

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN L. SCOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47486

STEVEN L. SCOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47721

FILED

OCT 19 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

These are proper person appeals from orders of the district court denying appellant's petition for a writ of mandamus and motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. We elect to consolidate these appeals for disposition.¹

On June 4, 2002, the district court convicted appellant, pursuant to a jury verdict, of one count of possession of a stolen vehicle (Count 1), two counts of possession of a debit or credit card without the cardholder's consent (Counts 2 and 3), and one count of failure to stop on signal of a police officer (Count 4). The district court adjudicated appellant a habitual criminal and sentenced appellant to serve the following terms in the Nevada State Prison: for Count 1, a term of life with the possibility of parole; for Count 2, a term of life with the possibility

¹See NRAP 3(b).

of parole, to run consecutively to Count 1; for Count 3, a term of life with the possibility of parole, to run concurrently to Count 2; and for Count 4, a term of life with the possibility of parole, to run consecutively to Count 3. On appeal, this court reversed appellant's conviction for Count 4 and affirmed his remaining convictions.² The remittitur issued on June 29, 2004. Appellant unsuccessfully sought post-conviction relief.³

Docket No. 47486:

On April 26, 2006, appellant filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition. On May 18, 2005, the district court denied the petition. This appeal followed.

In his petition, appellant sought an order directing the State to provide him with copies of police reports by Sergeant Fitz and Officers Aker, Myers, Cargile and Morrison. Appellant further alleged that the State violated Brady⁴ requirements by failing to provide him with Officer Aker's report.

²Scott v. State, Docket No. 39654 (Order Affirming in Part, Reversing in Part and Remanding, April 6, 2004). The district court entered an amended judgment of conviction on January 11, 2006.

³Scott v. State, Docket No. 45564 (Order of Affirmance, April 18, 2006) and (Order Directing Correction of Order of Affirmance, September 14, 2006); Scott v. State, Docket No. 45410 (Order Affirming, Dismissing in Part and Remanding for Entry of Corrected Judgment of Conviction, August 24, 2005); Scott v. State, Docket No. 43724 (Order of Affirmance, January 20, 2005); Scott v. State, Docket No. 41027 (Order of Affirmance, October 13, 2003).

⁴Brady v. Maryland, 373 U.S. 83 (1963).

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion.⁵ A petition for an extraordinary writ is addressed to the sound discretion of the court.⁶

Based upon our review of the record on appeal, we conclude that the district court did not abuse its discretion in denying the petition. Appellant failed to demonstrate that the reports requested by appellant exist, and thus, failed to demonstrate that the State violated Brady requirements.⁷ Accordingly, we affirm the order of the district court.

Docket No. 47721:

On June 6, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On June 29, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence for possession of a stolen vehicle was illegal because the district court sentenced him to life with the possibility of parole and that offense is only

⁵NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁶State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

⁷To the extent that appellant relied upon this court's April 18, 2006, Order of Affirmance in Docket No. 45564 to demonstrate that a report from Officer Aker exists, we note that the Order of Affirmance contained a clerical error that has since been corrected. Scott v. State, Docket No. 45564 (Order Directing Correction of Order of Affirmance, September 14, 2006).

punishable as a category C felony. Appellant also contended that his sentences for possession of a debit or credit card without the cardholder's consent were improper and violated his due process and equal protection rights because the district court sentenced him under the recidivist statute without first sentencing him for the substantive crime.

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.⁸ "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.'"⁹

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant failed to demonstrate that the district court lacked jurisdiction to sentence him. Further, appellant failed to demonstrate that the sentences imposed exceeded the statutory maximum. Prior to sentencing appellant on any offenses, the district court adjudicated appellant as a habitual criminal. Because appellant was properly adjudicated as a habitual criminal, appellant's sentences of life with the possibility of parole for possession of a stolen vehicle and possession of a debit or credit card without the cardholder's consent were legal.¹⁰


⁸Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

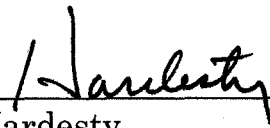
⁹Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

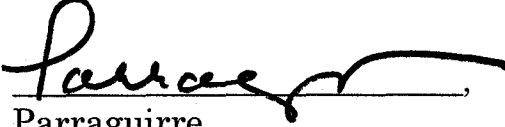
¹⁰See NRS 207.010(1)(b)(2).

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.¹¹ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹²


_____, J.
Becker


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Steven L. Scott
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, 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.