IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH DAVID HOUSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46587

FILED

MAY 02 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 correct an illegal sentence. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

On February 14, 1983, the district court convicted appellant, pursuant to a guilty plea, of one count of first-degree murder and one count of sexual assault causing great bodily harm. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. Appellant did not file a direct appeal. Appellant attempted unsuccessfully to seek post-conviction relief in several proceedings.[1]

[1]See e.g., Houston v. State, Docket No. 40652 (Order of Affirmance, November 14, 2003); Houston v. State, Docket No. 36271 (Order of Affirmance, August 7, 2001); Houston v. State, Docket No. 30059 (Order Dismissing Appeal, March 30, 1999); Houston v. State, Docket No. 22706 (Order Dismissing Appeal, December 30, 1991).

On June 24, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court.[2] The State opposed the motion. On November 8, 2005, the district court issued an order denying appellant's motion. The district court filed a second order denying appellant's motion on December 14, 2005. This appeal followed.

In his motion, appellant contended that his sentences were illegal because Nevada law did not provide for a sentence of life without the possibility of parole until the 1995 enactment of NRS 213.085 and because his sentencing for both counts violated double jeopardy.

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]

Contrary to appellant's assertions, life without the possibility of parole was an available sentence for the crime of first-degree murder

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[2]Appellant filed a request to have the motion submitted on October 13, 2005.

[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)).

when appellant was convicted of that crime.[5] Life without the possibility of parole was also an available sentence for the crime of sexual assault causing substantial bodily harm when appellant was convicted of that crime.[6] NRS 213.085 does not address the availability of the sentence of life without the possibility of parole for these crimes; it only restricts the Parole Board's authority to commute a sentence of life without the possibility of parole to a sentence that allows parole. Accordingly, we conclude the district court did not err in denying this claim.

We also conclude that appellant's sentences do not violate double jeopardy. "Pursuant to Blockburger, a defendant may not be convicted of two offenses premised on the same facts unless each offense 'requires proof of a fact which the other does not.'"[7] None of the elements required by NRS 200.030 or NRS 200.366 are required by the other. Thus, appellant could properly be sentenced for both crimes without a double jeopardy violation.[8] Accordingly, we conclude the district court did not err in denying this claim.

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[5]See 1977 Nev. Stat. ch. 598, § 5, at 1627-28 (NRS 200.030).

[6]See 1977 Nev. Stat. ch. 598, § 3, at 1626 (NRS 200.366).

[7]Servin v. State, 117 Nev. 775, 788-89, 32 P.3d 1277, 1287 (2001) (quoting Blockburger v. United States, 284 U.S. 299, 304 (1932)).

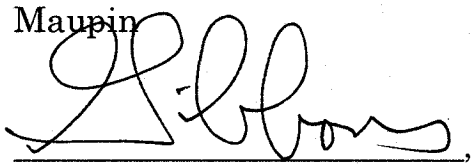
[8]See id.

Our review of the record on appeal reveals that appellant's sentence was facially legal,[9] 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.

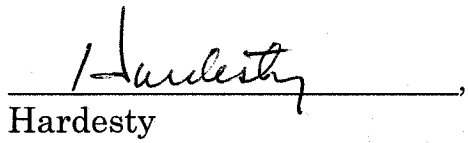
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

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[9]See 1977 Nev. Stat. ch. 598, § 5, at 1627-28 (NRS 200.030); 1977 Nev. Stat. ch. 598, § 3, at 1626 (NRS 200.366).

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

cc: Hon. Michael R. Griffin, District Judge
Keith David Houston
Attorney General George Chanos/Carson City
Carson City District Attorney
Carson City Clerk