

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER E. TIMOTHY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49778

FILED

NOV 20 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

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

On August 10, 2005, the district court convicted appellant, pursuant to a guilty plea, of stop required on signal of a police officer. The district court sentenced appellant to serve a term of twelve to thirty-six months in the Nevada State Prison. No direct appeal was filed.

On August 16, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court, which the district court denied. On appeal, this court affirmed the district court's decision.¹

¹Timothy v. State, Docket No. 46331 (Order of Affirmance, July 13, 2006).

On June 14, 2007, appellant filed a proper person motion to vacate an illegal sentence in the district court.² The State opposed the motion. On August 13, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his presentence report contained information sufficient to raise doubts as to his competency. Appellant contended further that the district court should have held a hearing on this issue before it adjudicated him guilty in the instant case. Appellant concluded that because the district court did not hold a competency hearing, the district court was without jurisdiction to adjudicate him guilty.

A motion to vacate or 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

²To the extent that appellant's motion may be construed to be a post-conviction petition for a writ of habeas corpus, the motion was untimely filed, and appellant failed to provide any explanation for the delay. See NRS 34.726(1).

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

challenge alleged errors in proceedings that occur prior to the imposition of sentence."⁴

Our review of the record reveals that the district court did not err in denying appellant's motion to vacate an illegal sentence. Appellant's claims fell outside the scope of a motion to correct or vacate an illegal sentence. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was without jurisdiction in the instant case.⁵ To the extent that appellant challenges the validity of his guilty plea, we note that appellant may not attack the validity of his guilty plea by way of a motion to vacate an illegal sentence.

Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit. The record on appeal did not indicate that the district court had sufficient cause to question appellant's competency; instead, the record on appeal indicated that appellant was denied entry into mental health court after a psychological examination.⁶ Thus, the information contained in the presentence report was insufficient to raise doubts as to appellant's competency and the district court had

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


⁵See NRS 484.348.

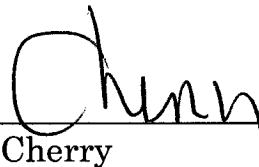
⁶See NRS 178.400; NRS 178.405; NRS 178.415.


jurisdiction to proceed to sentencing. Therefore, we affirm the order of the district court denying the motion.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Donald M. Mosley, District Judge
Roger E. Timothy
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).