IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMY EARL COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52356

FILED

MAR 27 2009

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; Douglas W. Herndon, Judge.

On February 18, 1997, the district court convicted appellant, pursuant to a jury verdict, of: burglary while in possession of a firearm (counts 1, 4, and 17), battery with the use of a deadly weapon, victim age sixty-five years or older (count 2), robbery with the use a deadly weapon, victim age sixty-five or older (count 3), robbery with the use of a deadly weapon (counts 5, 7, 8, 16, and 18), battery with the use of a deadly weapon (counts 6, 11, and 15), attempted robbery with the use of a deadly weapon (counts 9, 10, and 14), burglary (count 12), and robbery (count 13). The district court sentenced appellant to serve terms totaling approximately fifty to two hundred and twenty-five years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence. Collins v. State, Docket No. 30653 (Order Dismissing Appeal, July 7, 1999).

On April 19, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

State opposed the petition. The district court granted in part and denied in part appellant's petition.[1] This court affirmed the district court's decision on appeal. Collins v. State, Docket No. 41033 (Order of Affirmance, March 17, 2005).

On August 10, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On December 29, 2006, the district court denied appellant's petition. This court affirmed the district court's decision on appeal. Collins v. State, Docket No. 48850 (Order of Affirmance, July 20, 2007).

On July 11, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On August 11, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that he was not properly sentenced under NRS 176.035 because the district court did not specify whether counts 5 through 18 were to run concurrent or consecutively to count 3, the longest sentence pronounced of counts 1, 2, and 3, which were ordered to run concurrently. NRS 176.035(1) states that when a district court sentences a defendant for two or more offenses, the district court may order the subsequent sentences to run "concurrently or consecutively with the sentence first imposed." If no specification is made, the sentences will run concurrently. NRS 176.035(1). Appellant claimed that since the

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[1]The district court vacated count 2 and entered an amended information on January 31, 2003.

district court failed to specify how the sentences should be served, counts 5 through 18 should be served concurrently with count 3.

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. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "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.'" Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentence was facially legal, and the record does not support an argument that the district court was without jurisdiction in this matter. See 1995 Nev. Stat., ch. 443, § 124, at 1215; 1997 Nev. Stat., ch. 160, § 3, at 435-36 and ch. 314, § 4, at 1180-81, and ch. 476, § 19, at 1813-14; 1993 Nev. Stat., ch. 2, § 1, at 1-2; 1995 Nev. Stat., ch. 455, § 1, at 1431; 1995 Nev. Stat., ch. 443, § 60, at 1187-88; and 1997 Nev. Stat., ch. 314, § 2, at 1178-79.

As a separate and independent ground to deny relief, appellant's claim lacked merit. NRS 176.035 "merely recites rules to determine the intent of the sentencing judge." Collins v. Warden, 88 Nev. 99, 101, 493 P.2d 1335, 1337 (1972) (interpreting NRS 176.035(2)). The district court's intent is stated in the judgment of conviction. Each count declares whether it is to be run consecutively or concurrently to the previous count. Counts 5 through 18 do not have to state how they run in regards to count 3 as all of these counts state how they run with the immediately preceding count.

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. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Hardesty

_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Sammy Earl Collins
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[2]We 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.