

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENARD TRUMAN POLK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50949

FILED

JUN 09 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; Michael Villani, Judge.

On April 1, 2002, the district court convicted appellant Renard Truman Polk, pursuant to a jury verdict, of one count of attempted sexual assault with a minor under 14 years of age and one count of sexual assault with a minor under 14 years of age. The district court sentenced appellant to serve in the Nevada State Prison a term of 48 to 120 months for the attempted sexual assault count and a consecutive term of life in prison with the possibility of parole after 240 months for the sexual assault count. This court affirmed appellant's judgment of conviction and sentence.¹ The remittitur issued on September 19, 2003.

¹Polk v State, Docket No. 39457 (Order of Affirmance with Limited Remand for Correction of Judgment of Conviction, August 25, 2003). The matter was remanded to the district court for a correction of Polk's
continued on next page . . .

On July 1, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On September 14, 2004, the district court denied appellant's petition. On appeal, this court affirmed the district court's denial of appellant's petition.²

On December 7, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On December 31, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended as follows: that errors in the prior trial and habeas proceedings deprived the district court of personal jurisdiction and subject matter jurisdiction over him, that the district erred by denying the claims in his habeas petition, that he was convicted without presentment of a grand jury indictment, that he was not before a fair and impartial tribunal, that he did not have meaningful access to the courts, that his conviction violated double jeopardy, that he was not properly certified as an adult for the proceedings, that refusal to

... continued

judgment of conviction, which inaccurately reflected that he pleaded guilty.

²Polk v. State, Docket No. 44087 (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction, January 25, 2005). The matter was again remanded to the district court for a correction of Polk's judgment of conviction, as the correction had not been made pursuant to the previous order.

allow filing of proper person documents by a party represented by counsel violates his U.S. Constitutional rights, and that ex-parte decisions on post-conviction writs violate the U.S. Constitution.

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

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant’s motion. Appellant’s sentence was facially legal.⁵ Further, there is nothing in the record indicating that the district court was without jurisdiction to impose a sentence in this case. The claims that appellant raised fell outside of the scope of claims permissible in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

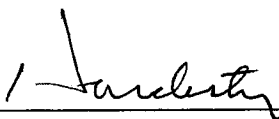
³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

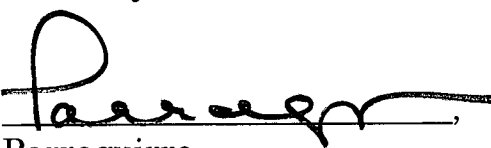
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

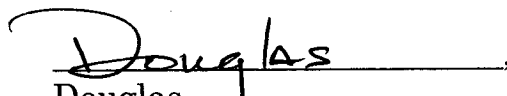
⁵See NRS 200.364, 1999 Nev. Stat., ch. 105, § 23, at 431-432 (codified as NRS 200.366).

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Michael Villani, District Judge
Renard Truman Polk
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We 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.