IN THE SUPREME COURT OF THE STATE OF NEVADA

LORANZO RAY ARRINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52491

FILED

AUG 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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; Jennifer Togliatti, Judge.

On March 10, 2006, the district court convicted appellant, by a plea of guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), of one count of child abuse with substantial mental harm. The district court sentenced appellant to serve a term of 36 to 120 months in the Nevada State Prison, suspended the sentence and placed appellant on probation for a period of 3 years. No direct appeal was taken. On August 17, 2006, the district court entered an order revoking probation and causing the original sentence to be executed. No appeal was taken.

On May 8, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 July 3, 2007, the district court denied the petition. On appeal, this court affirmed the order of the district court in part but reversed and remanded for an evidentiary hearing on an appeal deprivation claim related to the probation revocation hearing.

Arrington v. State, Docket No. 49807 (Order Affirming in Part, Reversing in Part and Remanding, July 10, 2008).

On August 5, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On September 19, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court breached the conditional plea agreement by imposing sex-offender-type conditions on probation. Appellant requested that his probation be reinstated.

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)).

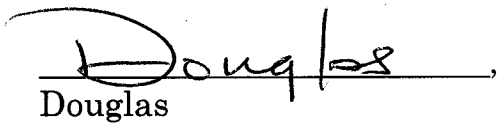
Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentence was facially legal pursuant to NRS 200.508(1)(a)(2), and appellant failed to demonstrate that the district court was not a competent court of jurisdiction. Moreover, as a separate and independent ground to deny relief, appellant's claim was patently without merit. NRS 176A.400 provides the district court discretion in fixing the terms and conditions of probation, including terms that prohibit "the probationer from engaging in specific conduct that may be harmful to his own health, safety or welfare, or the health, safety or welfare of another person." NRS 176A.400(1)(c)(4).

In the instant case, the district court borrowed heavily from the terms of the conditions of probation for a sex offender pursuant to NRS 176A.410. This was not an abuse of the discretion in view of the fact that appellant was originally charged with 22 counts of lewdness with a child under the age of fourteen. The factual basis for the child abuse count included inappropriately touching the victims. Therefore, we affirm the order of the district court.

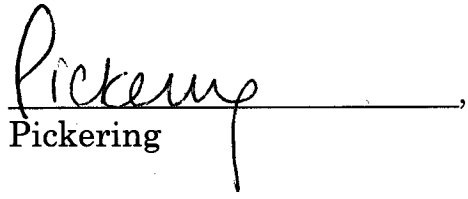
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

[1]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.

cc: Hon. Jennifer Togliatti, District Judge
Loranzo Ray Arrington
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk