

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARL HENRY OLSEN, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49793

FILED

FEB 13 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
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 correct an illegal sentence or modify sentence in absentia. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On May 10, 1990, the district court convicted appellant, pursuant to a jury verdict, of eight counts of sexual assault of a minor under fourteen years of age and sentenced appellant to serve eight consecutive life sentences with the possibility of parole in the Nevada State Prison. Appellant did not file a direct appeal.

On May 29, 2007, appellant filed a motion to correct an illegal sentence or modify sentence in absentia in the district court. The State opposed the motion. On June 26, 2007, the district court denied the motion.

In his motion, appellant contended that his sentence was illegal because it was in excess of the statutory maximum. Appellant noted that NRS 176.035 mandated that a person convicted of sexual assault of a minor under the age of fourteen be sentenced to a term of life with the possibility of parole. Appellant argued that eight consecutive terms of life with the possibility of parole, on eight separate counts of sexual assault of a minor under the age of fourteen, violated that mandate

because his sentence was essentially tantamount to a sentence of life without the possibility of parole.

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.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

Appellant's contention is patently without merit. In Nevada, the district court must sentence a defendant separately for each count upon which a defendant is convicted and may not aggregate the sentences for the purposes of parole.³ The district court sentenced appellant to serve a sentence of life with the possibility of parole on each of the eight counts of sexual assault of a minor under the age of fourteen as prescribed by NRS 176.035.⁴ It was within the discretion of the district court to

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)).

³Powell v. State, 113 Nev. 258, 264, n.9, 934 P.2d 224, 228 n.9 (1997) (recognizing that a defendant must be sentenced to definite terms on each conviction); see also State, Dep't of Prisons v. Kimsey, 109 Nev. 519, 521, 853 P.2d 109, 110-11 (1993) (noting that the district court was not permitted to sentence a defendant convicted of multiple offenses to an aggregate sentence for the purpose of parole).

⁴1977 Nev. Stat., ch. 598, § 3, at 1626-27 (NRS 200.366) providing that if a sexual assault is committed upon a child under 14 years of age, the district court shall sentence a defendant to a term of life with the possibility of parole, with parole eligibility beginning when a minimum of 10 years has been served).

determine whether these sentences should run consecutively or concurrently.⁵ Thus, appellant's sentence was facially legal and appellant failed to demonstrate that the district court lacked jurisdiction in this matter. Therefore, the district court did not err in denying appellant's claim.

Next, appellant argued that his sentence should be modified because the district court relied on the mistaken assumption of fact that appellant was a career criminal.

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."⁶ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁷

Appellant argued that the district court sentenced him harshly because it mistakenly believed that he was a career criminal, when in actuality he had only been convicted of one felony and three misdemeanors. At the sentencing hearing, the State argued that the district court should sentence appellant to consecutive sentences because appellant had a history of preying upon children. Appellant's counsel argued that the district court should run appellant's sentences concurrently to achieve proportionality between the sentence and the crime. The district court then discussed all of appellant's criminal charges and convictions at length and correctly noted that appellant had been

⁵See Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).


⁶Edwards, 112 Nev. at 708, 918 P.2d at 324.

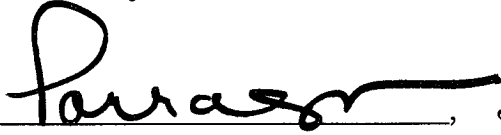
⁷Id. at 708-09 n.2, 918 P.2d at 325 n.2.


convicted of misdemeanor battery with serious bodily injury, reckless driving, petty larceny, and felony child abuse. It is therefore clear from the record that the district court knew that appellant had only been convicted of one felony and three misdemeanors. Thus, appellant's claim that the district court relied on a mistaken assumption in his criminal record was without merit. Therefore, the district court did not err in denying appellant's claim.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Carl Henry Olsen III
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).