

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMAA ANTHONY CINQUE A/K/A
JAMA ANTHONY CINQUE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47885

FILED

JAN 30 2007

JAMAA ANTHONY CINQUE A/K/A
JAMA ANTHONY CINQUE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47886

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

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying appellant's motion to correct an illegal sentence and motion for sentence modification. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. We elect to consolidate these appeals for disposition.¹

On August 28, 2003, the district court convicted appellant in district court case number CR030873, pursuant to a guilty plea, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of five to twenty years in

¹See NRAP 3(b).

the Nevada State Prison. This court affirmed appellant's conviction and sentence on direct appeal.²

On August 28, 2003, the district court convicted appellant in district court case number CR030888, pursuant to a guilty plea, of three counts of burglary. The district court sentenced appellant to serve two consecutive terms, and one concurrent term, of four to ten years in the Nevada State Prison. These sentences were imposed to run consecutive to the sentence imposed in district court case number CR030873. This court affirmed appellant's conviction and sentence on direct appeal.³

Motion to correct illegal sentence:

On October 24, 2005, appellant submitted for filing a proper person motion to correct an illegal sentence in both district court cases. On February 7, 2006, appellant supplemented the motion. On August 10, 2006, the district court denied appellant's motion. These appeals followed.

In his motion, appellant claimed that his habitual criminal adjudication violated Apprendi v. New Jersey⁴ because the issue of whether he should be adjudicated a habitual criminal was not presented to the jury. Appellant further claimed that the district court improperly relied on unproven and uncharged conduct when sentencing him and the district court did not make a just and proper determination regarding his habitual criminal adjudication.

²Cinque v. State, Docket Nos. 42123 and 42125 (Order of Affirmance, February 25, 2004).

³Id.

⁴530 U.S. 466 (2000).

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.⁵ "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.'"⁶ A motion to correct an illegal sentence may not be used to correct alleged errors occurring at sentencing.⁷

Based on our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's sentences were facially legal.⁸ Further, there is nothing in the record to indicate that the district court was without jurisdiction to impose the sentences. A claim that the district court allegedly exceeded its authority at sentencing, or violated appellant's due process rights, is not appropriately raised in a motion to correct an illegal sentence. Accordingly, we affirm the order of the district court.

Motion for sentence modification:

On March 20, 2006, appellant submitted for filing a proper person motion for sentence modification in both district court cases. On

⁵Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁶Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁷Id.

⁸See 1995 Nev. Stat., ch. 443 § 124, at 1215 (NRS 205.060(2)); NRS 207.010(1)(a).

August 10, 2006, the district court denied appellant's motion. These appeals followed.

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."⁹ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.¹⁰

The district court denied appellant's motion on the basis that this court had already addressed the legality of appellant's sentences and found that the sentences were within the parameters provided by the relevant statutes. This court's prior decision on direct appeal regarding the legality of appellant's sentences is not dispositive of appellant's motion for sentence modification. Nevertheless, for the following reasons, we conclude that the district court did not err in denying appellant's motion.¹¹

First, appellant claimed that the district court relied upon false information when sentencing him. Specifically, appellant claimed that the presentence investigation report (PSI) incorrectly stated the number of times he has been arrested and how those arrests were disposed of, and he was not given an opportunity to comment on any potential errors contained in the PSI.

⁹Edwards, 112 Nev. at 708, 918 P.2d at 324.

¹⁰Id. at 708-09 n.2, 918 P.2d at 325 n.2.

¹¹See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong decision).

Appellant failed to demonstrate that the PSI contained incorrect information about his criminal record. Further, even assuming that the PSI contained incorrect information as alleged by appellant, appellant failed to demonstrate that the district court relied upon incorrect information to his detriment when sentencing him. The record on appeal indicates that when determining appellant's sentence the district court considered thirteen certified copies of prior felony convictions and appellant's long history of committing felonies in several different states. Appellant did not demonstrate that any of the prior convictions the district court relied upon were false. Finally, contrary to appellant's assertion, the record on appeal indicates that appellant was provided an opportunity to address the court during his sentencing hearing and appellant did not challenge any of the information contained in the PSI. Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed that the district court erred when adjudicating him a habitual criminal because certified copies of all of the prior convictions alleged in the amended information were not presented to the district court. Appellant failed to demonstrate that the district court relied upon incorrect information about his criminal record when sentencing him. The record on appeal indicates that the State offered and the district court considered thirteen certified prior convictions for appellant when adjudicating appellant a habitual criminal. This was sufficient to support appellant's habitual criminal adjudication,¹² and

¹²See NRS 207.010(1)(a).

therefore the State's failure to present certified copies of all prior convictions that were alleged in the amended information was not prejudicial. Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed that the district court erred when adjudicating him a habitual criminal because it improperly relied upon uncharged and unproven misconduct when sentencing him. Appellant failed to demonstrate that the district court relied upon incorrect information about his criminal record that worked to his detriment when sentencing him. The record on appeal indicates that the district court relied upon thirteen certified prior convictions and appellant's long criminal record when sentencing him. Additionally, appellant did not receive the maximum sentence possible; the district court imposed one of his sentences to run concurrent with the other sentences rather than imposing all sentences to run consecutively. Accordingly, we conclude the district court did not err in denying this claim.


Fourth, appellant claimed that his sentence violated Apprendi¹³ because the sentence was based on the judge's finding that his sentence was necessary to protect the public and the judge considered information other than just his prior convictions when adjudicating him a habitual criminal. This claim fell outside the narrow scope of claims permitted in a motion for sentence modification. Accordingly, we conclude the district court did not err in denying this claim.

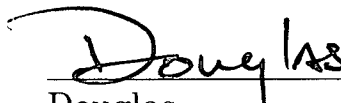
¹³Apprendi, 530 U.S. 466.

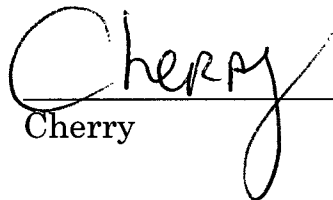
Conclusion:

Having reviewed the records 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.¹⁴ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹⁵


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Steven P. Elliott, District Judge
Jamaa Anthony Cinque
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

¹⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁵We 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.