹Manciano v. State, Docket No. 30396 (Order Dismissing Appeal, September 1, 1999).

On March 14, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition and appellant filed a reply. On May 24, 2000, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.²

On January 28, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion and appellant filed a reply. On March 11, 2002, the district court denied appellant's motion. This court affirmed the order of the district court on appeal.³

On May 21, 2005, appellant filed a second proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On July 14, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the restitution the district court ordered him to pay was illegal because it was not awarded to "victims" of his crime as defined in NRS 176.015(5)(b), the award of restitution was not supported by sufficient evidence and restitution cannot be awarded for an investigation conducted by an investigating agency.

²Manciano v. State, Docket No. 36159 (Order of Affirmance, March 27, 2002).

³Manciano v. State, Docket No. 39431 (Order of Affirmance, December 19, 2002).

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 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 by denying appellant's motion. Appellant's sentence was facially legal.⁶ Further, there is no indication that the district court was without jurisdiction. Accordingly, we affirm the order of the district court.

Moreover, as a separate and independent ground for denying relief, appellant waived these claims by failing to object to the order of restitution at his sentencing hearing and failing to raise any error concerning restitution in his direct appeal.⁷


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

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

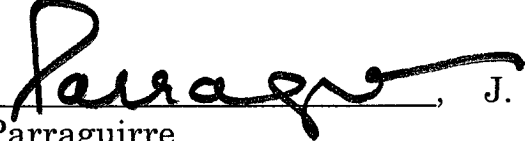
⁶See NRS 176.033; NRS 193.330; NRS 200.010; NRS 205.010; 1979 Nev. Stat. ch. 646, § 2, at 1395; 1995 Nev. Stat., ch. 443, § 44, at 1181.

⁷See Martinez v. State, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999).

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.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
William Scott Manciano
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).