

IN THE SUPREME COURT OF THE STATE OF NEVADA

CANDIDO CAMACHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CANDIDO CAMACHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47947

FILED

JAN 05 2007

No. 47948
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 47947 is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Docket No. 47948 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; Joseph T. Bonaventure, Judge. We elect to consolidate these appeals for disposition.¹

On June 17, 2005, the district court convicted appellant, pursuant to a guilty plea, of two counts of lewdness with a child under fourteen. The district court sentenced appellant to serve two consecutive terms of thirty to two hundred and forty months in the Nevada State

¹See NRAP 3(b).

Prison. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.²

Docket No. 47947

On June 21, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition, and appellant filed a response. 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 August 30, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

Appellant first claimed that his petition was timely because it was filed within one year from issuance from the remittitur on direct appeal. Appellant's petition was not timely. The remittitur for purposes of NRS 34.726(1) includes only the remittitur from a timely appeal from a judgment of conviction.⁵ Because appellant's direct appeal was dismissed as untimely, the remittitur in Docket No. 45646 had no effect on the

²Camacho v. State, Docket No. 45646 (Order Dismissing Appeal, September 14, 2005).

³See NRS 34.726(1).

⁴See id.

⁵See Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).

statutory deadline for filing a timely habeas corpus petition in the instant case.

Next, appellant claimed that he had good cause because he does not speak English, he had no idea of time limitations, and he was unable to get a copy of his case files from his trial counsel.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant had failed to demonstrate good cause. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.⁶ Appellant failed to demonstrate that the alleged language barrier prevented him from filing a timely petition as he failed to demonstrate any official interference in the instant case.⁷ Appellant's ignorance of the deadline for filing a timely petition is not good cause.⁸ A claim that a defendant did not receive case files from counsel is not good cause.⁹ Therefore, we affirm the order of the district court dismissing appellant's petition.

Docket No. 47948

On August 9, 2006, appellant filed a proper person motion to correct an illegal sentence. The State opposed the motion. On October 11, 2006, the district court denied the motion. This appeal followed.

⁶See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁷See id.; see also Lewis v. Casey, 518 U.S. 343, 350-60 (1996).

⁸See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

⁹See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

In his motion, appellant contended that his sentence was illegal because the district court had no authority to impose a minimum term of greater than two years for each count.

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.¹⁰ "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."¹¹

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal; at the time appellant committed his offense, the district court was empowered to impose a "definite term of 20 years, with eligibility for parole after a minimum of 2 years has been served."¹² Two years was only the minimum parole eligibility term, and the district court had the authority to impose a minimum parole eligibility term up to forty percent of the maximum twenty year term—eight years.¹³ In the instant case, the minimum parole eligibility term of thirty months was within the

¹⁰Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

¹¹Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

¹²See 2003 Nev. Stat., ch. 461, § 2, at 2826.

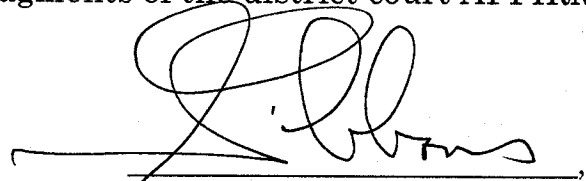
¹³See NRS 193.130(1).

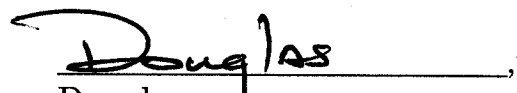
permissible range. Therefore, we affirm the order of the district court denying the motion.

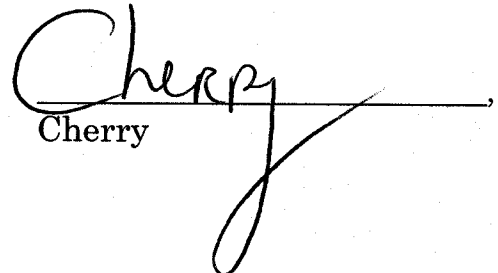
Conclusion

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.¹⁴ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹⁵


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

¹⁴See Lockett 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 this matter, 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.

cc: Hon. Joseph T. Bonaventure, District Judge
Candido Camacho
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk