IN THE SUPREME COURT OF THE STATE OF NEVADA

REGINALD CLARENCE HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49851

FILED

NOV 28 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's fourth motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On July 15, 1998, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary. The district court adjudicated appellant a habitual criminal pursuant to NRS 207.010(1)(b) and sentenced him to serve a term of life in the Nevada State Prison with the possibility of parole in ten years. This court dismissed appellant's direct appeal.[1] Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus and three prior motions to correct an illegal sentence.[2]

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[1]Howard v. State, Docket No. 32854 (Order Dismissing Appeal, August 11, 2000).

[2]Howard v. State, Docket No. 43031 (Order of Affirmance, September 22, 2004); Howard v. State, Docket No. 41115 (Order of Affirmance, November 25, 2003); Howard v. State, Docket No. 38108 (Order of Affirmance, January 15, 2003).

On May 17, 2007, appellant filed a fourth proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On July 12, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was illegal because NRS 207.010(1)(b) was amended in 1997 to require that the felony offense upon which a defendant is adjudicated must involve violence, force, or threat of force or violence. Appellant claimed that neither the instant offense of burglary nor any of the prior felony convictions involved violence, force, or threat of force or violence.

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. This court has twice previously considered and rejected appellant's challenges to his adjudication as a habitual criminal. The doctrine of the law of the case

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

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

prevents further litigation of his habitual criminal adjudication and cannot be avoided by a more detailed and precisely focused argument made upon reflection of the prior proceedings.[5] Appellant's sentence was facially legal, and there is no indication that the district court was not a competent court of jurisdiction.[6] Moreover, as a separate and independent ground to deny relief, appellant's claim was patently without merit. Although prior to October 1, 1997, NRS 207.010(1)(b) specified that the felony offense for which habitual criminal adjudication was sought must involve the use or threatened use of force or violence against the victim, at the time of appellant's offense, October 24, 1997, NRS 207.010(1)(b) did not require that the felony offense involve the use or threatened use of force or violence against the victim.[7] Therefore, we affirm the order of the district court.

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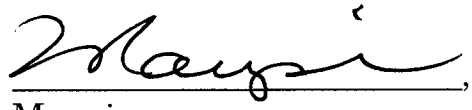
[5]See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[6]See NRS 207.010(1)(b).

[7]Compare NRS 207.010(1)(b) (providing that a person convicted of "[a]ny felony, who has previously been three times convicted . . . is a habitual criminal") with 1997 Nev. Stat., ch. 314, § 8, at 1184-85 (providing that a person convicted of "[a]ny felony, [involving the use or threatened use of force or violence against the victim,] who has previously been three times convicted . . . is a habitual criminal") and 1997 Nev. Stat., ch. 314, § 23, at 1193 (providing that the amendment set forth in section 8 became effective on October 1, 1997). Contrary to appellant's assertion that the material in brackets was added to NRS 207.010, the material in brackets was deleted.

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.



, C.J.
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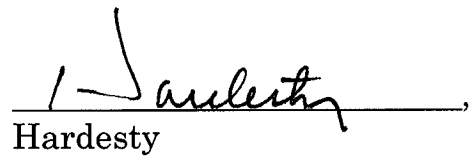

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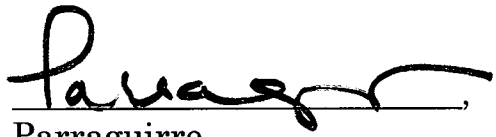

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cc: Hon. Michelle Leavitt, District Judge
Reginald Clarence Howard
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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