

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL E. HENSLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50376

FILED

AUG 29 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for modification of sentence and a petition for correction of illegal sentence. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On June 4, 1992, the district court convicted appellant, pursuant to a guilty plea, of one count of murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from the judgment of conviction and sentence based upon the motion and stipulation to dismiss appeal.¹

¹Hensley v. State, Docket No. 24057 (Order Dismissing Appeal, May 24, 1993).

On April 17, 2001, with the assistance of counsel, appellant filed a petition for correction of an illegal sentence. The State opposed the petition. The district court denied the petition. This court affirmed the order of the district court on appeal.²

On September 7, 2007, appellant filed a proper person motion for sentence modification in the district court. On September 7, 2007, appellant also filed a petition for correction of illegal sentence in the district court. The State opposed the motion and petition. On October 5, 2007, the district court denied appellant's motion and petition. This appeal followed.

Motion for Sentence Modification

In his motion, appellant claimed that the 2007 amendment to NRS 193.165, reducing the term of a deadly weapon enhancement from an equal and consecutive term to a term of not less than 1 year or more than 20 years, applied to his sentence.³ Thus, appellant sought modification of his sentence and requested that his deadly weapon enhancement term be reduced from a term of life with the possibility of parole to a term of 1 to 5 years or a new sentencing hearing.

²Hensley v. State, Docket No. 38378 (Order of Affirmance, May 30, 2002).

³See 2007 Nev. Stat., ch. 525, § 13, at 3188-89.

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.”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. Appellant failed to demonstrate that the district court relied upon a mistaken assumption about appellant’s criminal record that worked to his extreme detriment. Moreover, as a separate and independent ground to deny relief, appellant’s claim lacked merit. The 2007 amendment to NRS 193.165 does not apply retroactively.⁶ Therefore, we affirm the order of the district court denying the motion for sentence modification.

Petition for Correction of Illegal Sentence

In his petition, appellant claimed that his sentence was illegal because the district court did not properly have jurisdiction over his murder charge because appellant was under the age of 16 years when he committed his crime.

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

⁶See State v. Dist. Ct. (Pullin), 124 Nev. ___, ___ P.3d ___ (Adv. Op. No. 54, July 24, 2008).

A petition 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.⁷ “A [petition] 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.’”⁸

Our review of the record on appeal reveals that the district court did not err in denying his petition. Appellant’s sentence was facially legal.⁹ Appellant failed to demonstrate that the district court was not a competent court of jurisdiction in the instant case. Pursuant to NRS 62.040(1)(b), in effect at the time of appellant’s offense, the juvenile court was statutorily divested of jurisdiction as appellant was charged with murder.¹⁰ Therefore, we affirm the order of the district court denying appellant’s petition to correct an illegal sentence.

⁷Edwards, 112 Nev. at 708, 918 P.2d at 324.

⁸Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁹See 1989 Nev. Stat., ch. 631, § 1, at 1451.

¹⁰See 1989 Nev. Stat., ch. 408, § 3, at 867.

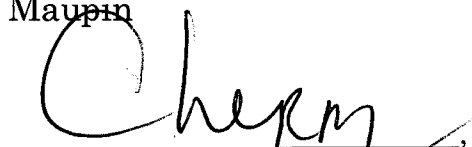
Conclusion

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²

 J.

Maupin

 J.

Cherry

 J.

Saitta

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Jackie Glass, District Judge
Michael E. Hensley
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk