

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUARDO MORA-MARIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46772

FILED

JUL 05 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On December 17, 1998, the district court convicted appellant, pursuant to a jury verdict, of two counts of possession of a controlled substance and one count of trafficking in a controlled substance. The district court sentenced appellant to serve a term of ten to twenty-five years in the Nevada State Prison for trafficking.¹ This court dismissed appellant's direct appeal from his judgment of conviction.² The remittitur issued on August 1, 2000.

¹For the possession counts, the district court imposed concurrent terms of twelve to forty-eight months. The district court suspended the sentences and placed appellant on probation for a period not to exceed twelve months. Appellant's probation was imposed to run concurrently with his prison term.

²Mora-Marín v. State, Docket No. 33554 (Order Dismissing Appeal, July 7, 2000).

On January 4, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. On January 27, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court unconstitutionally sentenced him to multiple sentences in violation of the Double Jeopardy Clause because the possession of controlled substance convictions were lesser-included offenses and should have merged into the greater conviction of trafficking in a controlled substance.³

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.⁴ "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.'"⁵

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentences were facially legal.⁶ There is no indication that the district court was without

³See U.S. Const. amend. V; Blockburger v. United States, 284 U.S. 299 (1932).

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁶1997 Nev. Stat., ch. 203, § 293, at 521-23 (NRS 453.336) (providing for a minimum term of not less than one year and a maximum term of not more than six years); 1997 Nev. Stat., ch. 256, § 5, at 905 (NRS 453.3385) (providing for either a life sentence with parole possibility after ten years has been served, or a fixed term of ten to twenty-five years, where

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jurisdiction to impose a sentence upon appellant. As a separate and independent reason to deny relief, appellant's double jeopardy claim has no merit. Appellant was convicted for possession and trafficking of three separate controlled substances. Therefore, we affirm the order of the district court.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

... continued

defendant is convicted of trafficking in twenty-eight grams or more of controlled substance).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We 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.

cc: Hon. Steven P. Elliott, District Judge
Eduardo Mora-Marin
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk