

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAFAEL MORENO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53026

FILED

OCT 07 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 illegal sentence. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On February 10, 1998, the district court convicted appellant, by a guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), of one count of attempted murder with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang (count one), and one count of intimidating a witness to influence testimony with the intent to promote, further, or assist a criminal gang (count two). The district court sentenced appellant to a term of 240 months in the Nevada State Prison with the possibility of parole in 36 months, plus an equal and consecutive term of imprisonment as a criminal gang enhancement for count one. The district court also sentenced appellant to a term of 48 months in the Nevada State Prison with the possibility of parole in 19 months, plus an equal and consecutive term of imprisonment as a criminal gang enhancement for count two. Count two was imposed to run concurrently to count one. This court dismissed appellant's appeal from

the judgment of conviction. Moreno v. State, Docket No. 31969 (Order Dismissing Appeal, June 17, 1998). The remittitur issued on July 7, 1998.

Appellant unsuccessfully sought post-conviction relief by way of two post-conviction petitions for a writ of habeas corpus and a motion to withdraw plea. Moreno v. State, Docket No. 34722 (Order of Affirmance, June 27, 2001); Moreno v. State, Docket No. 40329 (Order of Affirmance, September 23, 2003).

On November 4, 2008, appellant filed a proper person motion to correct illegal sentence. The State opposed the motion. On December 10, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that the district court imposed the gang enhancement without canvassing appellant on all of the rights he was waiving by entering an Alford plea. Appellant claimed that the plea canvass was insufficient because the district court failed to inform him that he had a right to a jury determination of the gang enhancement. Appellant also claimed that the record does not contain proof beyond a reasonable doubt to support the gang enhancement.

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)).

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. 1989 Nev. Stat., ch. 282, § 9, at 589 (codified as NRS 200.010); NRS 193.330; 1991 Nev. Stat., ch. 403, § 6, at 1059 (codified as NRS 193.165); 1991 Nev. Stat., ch. 403, § 2, at 1057-58 (codified as NRS 193.168); NRS 199.240. 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 denying the 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.

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Rafael Moreno
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk