

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JOHN LANOUE A/K/A
ROBERT J. LANOUE A/K/A ROBERT
LANOUE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48902

FILED

JUL 23 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

On June 25, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of lewdness with a child under the age of 14 years (count 1), one count of the use of a minor in producing pornography (count 2), and one count of possession of a visual presentation depicting sexual conduct of a person under sixteen years of age (count 3).¹ The district court sentenced appellant to serve the following consecutive terms in the Nevada State Prison: for count 1, a

¹On October 12, 1998, the district court entered an amended judgment of conviction to reflect one hundred and forty-four days of presentence credit. On June 26, 2001, the district court entered a second amended judgment of conviction to include a fee of \$250 for DNA testing.

minimum term of 24 months to a maximum term of 62 months; for count 2, a term of life with the possibility of parole; for count 3, a minimum term of 12 months to a maximum term of 36 months. This court dismissed appellant's appeal from his judgment of conviction and sentence.² The remittitur issued on November 16, 1999.

On October 6, 1998, appellant filed a "motion to modify/correct illegal sentence" in the district court. The State opposed appellant's motion. On October 26, 1998, the district court denied appellant's motion. Appellant did not appeal from this decision.

On December 14, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 February 23, 2000, the district court denied appellant's petition. This court affirmed the district court's order on appeal.³

On October 18, 2001, appellant filed a proper person motion to correct or modify a sentence in the district court. The State opposed the

²Lanoue v. State, Docket No. 32707 (Order Dismissing Appeal, October 19, 1999).

³Lanoue v. State, Docket No. 35947 (Order of Affirmance, October 12, 2001).

motion. On November 6, 2001, the district court denied appellant's motion. This court affirmed the district court's order on appeal.⁴

On January 9, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 15, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant argued that his sentence was illegal because the court guaranteed him a 5-to-15 year maximum sentence as to count 2. Appellant argued that the court's sentence of a term of life with the possibility of parole on count 2 "is an illegal sentence because the court stated on the record that 'the 'consequence' of pleading to it was '5-to-15 years', and because the written plea agreement states the 'consequence' of Count 2 is '5-to-15 years'".⁵ Appellant argued that, as a result, the sentence must be corrected to read "5-to-15 years."

⁴Lanoue v. State, Docket No. 38819 (Order of Affirmance, June 5, 2002).

⁵The plea agreement specifically stated:

I understand that as a consequence of my plea of guilty to Count II- the court must sentence me to imprisonment in the Nevada State Prison **for a term of life** with the possibility of parole after a minimum of FIVE (5) YEARS; **or a definite term of FIFTEEN (15) YEARS** with parole eligibility after a minimum of FIVE (5) YEARS. I understand that I may also be fined not more than \$100,000. (emphasis added).

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.⁶ Importantly, "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.'"⁷

We conclude that the claims presented in the instant appeal are essentially the same claims as those previously considered and rejected by this court.⁸ In a prior appeal, this court specifically determined that appellant's sentence was facially legal.⁹ Because appellant has presented no new facts as to this issue, the doctrine of the law of the case prevents further litigation of this issue.¹⁰ Therefore, we affirm the order of the district court.

⁶Edward v. State, 112 Nev. 704, 708, 918 P.2d 321, 332 (1996).

⁷Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

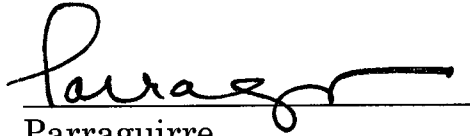
⁸Lanoue v. State, Docket No. 38819 (Order of Affirmance, June 5, 2002).

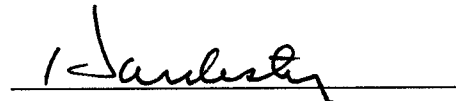
⁹Id.

¹⁰Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798-799 (1975) (citations omitted).

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

cc: Hon. James M. Bixler, District Judge
Robert John Lanoue
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).