

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS SCOTT SHELLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49691

**FILED**

MAR 27 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Thomas Scott Shelley's motion to correct and/or modify an illegal sentence. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On August 16, 2000, Shelley was convicted, pursuant to a guilty plea, of level-three trafficking in a controlled substance and sentenced to serve a prison term of 10-25 years and pay a fine of \$25,000.<sup>1</sup> On March 26, 2004, the district court entered an amended judgment of conviction awarding Shelley an additional 770 days credit for time served.

On March 23, 2007, Shelley filed a proper person motion to correct and/or modify an illegal sentence in the district court. The State opposed the motion. The district court conducted a hearing with stand-by counsel present to assist Shelley, and on May 21, 2007, entered an order denying Shelley's motion. This timely appeal followed.

---

<sup>1</sup>On January 6, 1999, an indictment was filed charging Shelley with one count each of manufacture of a controlled substance, level-three trafficking in a controlled substance, possession of a forged instrument, conspiracy to manufacture controlled substances, conspiracy to possess forged instruments, and possession of a controlled substance.

Shelley contends that the district court erred by denying his motion to correct and/or modify an illegal sentence. Shelley claims that his sentence was based on a “mistake of material fact,” specifically, the amount of controlled substances he pleaded guilty to trafficking. Shelley argues that the actual weight of the controlled substances, minus the liquid or by-product solution it was found in, did not satisfy the requirements for level-three trafficking. We disagree.

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.<sup>2</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>3</sup> “[S]uch a motion cannot . . . be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing.”<sup>4</sup> 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.”<sup>5</sup> A motion to correct or modify a sentence that raises issues

---

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

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

<sup>4</sup>Id.

<sup>5</sup>Id. at 708, 918 P.2d at 324.

outside the very narrow scope of issues permissible should be summarily denied.<sup>6</sup>

The arguments raised by Shelley fall outside the scope of issues permissible in a motion to correct an illegal sentence. Shelley's sentence was facially legal, and there is no indication that the district court was without jurisdiction.<sup>7</sup> Additionally, Shelley has not alleged, let alone demonstrated, that his sentence was based on a mistaken assumption about his criminal record which worked to his extreme detriment. In denying Shelley's motion, the district court stated:

The problem is you're really not asking to correct an illegal sentence because you were sentenced legally for the charge you pled to. In fact, you got the mandatory minimum for that charge.

You're really asking me to withdraw your plea and allow you to plead to a lesser charge with a lesser narcotics weight for a mid-level or low-level trafficking. That's not really anything I can do on this motion. And I'm going to guess if you filed that motion, if the plea transcript and everything looks good, then that's probably a motion that's going to lack merit as well.

When you pled guilty, you accepted the high-level trafficking charge and what was being alleged there, and agreed and waived a number of things to enter that plea.

---

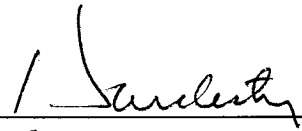
<sup>6</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

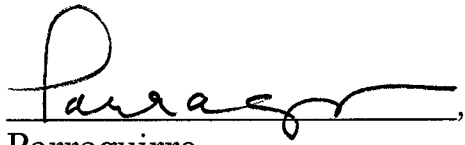
<sup>7</sup>See 1997 Nev. Stat., ch. 256, § 5(3)(b), at 905 (category A felony punishable by a prison term of 10-25 years and a fine not to exceed \$500,000).

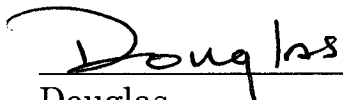
Based on all of the above, we conclude that the district court did not err by denying Sanford's motion to correct and/or modify an illegal sentence.

Having considered Shelley's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Douglas W. Herndon, District Judge  
Carmine J. Colucci & Associates  
Thomas Scott Shelley  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

---

<sup>8</sup>Because Shelley is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action on and shall not consider the proper person documents Shelley has submitted to this court in this matter.