IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE SANTOS MIRANDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46906

FILED

JUL 19 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 a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On May 6, 1994, the district court convicted appellant, pursuant to a jury verdict, of two counts of lewdness with a minor and one count of sexual assault of a minor under fourteen years of age. The district court sentenced appellant to serve two concurrent terms of three years in the Nevada State Prison for the lewdness counts and a concurrent term of life for the sexual assault count. This court dismissed appellant's direct appeal.[1]

On February 6, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. On March 1, 2006, the district court denied appellant's motion. This appeal followed.

[1]Miranda v. State, Docket No. 25984 (Order Dismissing Appeal, July 23, 1996).

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In his motion, appellant contended that his conviction violates the Double Jeopardy Clause because lewdness with a child is a lesser-included offense of sexual assault of a child.

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 sentences were facially legal,[4] and there is no indication that the district court was without jurisdiction to impose a sentence upon appellant. Thus, we affirm the order of the district court.

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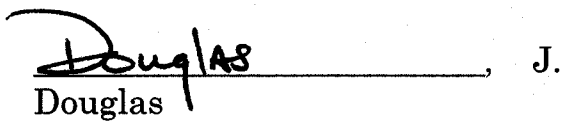
[2]Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

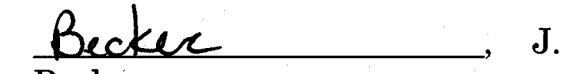
[4]See 1991 Nev. Stat., ch. 250, § 1, at 612 (NRS 200.366); 1991 Nev. Stat., ch. 389, § 18, at 1009 (NRS 201.230).

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

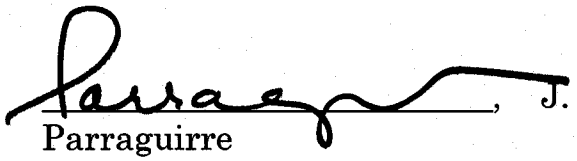
ORDER the judgment of the district court AFFIRMED.



_____, J.
Douglas



_____, J.
Becker



_____, J.
Parraguirre

cc: Hon. Lee A. Gates, District Judge
Jose Santos Miranda
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).