

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON MIGUEL GARCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48855

FILED

JUN 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 an illegal sentence. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On September 11, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault on a minor under the age of sixteen. The district court sentenced appellant to serve a term of five to twenty years in the Nevada State Prison. The district court further imposed the special sentence of lifetime supervision. No direct appeal was taken.

On December 27, 2006, appellant filed a proper person motion to vacate an illegal sentence in the district court. The State opposed the motion. On January 25, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that that the special sentence of lifetime supervision was illegal. Appellant claimed that the potential conditions of lifetime supervision were unconstitutional and he was never advised by the district court or his counsel of these potential conditions.

A motion to vacate 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>1</sup> "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.'"<sup>2</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence of five to twenty years was facially legal.<sup>3</sup> Further, the district court was required to impose the special sentence of lifetime supervision because appellant was convicted of a qualifying sexual offense—sexual assault on a minor under the age of sixteen in violation of NRS 200.366.<sup>4</sup> Appellant failed to demonstrate that the district court was without jurisdiction in this matter. Appellant may not challenge the constitutionality of any potential conditions of lifetime supervision in a motion to vacate an illegal sentence at this time. Therefore, we affirm the order of the district court denying appellant's motion.

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<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


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

<sup>3</sup>See 1997 Nev. Stat., ch. 314, § 3, at 1179-80 (as amended 1999 Nev. Stat., ch. 105, §23, at 431-32).

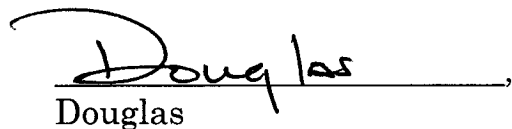
<sup>4</sup>See NRS 176.0931.

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>5</sup> Accordingly, we

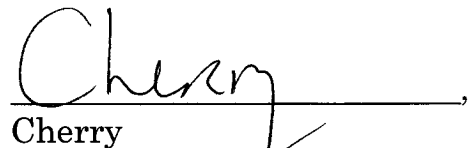
ORDER the judgment of the district court AFFIRMED.

 J.

Gibbons

 J.

Douglas

 J.

Cherry

cc: Hon. Jackie Glass, District Judge  
Jason Miguel Garcia  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).