

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAIGA HRALIMA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50718

MAIGA HRALIMA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50719

FILED

APR 18 2008

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

ORDER OF AFFIRMANCE

Docket No. 50718 is a proper person appeal from an order of the district court order denying a motion to vacate an illegal sentence. Docket No. 50719 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.¹ Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On July 16, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted murder with the use of

¹See NRAP 3(b).

a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 43 to 192 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction and sentence on appeal.² The remittitur issued on February 24, 2004.

On March 7, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the Second Judicial District Court. On July 12, 2006, the district court denied appellant's petition as untimely. This court affirmed the denial of appellant's petition on appeal.³

Docket No. 50718

On September 4, 2007, appellant filed a motion to vacate an illegal sentence. On November 19, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court never had jurisdiction to enter judgment against him because he was deprived of a preliminary examination. He argued that his attorney waived the preliminary examination without appellant's consent. Appellant also argued that his sentence was illegal because he did not have a chance to correct errors in his Presentence Investigation Report.

²Hralima v. State, Docket No. 41920 (Order of Affirmance, January 27, 2004).

³Hralima v. State, Docket No. 47928 (Order of Affirmance, February 5, 2007).

A motion to correct or vacate 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.⁴ “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.’”⁵

Our review of the record on appeal reveals that the district court did not err by denying appellant’s motion. Because the preliminary examination was waived, the district court had jurisdiction over the matter in the district court. Appellant’s claims concerning the Presentence Investigation Report challenged the validity of his conviction and, therefore, fell outside the scope of claims permissible in a motion to correct or vacate an illegal sentence. Moreover, appellant’s sentences were facially legal, and there is nothing in the record to indicate that the district court was without jurisdiction to impose the sentence.⁶ Accordingly, we affirm the order of the district court.

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

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁶See 1999 Nev. Stat., ch. 319, § 3, at 1335-36 (NRS 200.030); NRS 193.330; 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165).

Docket No. 50719

On August 31, 2007, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the First Judicial District Court. Because the petition challenged the validity of appellant's conviction and sentence, the petition was transferred to the Second Judicial District Court where appellant was originally convicted. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 19, 2007, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁷ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁸

Appellant failed to set forth any causes for delay which this court had not previously considered and rejected in appellant's previous appeal from the denial of his first petition for a writ of habeas corpus. Therefore, we affirm the order of the district court denying the petition as procedurally barred.

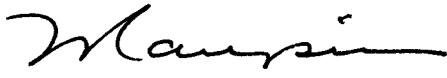
⁷See NRS 34.726(1).

⁸See id.

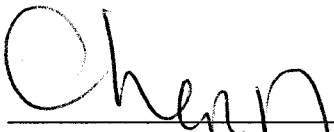
Conclusion

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.⁹ Accordingly, we

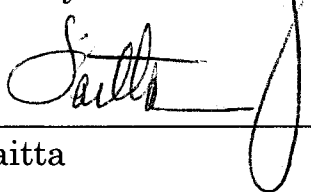
ORDER the judgments of the district court AFFIRMED.¹⁰


_____ J.

Maupin


_____ J.

Cherry


_____ J.

Saitta

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, 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. Jerome Polaha, District Judge
Maiga Hralima
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk