

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREG LAWRENCE TEIXEIRA,

No. 35589

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 11 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence.

On May 21, 1999, the district court convicted appellant, pursuant to a guilty plea, of two counts of sale of a controlled substance. The district court sentenced appellant to serve a term of 120 months with parole eligibility in 45 months and a consecutive term of 96 months with parole eligibility in 38 months in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on December 15, 1999.

On November 17, 1999, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Appellant filed a reply. On January 25, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was illegal because his sentence was enhanced pursuant to the statute for possession of a controlled substance as a second time offender and he was

¹Teixeira v. State, Docket No. 34364 (Order Dismissing Appeal, November 19, 1999).

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not formally notified in the charging document that the State was seeking an enhanced sentence.

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 that the sentence was imposed in excess of the statutory maximum.² Because a motion to correct an illegal sentence presupposes a valid conviction, it cannot be used as a vehicle for challenging the validity of a sentence based on alleged errors that occurred at trial or sentencing.³

Our review of the record reveals that that the district court did not err in denying appellant's motion. Appellant's sentence is facially legal, and there is no indication that the district court was without jurisdiction.⁴ Appellant's claim that he did not have notice of the sentencing enhancement falls outside the narrow scope of claims cognizable in a motion to correct an illegal sentence because he challenged an alleged error that occurred at sentencing. Moreover, appellant's claim is belied by the record. During the guilty plea canvass, appellant's attorney stated that appellant had a previous conviction related to a controlled substance and it was the understanding of the parties that these convictions were treated as a second offense. In addition, at the sentencing hearing, the State submitted a certified copy of appellant's previous judgment of conviction for sale of a controlled substance to the district court. Further, prior to sentencing, appellant filed a motion to withdraw his guilty plea. In his motion, appellant challenged the fact that he was not informed that his offense was non-probational because he was a second time offender. Appellant, however, withdrew his motion and

²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

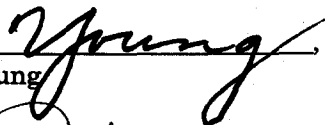
³Id.

⁴Id.


elected to proceed to sentencing pursuant to the original negotiations. Therefore, appellant had adequate notice that the State was seeking an enhanced sentence.

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.⁵ Accordingly, we


ORDER the judgment of the district court AFFIRMED.⁶



Young J.



Agosti J.



Leavitt J.

cc: Hon. Archie E. Blake, District Judge
Attorney General
Churchill County District Attorney
Greg Lawrence Teixeira
Churchill County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.