

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY LEE GRUNDY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49361

FILED

SEP 07 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Alvarado
DEPUTY CLERK

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; David Barker, Judge.

On January 24, 2000, the district court convicted appellant, pursuant to a jury verdict, of second-degree kidnapping with the use of a deadly weapon, battery with the use of a deadly weapon, battery with intent to commit sexual assault, sexual assault with a deadly weapon, and sexual assault with a deadly weapon causing substantial bodily harm. The district court sentenced appellant to serve in the Nevada State Prison: two consecutive terms of 38 to 156 months for kidnapping with use of a deadly weapon, one term of 30 to 96 months for battery with the use of a deadly weapon, one term of 56 to 156 months for battery with intent to commit sexual assault, two consecutive terms of 10 to 25 months for sexual assault with the use of a deadly weapon, and two consecutive terms of 15 to 40 months for sexual assault with a deadly weapon causing substantial bodily harm. The district court imposed the kidnapping and

battery charges to run consecutively and the sexual assault charges to run concurrently. On March 7, 2000, the district court entered an amended judgment of conviction correcting clerical errors on appellant's prior judgment of conviction as follows: for battery with intent to commit sexual assault one term of 35 to 156 months, for sexual assault with the use of a deadly weapon two consecutive terms of 10 to 25 years, and for sexual assault with a deadly weapon causing substantial bodily harm two consecutive terms of 15 to 40 years. On direct appeal, this court reversed and remanded for a new trial on appellant's sexual assault convictions but affirmed the remaining convictions.¹ The remittitur issued on July 25, 2002.

On May 7, 2003, appellant filed a proper person petition for a writ of habeas corpus, which the district court denied. On appeal, this court affirmed the district court's order.²

On February 5, 2007, appellant filed a motion to correct an illegal sentence in the district court. The State opposed the motion. Appellant filed a reply. On March 28, 2007, the district court denied appellant's motion. This appeal followed.

¹Grundy v. State, Docket No. 35569 (Order Affirming in Part, Reversing in Part and Remanding, May 10, 2002).

²Grundy v. State, Docket No. 43104 (Order of Affirmance, January 12, 2005).

In his motion, appellant contended that his sentence was illegal because the same acts which constituted his conviction for battery with the intent to commit sexual assault are the very same which formed the basis of his conviction for battery with a deadly weapon.

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

Our review of the record on appeal reveals that that the district court did not err in denying appellant's motion. Notably, appellant's claims challenged the validity of his conviction and therefore fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal,⁵ and the record does not support an argument that the district court was without jurisdiction in this matter.

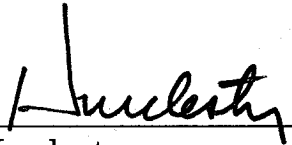
³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

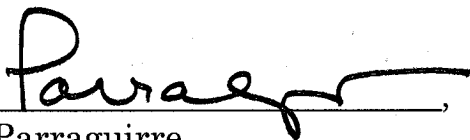
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

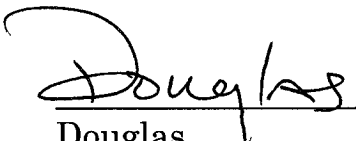
⁵1999 Nev. Stat., ch. 57, § 2 at 142; 1995 Nev. Stat., ch. 443, § 62, at 1188-89.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. David Barker, District Judge
Ricky Lee Grundy
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).