

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK GARY HOUGH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53979

MARK GARY HOUGH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53981 ✓

FILED

JUN 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated proper person appeals from orders of the district court denying two post-conviction petitions for writs of habeas corpus/motions to correct or modify sentence.¹ Eighth Judicial District Court, Clark County; James A. Brennan, Judge.

In his petitions filed on April 13, 2009, in district court case numbers C115662 and C116863, appellant challenged the validity of his

¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

judgment of conviction. The petition was not cognizable, however, because appellant was not in custody in these cases when he filed these petitions. Jackson v. State, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999); see also Nev. Const. art. 6, § 6(1) (providing that the district courts may issue a writ of habeas corpus on petition by “any person who is held in actual custody in their respective districts, or who has suffered a criminal conviction in their respective districts and has not completed the sentence imposed pursuant to the judgment of conviction”).

Appellant also sought to correct or modify his sentence. Appellant claimed that his sentences were obtained in violation of his due process rights because he was actually innocent and because the convictions were based on a plea agreement that was breached by the State. Appellant failed to demonstrate that the district court relied upon mistaken assumptions regarding his criminal record that worked to his extreme detriment. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Further, appellant’s claim was outside the scope of a motion to correct an illegal sentence as the sentences were facially legal, see 1989 Nev. Stat., ch. 626, § 20, at 1434-35, and there is nothing in the record indicating that the district court was without jurisdiction to impose a sentence in these cases. See Edwards, 112 Nev. at 708, 918 P.2d at 324.

We therefore conclude that the district court did not err in denying appellant's motions. Accordingly, we

ORDER the judgments of the district court AFFIRMED.²

Cherry J.
Cherry

Saitta J.
Saitta

Gibbons J.
Gibbons

cc: Chief Judge, Eighth Judicial District
Hon. James A. Brennan, Senior Judge
Mark Gary Hough
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, 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.