IN THE SUPREME COURT OF THE STATE OF NEVADA

TOBIN KONRAD A/K/A TOBIN DANIEL KONRAD, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 45889
TOBIN KONRAD A/K/A TOBIN DANIEL KONRAD, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 45891

FILED

FEB 23 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 45889 is an appeal from a district court order denying appellant's motion to correct sentence. Docket No. 45891 is an appeal from a district court order denying appellant's motion to remedy the instant offense. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. We elect to consolidate these appeals for resolution purposes.[1]

On July 21, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a controlled substance. The district court sentenced appellant to serve a term of twelve to forty-eight months in the Nevada State Prison to be served consecutively with a term imposed in district court case number C198043. Appellant did not file a direct appeal.

[1]See NRAP 3(b).

Docket No. 45889:

On July 28, 2005, appellant filed a proper person motion to correct sentence in the district court. The State opposed the motion. On August 12, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was excessive due to the mildness of his crime. Appellant further contended that his sentence was improper because he was informed that by taking a plea his offense would be reduced to a misdemeanor and he would receive a term of six months to run concurrent to his term in district court case number C198043. Appellant additionally claimed that inclusion of the term 'trafficking' for case number C198043 in the presentence investigation report improperly influenced the district court at sentencing. Finally, appellant argued that his case should have been dismissed by the Justice's court because the officer did not appear at court.

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.[2] "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.'"[3]

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

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

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claim fell outside of the scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal,[4] and there is no indication that the district court was without jurisdiction. To the extent that appellant's motion may be construed as a motion to modify a sentence, we conclude that the district court did not err in denying relief. Appellant failed to demonstrate that, when sentencing appellant, the district court made a material mistake about his criminal record that worked to his extreme detriment.[5] Accordingly, we conclude that the district court did not err in denying appellant's motion.

Docket No. 45891:

On August 10, 2005, appellant filed a proper person motion to remedy the instant offense to a misdemeanor ("motion to remedy"). The text of the motion indicated that the motion was intended to be a response to the State's opposition to appellant's motion to correct sentence filed July 28, 2005. The motion to remedy raised the same claims raised in the motion to correct. The record on appeal indicates that because the motion to remedy was filed after the district court had verbally denied the motion to correct, the district court construed the motion to remedy as a second motion to correct. On August 29, 2005, the district court denied appellant's motion to remedy. This appeal followed.

Because appellant's motion to remedy raised the same claims raised in his motion to correct, we conclude, for the reasons stated above

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[4]See NRS 453.336(2)(a); NRS 193.130(e).

[5]See Edwards, 112 Nev. at 708, 918 P.2d at 324.

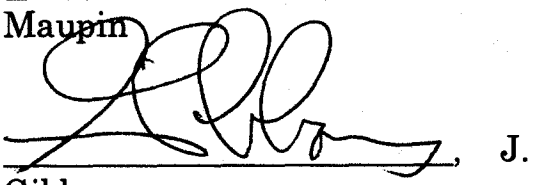
under Docket No. 45889, that the district court did not err in denying the motion.

Conclusion:

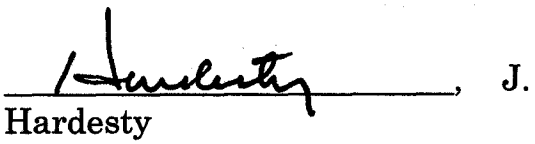
Having reviewed the records on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[6] Accordingly, we

ORDER the judgments of the district court AFFIRMED.[7]

_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

cc: Hon. Lee A. Gates, District Judge
Tobin Konrad
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[7]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.