

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLEO PEARSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34662

FILED

MAY 16 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence.

On October 21, 1992, the district court convicted appellant, pursuant to a guilty plea, of one count of larceny from the person. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. Appellant did not file a direct appeal.

On October 23, 1995, appellant filed a proper person post-conviction petition for a writ of habeas corpus. On December 4, 1995, the district court denied appellant's petition pursuant to NRS 34.726(1). This court dismissed appellant's subsequent appeal.¹

On May 3, 1999, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On August 3, 1999, the district court denied appellant's motion. This appeal followed.

¹Pearson v. State, Docket No. 28014 (Order Dismissing Appeal, January 14, 1999).

In his motion, appellant contended that the district court improperly allowed him to stipulate to being an habitual criminal and failed to determine whether it was just and proper that he be adjudicated an habitual criminal. Appellant also argued that the district court failed to sentence him first on the primary offense. Appellant argued that the appropriate remedy would be resentencing.

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 Because a motion to correct an illegal sentence presupposes a valid conviction, it cannot be "used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing."³

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal, and there is no indication that the district court was without jurisdiction.⁴ In challenging his habitual criminal adjudication, appellant challenged the validity of the conviction based on alleged errors occurring at sentencing. Appellant's claims, thus, fell outside the narrow scope of a motion to correct an illegal sentence.

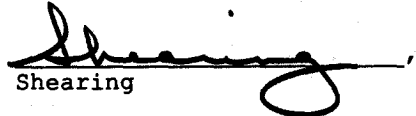
²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

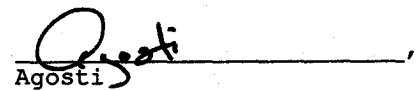
³Id.

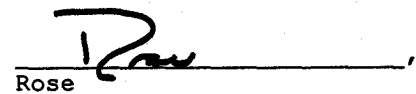
⁴See 1985 Nev. Stat., ch. 544, § 1, at 1643-44.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Agosti, J.


Rose, J.

cc: Hon. Michael L. Douglas, District Judge
Attorney General
Clark County District Attorney
Cleo Pearson
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

CLEO PEARSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34662

ORDER RE: RECORDS ON APPEAL

Having reviewed the documents on file in these proper person appeals, this court has concluded that its review of the complete records is warranted. See NRAP 10(a)(1). Accordingly, within one hundred and twenty (120) days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the complete trial court record in each of the above-identified appeals. See NRAP 11(a)(2) (each complete record shall contain every paper, pleading and other document filed, or submitted for filing, in the district court, as well as any previously prepared transcripts of the district court proceedings).¹

It is so ORDERED.

 _____, C.J.

cc: Attorney General
Clark County District Attorney
Samuel Eugene Abraham
George T. Lovell
Ronald Farris
Ernold Marvin Henley
Leo Charles Stevens
Franklin Delano Combs
Cleo Pearson
Clark County Clerk

¹The records shall not include any exhibits filed in the district court.