

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN GORDON CROUSE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46760

FILED

APR 19 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On July 26, 2005, the district court convicted appellant, pursuant to a guilty plea, of driving under the influence, third offense. The district court sentenced appellant to serve a term of nineteen to forty-eight months in the Nevada State Prison. Appellant did not file a direct appeal.

On January 6, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court.¹ The State opposed the motion. On January 9, 2006, the district court denied appellant's motion. This appeal followed.

¹The motion was received on October 21, 2005, but as it was apparently not the original copy, it was not filed; the original copy was filed on January 6, 2006.

In his motion, appellant contended that the district court abused its discretion in sentencing him to nineteen to forty-eight months when he and the State had agreed to recommend a sentence of twelve to thirty months.

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 the district court did not err in denying the motion. Appellant's sentence was facially legal,⁴ and there is no indication the district court was without jurisdiction to sentence appellant. Moreover, as a separate and independent ground for denying relief, the guilty plea appellant signed notified him that the district court had the discretion to sentence him to between one and six years in the Nevada State Prison. The district court also canvassed appellant on this point at the plea entry hearing and defendant affirmed

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

³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁴See NRS 484.379, 2003 Nev. Stat., ch. 284, § 49 at 1490-91 (NRS 484.37921(c)).

he understood the district court could sentence him to between one and six years in the Nevada State Prison despite his agreement with the State to recommend twelve to thirty months. Accordingly, we affirm the district court's order denying the 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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Steve L. Dobrescu, District Judge
Dean Gordon Crouse
Attorney General George Chanos/Carson City
White Pine County District Attorney
White Pine County Clerk

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