

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE DEAN GREEN,
Appellant
vs.
THE STATE OF NEVADA,
Respondent.

No. 50459

FILED

AUG 04 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 to correct an illegal sentence. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

On August 13, 2004, the district court convicted appellant, pursuant to a jury verdict, of two counts of burglary and two counts of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve four concurrent terms of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction and sentence on appeal.¹ Appellant unsuccessfully sought relief from the conviction by way of a post-conviction petition for a writ of habeas corpus.²

¹Green v. State, Docket No. 43721 (Order of Affirmance, February 16, 2006).

²Green v. State, Docket No. 47857 (Order of Affirmance, April 23, 2007).

On October 3, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 5, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court exceeded its jurisdiction in adjudicating him a habitual criminal because no adjudication hearing was conducted and no determination of his status was made. Appellant further claimed that the State never proved the prior convictions beyond a reasonable doubt and never presented the prior judgments of conviction to the district court. Appellant appeared to have further claimed that one of the seven prior judgments of conviction was infirm.

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 the motion. Appellant's claims fell outside the scope of claims permissible in a motion to correct an illegal sentence as

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

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

they challenge alleged errors occurring prior to imposition of sentence. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was not a competent court of jurisdiction.⁵ Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit. The State filed a sentencing memorandum in the district court and attached certified copies of seven judgments of conviction. At the sentencing hearing, the district court considered arguments from both sides regarding habitual criminal adjudication and found that habitual criminal adjudication was warranted because of appellant's criminal history. This court determined on direct appeal that the district court had made a specific finding in regards to habitual criminal adjudication; the doctrine of the law of the case prevents further litigation of this issue.⁶ Even assuming that one of the seven judgments of conviction was infirm, appellant failed to demonstrate that an insufficient number of judgments of convictions was presented to the district court to warrant large habitual criminal treatment as six judgments of conviction are more than sufficient for habitual criminal adjudication under NRS 207.010(1)(b).⁷ Therefore, we affirm the order of the district court.

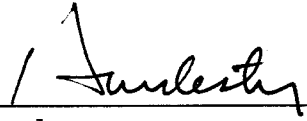
⁵See NRS 207.010(1)(b).

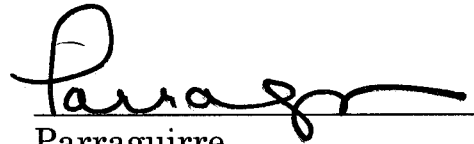
⁶Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

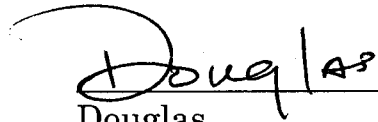
⁷See NRS 207.010(1)(b) (providing that a criminal defendant who has had at least 3 prior felony convictions is a habitual criminal and shall be punished by a term of life without the possibility of parole, life with the possibility of parole after serving 10 years, or a term of 10 to 25 years).

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.⁹


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Valerie Adair, District Judge
Lawrence Dean Green
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).

⁹We 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.