IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN PATRICK HICKLES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46566

FILED

APR 19 2006

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

ORDER OF AFFIRMANCE

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; Valorie Vega, Judge.

On April 12, 2004, the district court convicted appellant, pursuant to a guilty plea, of burglary.[1] As part of his guilty plea agreement, appellant agreed to small habitual criminal treatment. The district court sentenced appellant to serve a term of 60 to 240 months in the Nevada State Prison. Appellant's direct appeal of his conviction was dismissed, as it was untimely filed.[2] The remittitur issued on August 17, 2004.

On December 1, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On December 28, 2005, the district court denied appellant's motion. This appeal followed.

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[1]An amended judgment of conviction was entered on May 25, 2004 to include reference to the habitual criminal statute.

[2]Hickles v. State, Docket No. 43568 (Order Dismissing Appeal, July 23, 2004).

In his motion, appellant contended he received ineffective assistance of counsel in the plea negotiation process and that counsel's performance resulted in appellant's "harsh" sentence.

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.[3] "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.'"[4]

Appellant's claim fell outside the narrow scope of issues permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal,[5] and there is no indication the district court was without jurisdiction to sentence appellant. Accordingly, we conclude the district court did not err in denying appellant's motion.

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

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

[5]See 1995 Nev. Stat., ch. 443, § 124 at 1215 (NRS 205.060), 207.010(1)(a). Our review of the record on appeal indicates that appellant had previously been convicted of at least three qualifying felonies: aggravated robbery in Arizona in 1977, robbery in Georgia in 1978, and armed robbery in Wisconsin in 1980. Appellant also had previously been convicted of felony retail theft in Wisconsin in 1989 and felony theft in Wisconsin in 1994. Appellant also had eight misdemeanor theft convictions in Wisconsin from 1996 to 2001.

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. Valorie Vega, District Judge
Edwin Patrick Hickles
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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