IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER HAYWOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46534

FILED

MAR 27 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 a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On June 28, 2004, the district court convicted appellant, pursuant to a guilty plea, of voluntary sexual conduct between a prisoner and another person in violation of NRS 212.187. The district court sentenced appellant to serve a term of twelve to thirty-two months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed three years. No direct appeal was taken.

On October 12, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. On February 9, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was illegal because NRS 212.187 did not provide for a penalty at the time he

committed the instant offense. Thus, he argued that his offense should have been treated as a misdemeanor pursuant to NRS 193.170.[1] Appellant further claimed that his sentence was illegal because the attorney general initiated the prosecution, and appellant believed that the district attorney had exclusive power over the prosecution of his offense. Finally, appellant challenged the timing of the preliminary hearing, the validity of his guilty plea, and the quality of assistance he received from counsel.

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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[1]NRS 193.170 provides, "Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor."

[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 term was facially legal, and there is no indication that the district court was without jurisdiction in this matter.[4] Contrary to appellant's arguments, NRS 212.187 provided for a penalty at the time appellant committed his offense in 2002, and the attorney general was permitted to prosecute the offense as it was a violation of NRS chapter 212.[5] Appellant's other challenges fell outside the scope of claims permissible in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

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[4]See NRS 212.187(1) (providing that a prisoner who voluntarily engages in sexual conduct with another person is guilty of a Category D felony); NRS 193.130(1)(d) (providing that a Category D felony shall be punished by a term of not less than one year and not more than four years). Voluntarily sexual conduct by a prisoner with another person is a probationable offense. See NRS 176A.100; NRS 176A.110.

[5]See NRS 212.187(1) (providing that a prisoner who voluntarily engages in sexual conduct with another person is guilty of a Category D felony); NRS 228.170(2)(c) (providing that the attorney general may investigate and prosecute any crime committed by a person in violation of NRS chapter 212 if the crime involves a person confined in an institution of the Department of Corrections). We note that NRS 212.187 was amended in 1997 to specifically set forth that a prisoner who voluntarily engages in sexual conduct with another person is guilty of a Category D felony. See 1997 Nev. Stat., ch. 450, § 5, at 1643. Appellant's reliance on the 1981 version of the statute, which did not set forth a penalty, is thus misplaced.

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.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Christopher Haywood
Attorney General George Chanos/Carson City
Attorney General George Chanos/Las Vegas
Clark County Clerk

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