

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON ROBERT SPARKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49419

FILED

SEP 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *J. Bloom*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On June 23, 2004, the district court convicted appellant, pursuant to a guilty plea, of failing to stop on the signal of a police officer. The district court adjudicated appellant a habitual criminal and sentenced him to serve a term of 60 to 150 months in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on direct appeal.¹ Appellant unsuccessfully sought relief from his conviction by way of a post-conviction petition for a writ of habeas corpus.²

On March 29, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

¹Sparks v. State, Docket No. 43656 (Order of Affirmance, May 22, 2006).

²Sparks v. State, Docket No. 46021 (Order of Affirmance, April 27, 2007).

motion. On April 25, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court erred in adjudicating him a habitual criminal without requisite proof of the prior convictions. Appellant further claimed that the State failed to file proof of the prior convictions in this case. Finally, appellant claimed that there was not a just and proper determination and the district court should not have relied on two recent convictions as they 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.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 the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and there is

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)).

no indication in the record on appeal that the district court was not a court of competent jurisdiction.⁵

We note that the district court minutes indicate that the district court denied appellant's motion as barred by doctrine of the law of the case. It does not appear that appellant raised claims relating to the State's failure to file proof of the prior convictions, the lack of a just and proper determination, and the reliance upon non-violent felonies in the prior proceedings. We may still affirm the district court's denial of these claims as they fell outside the scope of claims permissible in a motion to correct an illegal sentence as discussed above. On direct appeal, appellant argued that the district court improperly adjudicated him a habitual criminal without proof of the prior convictions. This court rejected the claim because: (1) appellant had stipulated to being sentenced as a habitual criminal in his plea agreement; (2) five prior felony convictions were set forth in the information; (3) the presentence investigation report described the five prior felony convictions set forth in the information as well as setting forth an additional conviction discussed during the sentencing hearing; (4) the district court's reference to two recent felony convictions; and (5) appellant never disputed the existence or validity of the prior convictions. For the reasons discussed below, this claim, in addition to being outside the scope of claims permissible in a motion to

⁵See NRS 207.010(1)(a).

correct an illegal sentence, was barred by the doctrine of the law of the case.⁶

Pursuant to this court's holding in Hodges v. State, there was no error relating to the habitual criminal adjudication based upon proof of the prior convictions as appellant stipulated in the plea agreement to being sentenced as a habitual criminal, the State specified at least two prior felony convictions in the information, the presentence report described at least two prior felony convictions, and appellant never challenged the existence or validity of the prior convictions.⁷ However, we

⁶See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁷119 Nev. 479, 78 P.3d 67 (2003).

The information listed the following prior felony convictions: (1) 1989 Missouri judgment of conviction for stealing; (2) 1990 Missouri judgment of conviction for stealing; (3) 1990 Missouri judgment of conviction for tampering; (4) 1990 Missouri judgment of conviction for stealing; and (5) 1999 judgment of conviction for possession of a firearm by a convicted felon. We note that the information appears to contain two typographical errors: (1) the 1990 Missouri judgment of conviction for tampering is set forth as second degree tampering in the information whereas the exemplified copy of this judgment of conviction indicates that it was in actuality first degree tampering; and (2) the 1999 conviction is set forth as a State of Nevada conviction whereas the exemplified copy of a 2000 judgment of conviction indicates that this conviction arose from the United State District Court in Nevada. The presentence investigation report repeated some of the prior convictions set forth in the information and set forth new prior convictions: (1) 1989 Missouri judgment of conviction in CR689750F for burglary in the second degree; (2) 1989 Missouri judgment of conviction in CR689751F for stealing; (3) 1990 Missouri judgment of conviction in CR690977F for stealing; (4) 1990 Missouri judgment of conviction in CR690799F for tampering; (5) 1990

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note that the district court's reference to two recent felony convictions and this court's reliance upon this statement on direct appeal were in error as the two recent felony convictions insufficiently established proof of two prior convictions in addition to those listed in the information, presentence investigation report or filed with the district court on the day of sentencing. In Brown v. State, this court held that all prior convictions used to enhance a sentence must have preceded the primary offense.⁸ Although the two recent prior convictions referenced by the district court during the sentencing hearing may have preceded the primary offense,

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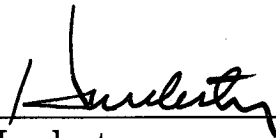
Missouri judgment of conviction in CR690737F for stealing; (6) 2000 federal judgment of conviction in CR-S-98-168-PMP(RLH) for possession of a firearm by a convicted felon; and (7) 2001 Nevada judgment of conviction in C172593 for burglary. Although it does not appear that exemplified copies of the judgments of conviction were filed prior to the sentencing hearing, the record indicates that the prior judgments of conviction were filed as exhibits on the day of sentencing and those judgments of conviction are contained in the record on appeal: (1) 2000 federal judgment of conviction for possession of a firearm in CR-S-98-168-PMP(RLH) by a convicted person; (2) 1989 Missouri judgment of conviction for burglary in the second degree in CR689750F; (3) 1989 Missouri judgment of conviction for stealing in CR689751F; (4) 1990 Missouri judgment of conviction for stealing in CR690977F; (5) 1990 Missouri judgment of conviction for tampering in the first degree in CR690799F; (6) 1990 Missouri judgment of conviction for stealing in CR690737F; and (7) 2001 Nevada judgment of conviction for burglary in C172593. In summary, these documents demonstrate that at least two prior felony convictions were set forth and stipulated to in the instant case.

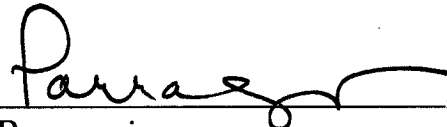
⁸97 Nev. 101, 624 P.2d 1005 (1981).

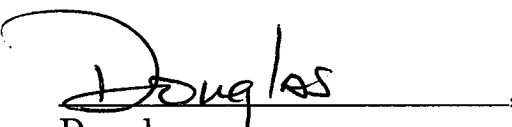
there is no actual proof in the record on appeal that these convictions were entered prior to the offense committed in the instant case. Nevertheless, as stated earlier, the requirements of NRS 207.010 were more than satisfied in this case. Therefore, despite a mistake regarding one factor on appeal, appellant's claim regarding the proof of the prior convictions has been fully litigated, and we affirm the decision of the district court to deny relief in this case.

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Chief Judge, Eighth Judicial District
Hon. James A. Brennan, Senior Judge
Jason Robert Sparks
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk