IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD HOUSTON JEFFRIES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46166

FILED

FEB 17 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's "motion to vacate, set aside or correct sentences, and pro se motion for clarification." Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On April 6, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of lewdness with a minor under the age of fourteen, one count of sexual assault of a minor under the age of sixteen, and one count of attempted sexual assault of a minor under the age of fourteen. The district court sentenced appellant to serve a term of life in the Nevada State Prison with parole eligibility after 10 years for the lewdness count, a consecutive term of 5 to 20 years for the sexual assault count, and a consecutive term of 16 to 24 months for the attempted sexual assault count. Appellant did not file a direct appeal.

On September 13, 2005, appellant filed a "motion to vacate, set aside or correct sentences, and pro se motion for clarification" in the district court. On October 4, 2005, the district court denied appellant's petition. This appeal followed.

In his motion below, appellant contended that he should have been allowed to have a psychosexual evaluation so that he would be

eligible for probation, and that his sentence was cruel and unusual considering it was his first offense, that the victim was a family member, and that the victim consented.

To the extent that appellant's motion is a motion to modify sentence, appellant failed to demonstrate that the district court made a material mistake of fact about appellant's criminal record that worked to his extreme detriment.[1] A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[2] Pursuant to NRS 176A.100(1)(a), appellant was not eligible for suspension of sentence or probation for the crimes to which he pleaded guilty, and thus, a psychosexual examination was not required.[3] Moreover, appellant's claim of cruel and unusual punishment lacks merit. A sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[4]

In the instant case, appellant did not allege that the sentencing statutes were unconstitutional, and we note that the sentence

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

[2]Id. at 708-09 n.2, 918 P.2d at 325 n.2.

[3]See NRS 176.139(1) (requiring a psychosexual examination where defendant is convicted of a sexual offense for which the suspension of sentence or the granting of probation is permitted).

[4]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

imposed did not exceed the parameters provided by the relevant statutes.[5] Further, the district court considered mitigating factors, and defense counsel emphasized the mitigating factors in his argument requesting a lesser sentence. Finally, we note the sentence imposed is not disproportionate to the crime: appellant was originally charged with 10 counts of sexual assault of a child under the age of sixteen and 25 counts of lewdness with a child under the age of fourteen. Although appellant had no prior criminal history, the sexual abuse of appellant's granddaughter continued for two years. The victim's father, appellant's son, testified at the sentencing hearing that the victim continued to suffer from extreme emotional turmoil. We conclude that the district court did not abuse its discretion in denying the motion to modify the sentence.

To the extent that appellant's motion may be construed as a motion to correct an illegal sentence, such 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.[6] "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be

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[5]See NRS 201.230 (providing for a sentence of life with the possibility of parole beginning after a minimum of 10 years has been served); NRS 200.366 (providing for a term of life with parole eligibility beginning after a minimum of 20 years has been served, or a definite term of 40 years, with parole eligibility after a minimum term of 15 years has been served); and NRS 193.330(1)(a)(1) (providing for a prison term of 2 to 20 years); see Breault v. State, 116 Nev. 311, 996 P.2d 888 (2000) (holding that sentence that did not comply with statute requiring minimum term of imprisonment must not exceed forty percent of maximum term imposed, does not apply where voluntary and knowing plea).

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

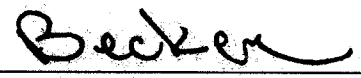
used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"[7]

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. As discussed above, the terms for appellant's sentences did not exceed the parameters provided by the relevant statutes. There is no indication that the district court was without jurisdiction. Therefore, we affirm the order of the district court.

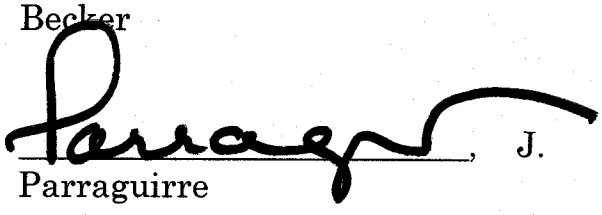
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Douglas



_____, J.
Becker



_____, J.
Parraguirre

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

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

cc: Hon. John S. McGroarty, District Judge
Edward Houston Jeffries
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk