

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH HARTWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48005

FILED

JAN 31 2007

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On April 29, 1997, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of stolen property, a felony. The district court sentenced appellant to serve a term of 48 to 120 months in the Nevada State Prison to be served consecutively to the sentences imposed in two other cases. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on June 8, 1999.

On June 24, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. On August 11, 2006, the district court denied appellant's motion. This appeal followed.²

¹Hartwell v. State, Docket Nos. 30490, 30503 and 30504 (Order Dismissing Appeals, May 13, 1999).

²To the extent that appellant is appealing from the district court's denial of his motion for the appointment of counsel, we conclude that the district court did not abuse its discretion when denying the motion.

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

In his motion, appellant contended that the sentence imposed exceeded the sentence permitted under NRS 205.275(2)(b). Specifically, appellant contended that because the property stolen was valued at \$400 and did not exceed \$2,500 he was only eligible to receive a sentence for a category C felony of one to four years. Our review of the record on appeal reveals that appellant's claim lacked merit.

NRS 205.275 was amended in 1997 to include a maximum, as well as a minimum, monetary threshold for determining whether a person who commits an offense involving stolen property is guilty of a misdemeanor, category C felony or category B felony.⁵ Prior to this amendment, the statute only contained a minimum monetary threshold of \$250 and provided that individuals convicted of an offense involving stolen property valued at more than \$250 were guilty of a category B felony.⁶ As this court noted in the order dismissing appellant's direct appeal, because

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)).

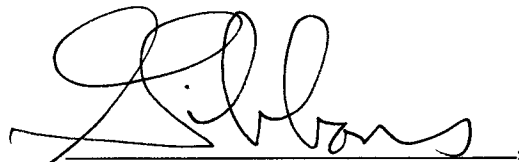
⁵1997 Nev. Stat., ch. 150, § 18, at 344-45.

⁶1995 Nev. Stat., ch. 443, § 376, at 1323-24.

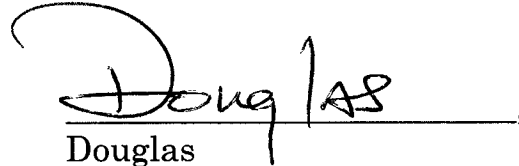
appellant was convicted for offenses committed before October 1, 1997, the 1997 amendments to NRS 205.275 did not apply to appellant. The sentence imposed was within the parameters provided by the relevant statutes in effect at the time he committed his offenses, and appellant did not demonstrate that the court was without jurisdiction to impose the sentence. Accordingly, we conclude that the district court did not err by denying appellant's motion.

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.⁷ Accordingly, we

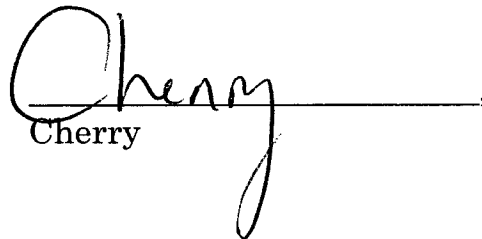
ORDER the judgment of the district court AFFIRMED.⁸

 J.

Gibbons

 J.

Douglas

 J.

Cherry

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We 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. Brent T. Adams, District Judge
Kenneth Hartwell
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk