IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM LEE ENGLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50178

FILED

MAR 05 2008

TRACIE K. LINDEMAN
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 motion to correct or modify an illegal sentence. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On November 11, 1987, the district court convicted appellant, pursuant to a jury verdict, of battery with the intent to commit a crime (count 1); lewdness with a minor (count 2); and sexual assault (counts 3-9). The district court sentenced appellant to serve the following terms in the Nevada State Prison: 10 years on count 1; 10 years on count 2, to run consecutively with count 1; life on count 3, to run consecutively with count 2; life on count 4, to run consecutively, with count 2, and life on counts 5 through 9, to run concurrently with counts 1 through 4. This court dismissed appellant's direct appeal from a judgment of conviction.[1] The remittitur issued on January 18, 1989.

[1]England v. State, Docket No. 18825 (Order Denying Appeal, December 27, 1988).

08-05515

On July 21, 2007, appellant filed a proper person motion to correct or modify an illegal sentence. On August 14, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was illegal because his convictions for battery with the intent to commit a crime and sexual assault were impermissibly redundant. Specifically, appellant claimed that the crime of battery with the intent to commit a crime is a lesser included offense of sexual assault. Appellant further argued that his conviction for lewdness with a minor was also illegal because lewdness is a lesser included offense of sexual assault. Finally, appellant argued that his sentences for sexual assault on counts 4 through 9 were illegal because the counts were duplicitous because they emanated from the same set of facts as his sentence for sexual assault on count three.

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.[2] A motion to correct an illegal sentence cannot be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on errors occurring at trial or sentencing.[3] A motion to modify a sentence "is limited in scope to sentences based on mistaken

---

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

[3]Id.

assumptions about a defendant's criminal record which work to the defendant's extreme detriment."[4] A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[5]

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Notably, appellant's claims challenged the validity of his conviction based on errors occurring prior to or at sentencing and therefore fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal,[6] and the record does not support an argument that the district court was without jurisdiction in this matter. Furthermore, appellant failed to demonstrate that the district court relied upon mistaken assumptions in his criminal record which worked to his extreme detriment. Therefore, the district court did not err in denying appellant's motion.

---

[4]Id.

[5]Id. at 708-09 n.2, 918 P.2d at 325 n.2.

[6]1985 Nev. Rev. Stat., ch. 82, § 59, at 247-48 (NRS 200.400); 1983 Nev. Rev. Stat., ch. 55, § 4, at 207 (NRS 201.230); 1979 Nev. Rev. Stat., ch. 349, § 1, at 572 (NRS 200.364); 1977 Nev. Rev. Stat., ch. 598, § 3, at 1626 (NRS 200.366).

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.
Maupin

_____, J.
Cherry

_____, J.
Saitta

cc: Hon. Jennifer Togliatti, District Judge
William Lee England
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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