IN THE SUPREME COURT OF THE STATE OF NEVADA

GENE ANTHONY ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46666

FILED

JUL 25 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. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On April 7, 2003, the district court convicted appellant, pursuant to a guilty plea, of sexual assault of a minor under the age of sixteen (count one) and lewdness with a child under the age of fourteen (count two). The district court sentenced appellant to serve a term of five to twenty years in the Nevada State Prison for count one and a concurrent term of life with the possibility of parole after ten years for count two. This court affirmed appellant's conviction on direct appeal.[1] The remittitur issued on April 6, 2004.

On December 22, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

[1]Allen v. State, Docket No. 41274 (Order of Affirmance, March 11, 2004).

motion. On January 24, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that he was coerced into entering his guilty plea, there were errors in the plea canvass and with a jury instruction, and that there was an "out of state motive to prosecute."

Appellant's claims fell outside the narrow scope of claims permissible in a motion to correct an illegal 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.[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]

Our review of the record on appeal reveals that appellant's sentence was facially legal,[4] and there is no indication the district court was without jurisdiction to sentence appellant in this matter. Accordingly, the district court did not err in denying appellant's motion.

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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)).

[4]See 1997 Nev. Stat. ch. 314, § 3, pp. 1179-80 (NRS 200.366); 1997 Nev. Stat. ch. 455, § 5, p. 1722 (NRS 201.230). The information in this matter charged appellant with crimes occurring between October 1997 and July 1998.

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.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]

Douglas, J.

Becker, J.

Parraguirre, J.

cc: Eighth Judicial District Court Dept. 16, District Judge
Gene Anthony Allen
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[6]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.