

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH BAYER BALIGNASA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49792

FILED

NOV 13 2007

MANETTE 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 vacate an illegal sentence. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On December 30, 1998, appellant was charged by way of information with one count each of burglary, conspiracy to commit burglary, conspiracy to commit murder, murder, first-degree kidnapping, murder with the use of a deadly weapon, and accessory to murder. Appellant pleaded not guilty and proceeded to trial; however, the district court ultimately declared a mistrial due to jury misconduct.

Prior to appellant's retrial, appellant elected to negotiate with the State and decided to plead guilty to one count of second-degree murder. The guilty plea and an amended information were filed in open court on December 16, 1999. The amended information indicated that appellant committed the crime of second degree murder by killing Patricia Margello with premeditation and deliberation, and with malice aforethought.

On April 26, 2000, the district court convicted appellant, pursuant to a guilty plea, of second-degree murder. The district court

sentenced appellant to serve a term of ten to twenty-five years in the Nevada State Prison. Appellant did not file a direct appeal.

On May 17, 2007, appellant filed a proper person motion to vacate an illegal sentence in the district court. The State opposed the motion. On June 13, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his guilty plea cannot stand because the amended information stated that he committed the crime willfully, with premeditation, deliberation and malice aforethought—the elements of first-degree murder. Due to this language in the amended information, appellant claimed that his guilty plea must be equated to a plea of first-degree murder. Appellant contended that he really pleaded guilty to conspiracy to commit murder.

A motion to vacate 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.¹ "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.'"²

Our review of the record on appeal reveals that the district court did not err in denying this motion. Here, the guilty plea clearly

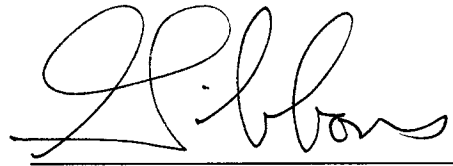
¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

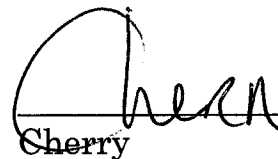
²Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

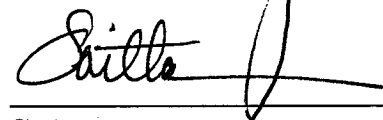
indicated that appellant pleaded guilty to second-degree murder. Appellant's sentence was within the controlling sentencing statute, and there was no indication that the district court was without jurisdiction in this matter.³ Further, by pleading guilty, appellant waived the right to raise any errors concerning the amended information.⁴

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

³See 1995 Nev. Stat., ch. 168, § 1, at 257 (NRS 200.030) (setting forth the penalty for murder in the second degree).

⁴See Kirksey v. State, 112 Nev. 980, 998-99, 923 P.2d 1102, 1114 (1996) (holding that by pleading guilty, defendant waived all claims of error that occurred prior to the plea unless related to the voluntariness of the plea).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Kenneth C. Cory, District Judge
Joseph Bayer Balignasa
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk