

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRISS LONNIE ROGERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47289

FILED

SEP 13 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 a motion to correct or modify a sentence. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On January 27, 2004, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court adjudicated appellant a habitual felon and sentenced appellant to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole.¹ This court affirmed the judgment of conviction and sentence on direct appeal.²

On May 18, 2004, while his direct appeal was pending, appellant filed a proper person motion to correct or modify sentence in the district court. On April 5, 2006, the district court denied appellant's motion. This appeal followed.

¹On February 11, 2004, the district court corrected the judgment of conviction to include a specific reference to NRS 207.012, the habitual felon statute.

²Rogers v. State, Docket No. 42895 (Order of Affirmance, April 4, 2005).

In his motion, appellant claimed that the district court failed to determine that a sufficient number of prior convictions were presented and failed to determine whether these convictions were constitutionally valid. Appellant further claimed that NRS 207.016(6), a provision allowing for a habitual felon adjudication based upon a stipulation, was unconstitutional.

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.³ "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.'"⁴ A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."⁵ A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁶

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible. Appellant's sentences

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


⁵Id.

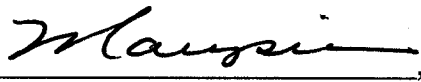
⁶Id. at 708-09 n.2, 918 P.2d at 325 n.2.

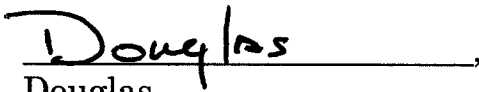
were facially legal and there is nothing in the record to indicate that the district court did not have jurisdiction to impose a sentence in the instant case.⁷ Appellant further failed to demonstrate that the district court relied upon any material mistakes about his criminal record that worked to his extreme detriment. We note that this court previously determined on direct appeal that appellant had a sufficient number of prior felony convictions for adjudication as a habitual felon. The doctrine of the law of the case prevents relitigation of this issue.⁸ 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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, J.


Maupin, J.


Douglas, J.

⁷See NRS 207.012(1)(b)(2).

⁸See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Connie J. Steinheimer, District Judge
Criss Lonnie Rogers
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk