

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRICK P. HOUSTON, JR. A/K/A BRICK
POMMERROY HOUSTON A/K/A BRICK
POMEROY HOUSTON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 47136

BRICK POMMERROY HOUSTON A/K/A
BRICK POMEROY HOUSTON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 47508

FILED

JUL 28 2006

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

ORDER OF AFFIRMANCE

Docket No. 47136 is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Docket No. 47508 is a proper person appeal from an order of the district court denying appellant's 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 April 14, 2004, the district court convicted appellant, pursuant to a guilty plea, of grand larceny. The district court sentenced

¹See NRAP 3(b).

appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. Appellant voluntarily dismissed his direct appeal.²

Docket No. 47136

On January 23, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 24, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition for a writ of habeas corpus more than one year after this court's order dismissing his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.⁴

In an attempt to demonstrate good cause for the delay, appellant argued that his appellate counsel promised to file a petition for a writ of habeas corpus on appellant's behalf and then failed to do so. Because appellant did not have the right to post-conviction counsel, counsel's ineffectiveness did not constitute good cause for appellant's filing

²Houston v. State, Docket No. 43269 (Order Dismissing Appeal, January 20, 2005).

³See NRS 34.726(1).

⁴See id.

an untimely petition.⁵ Accordingly, we conclude the district court did not err in dismissing appellant's petition for a writ of habeas corpus.

Docket No. 47508

On May 3, 2006, appellant filed a proper person motion to correct an illegal sentence. The State opposed the motion. On May 18, 2006, the district court denied the motion. This appeal followed.

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.⁶ "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.'"⁷

Our review of the record on appeal reveals that appellant was sentenced within the statutory maximum,⁸ and there is no indication the district court was without jurisdiction to impose sentence in this case. Accordingly, we conclude the district court did not err in denying appellant's motion.

⁵See McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).

⁶Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁷Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁸See NRS 205.220; NRS 205.222.

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 judgments of the district court AFFIRMED.¹⁰

Douglas J.
Douglas

Becker J.
Becker

Parraguirre J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Brick P. Houston Jr.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

¹⁰We 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.