

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH E. WHITE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46832

**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. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On January 14, 1999, the district court convicted appellant, pursuant to a guilty plea, of two counts of possession of a stolen vehicle. The district court sentenced appellant to serve two consecutive terms of 12 to 36 months in the Nevada State Prison, suspended the sentence, and placed appellant on probation for a period not to exceed three years.<sup>1</sup> On April 13, 2004, the district court revoked appellant's probation and reinstated the original sentence. Appellant did not file a direct appeal.

On December 16, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. On January 24, 2006,

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<sup>1</sup>On December 5, 2001, the State filed a notice of intent to seek revocation of probation. Thereafter, on December 17, 2001, appellant appeared in the district court with counsel and requested an extension of appellant's probation in order to allow time to pay his restitution. The district court granted the request and filed an amended judgment of conviction on December 27, 2001, extending appellant's probation for two additional years.

the district court summarily denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court illegally revoked his probation based on his inability to pay restitution, and that the district court should have made allowances because he was disabled and on a fixed income. Appellant also claimed that the district court was without jurisdiction to extend his probation.

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.<sup>2</sup> "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.'"<sup>3</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal.<sup>4</sup> There was no indication that the district court was without jurisdiction to impose a sentence upon appellant, or to modify the original

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

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

<sup>4</sup>See NRS 205.273 (providing for imprisonment for a term of one to five years, as prescribed for a Class C Felony in 1997 Nev. Stat., ch. 314, § 1, at 1177-78 (NRS 193.130)).

terms of appellant's probation.<sup>5</sup> Appellant's probation was revoked because he was convicted of three additional felonies while on probation, not because he failed to pay restitution. 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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
Kenneth E. White  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>5</sup>See NRS 176A.500(1) (providing that the court may at any time extend or terminate probation as long as the probationary period is not more than five years for a felony).

<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).