

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN KENNEDY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48550

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 vacate, modify and correct an illegal sentence. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On November 10, 2003, the district court convicted appellant, pursuant to a jury verdict, of one count of attempted burglary. Pursuant to NRS 207.010(1)(a), the district court sentenced appellant as a habitual criminal to serve a term of five to twenty years in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on appeal.¹

On January 11, 2006, appellant filed a proper person motion to vacate, modify and correct an illegal sentence in the district court. On

¹Kennedy v. State, Docket No. 42471 (Order of Affirmance, December 20, 2005).

November 7, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that he should not have been sentenced as a habitual criminal for the following reasons: (1) the district court failed to make a just and proper determination; (2) the State failed to prove beyond a reasonable doubt that the prior convictions were valid in light of the fact that the prior convictions were based upon guilty pleas; (3) the prior conviction in case no. 98-02563 was invalid because it indicated that he committed the crime sometime between January and November 1998 when appellant was incarcerated during that time for 90 days and the time span was too large; (4) habitual criminal eligibility should not have been based upon a combination of felony and misdemeanor convictions; and (5) his sentence should not have been enhanced because the prior convictions involved non-violent offenses.

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.² "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

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

of sentence."³ 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."⁴ A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁵

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. To the extent that appellant moved to correct an illegal sentence, 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 appellant failed to demonstrate that the district court was not a competent court of jurisdiction.⁶

To the extent that appellant moved to modify his sentence, appellant failed to demonstrate that his sentence was based upon any material mistakes about his criminal record that worked to his extreme detriment. Appellant challenged the habitual criminal enhancement on

³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁴Id.

⁵Id. at 708-09 n.2, 918 P.2d at 325 n.2.

⁶See NRS 207.010(1)(a).

direct appeal, and this court rejected that challenge. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument.⁷ Moreover, even if appellant's claims were not barred by the doctrine of the law of the case, claims 1, 2, 4, and 5 did not implicate a mistake about appellant's criminal record, and thus, they fell outside the scope of claims permissible in a motion to modify a sentence. As for claim 3, a criminal defendant may not challenge the validity of a prior conviction in habitual criminal proceedings.⁸ Even assuming that appellant could challenge the validity of a prior conviction, the record demonstrates that the State presented certified copies of the prior judgments of conviction and other documents demonstrating that appellant was represented during the proceedings on the prior convictions and the spirit of constitutional principles was respected.⁹ Therefore, we affirm the order of the district court denying appellant's motion.

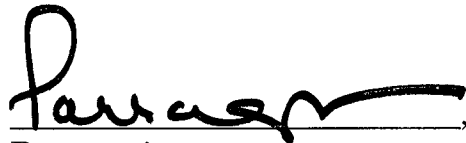
⁷See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

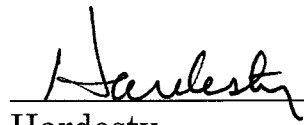
⁸See NRS 207.016(3). This prohibition against challenging the validity of a prior conviction for habitual criminal purposes was enacted by the legislature in 1995. See 1997 Nev. Stat., ch. 203, §14, at 520 (amending the 1995 enactment of NRS 207.016); 1995 Nev. Stat., ch. 443, § 181, at 1238 (enacting 207.016).

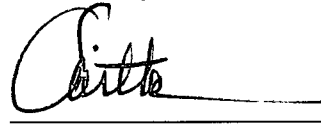
⁹See NRS 207.016(5); Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We 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. Steve L. Dobrescu, District Judge
Kevin Kennedy
Attorney General Catherine Cortez Masto/Carson City
White Pine County District Attorney
White Pine County Clerk