

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN HENRY ROSE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48256

**FILED**

APR 06 2007

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On January 29, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery. The district court adjudicated appellant a habitual felon pursuant to NRS 207.012 and sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction and sentence on appeal.<sup>1</sup> Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus.<sup>2</sup>

On July 18, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. On September 19, 2006, the district court denied appellant's motion. This appeal followed.

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<sup>1</sup>Rose v. State, Docket No. 42885 (Order of Affirmance, August 23, 2004).

<sup>2</sup>Rose v. State, Docket No. 45586 (Order of Affirmance, January 11, 2006).

In his motion, appellant contended that his trial counsel was ineffective for failing to inform him that he faced a life sentence if he was convicted after a trial, failing to bring forward discovery of Caucasian hairs found on clothes presented at trial, failing to investigate the mixed sample in DNA tests, failing to contact any witnesses, failing to adequately communicate and misleading him into writing a statement before sentencing. Appellant further claimed that his appellate counsel was ineffective for raising arguments about the habitual criminal statute (NRS 207.010) when he was adjudicated a habitual felon (NRS 207.012), failing to file a reply brief, and failing to order trial transcripts. Finally, appellant claimed that a 1978 conviction for carrying a concealed weapon should not have been mentioned by the State, the district court should not have stated that appellant needed to be kept away from people because of his conduct, and his habitual felon adjudication was illegal because the district court decided the issue of which punishment and whether it was just and proper to adjudicate appellant a habitual felon in violation of Apprendi v. New Jersey.<sup>3</sup>

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.<sup>4</sup> "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to

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<sup>3</sup>530 U.S. 466 (2000).

<sup>4</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

challenge alleged errors in proceedings that occur prior to the imposition of sentence."<sup>5</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell outside the scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and there is no indication that the district court was not a court of competent jurisdiction.<sup>6</sup>

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Parraguirre, J.  
Parraguirre

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

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<sup>5</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>6</sup>See NRS 207.012.

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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