IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT N. WORDLAW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52564

FILED

AUG 25 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 appellant Robert Wordlaw's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On February 11, 2003, the district court convicted appellant, pursuant to a jury verdict, of battery with the use of a deadly weapon.[1] The district court adjudicated appellant a habitual felon pursuant to NRS 207.012, and sentenced appellant to serve a term of twenty-five years in the Nevada State Prison with the possibility of parole after ten years. This court affirmed appellant's judgment of conviction and sentence on direct appeal. Wordlaw v. State, Docket No. 40988 (Order of Affirmance, January 27, 2004). Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus, a motion

[1]The original judgment of conviction incorrectly stated that appellant was convicted pursuant to a guilty plea and did not state that appellant had been adjudicated a habitual felon. A corrected judgment of conviction was entered on August 29, 2003.

for a new trial, and a motion to correct an illegal sentence. Wordlaw v. State, Docket No. 47073 (Order Affirming in Part and Dismissing in Part, January 11, 2007); Wordlaw v. State, Docket No. 45238 (Order of Affirmance, November 10, 2005).

On September 16, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On October 10, 2008, the district court denied appellant's motion. This appeal followed.

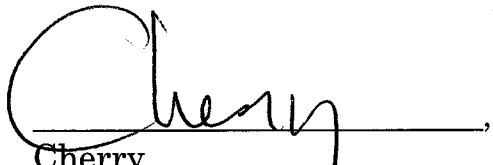
A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "A motion 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)).

In his motion, appellant contended that the district court was without jurisdiction to sentence him as a habitual felon. Appellant specifically contends that the district court lacked jurisdiction because the State failed to file a notice of habitual criminality prior to sentencing as required by Grey v. State, 124 Nev. ___, ___, 178 P.3d 154, 163 (2008). This claim is belied by the record. In the amended information filed on November 7, 2002, the State clearly gave notice that it intended to seek treatment of appellant as a habitual felon. Therefore, the State complied with the requirements of Grey. Appellant's sentence was facially legal. See NRS 200.481(1)(e); NRS 207.012. As appellant did not otherwise allege that that the district court lacked jurisdiction to impose the

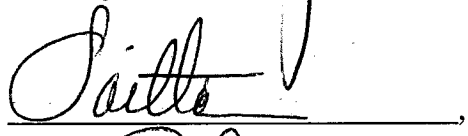
sentence, we conclude that the district court did not err in denying appellant's motion.

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]



_____, J.
Cherry



_____, J.
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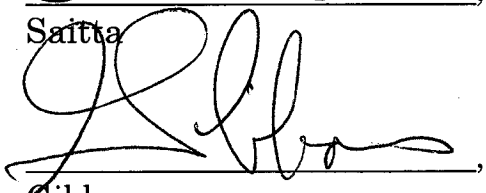

_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Robert N. Wordlaw
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.