

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID PHILLIP RUFFA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67369

FILED

JUN 16 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a “Motion to Correct Illegal Sentence/Unlawful Imprisonment/Constitutional Violations/Memorandum Irrefutable Evidence/Attachment and Grant Relief Time Served” and a district court order denying a post-conviction petition requesting genetic marker analysis.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his motion to correct an illegal sentence filed on November 7, 2014, appellant David Ruffa claimed his sentence was illegal because all laws passed by the legislature since 1957 do not contain an enacting clause and therefore the Nevada Revised Statutes are void and unenforceable. Ruffa failed to demonstrate his sentence was facially illegal or the district court lacked jurisdiction. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Ruffa’s claim did not implicate the jurisdiction of the court to impose sentence. *See Nev. Const. art. 6, § 6.*

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude 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).

Further, the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. Therefore, we conclude the district court did not err in denying the motion to correct an illegal sentence.

In his petition for genetic marker analysis filed on November 18, 2014, Ruffa requested genetic marker analysis of a water bottle found near the victim and the victim's fingernail clippings. Ruffa asserted that by using new DNA testing methods it is "often possible to determine whether a biological tissue matches a suspect with a near certainty." Ruffa requested to have short tandem repeat DNA testing completed on the water bottle and fingernail clippings and to have the results entered into CODIS in order to identify the true killer.²

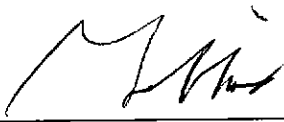
DNA testing was done on both the water bottle and the victim's fingernail clippings prior to Ruffa's trial. While an expert testified at trial that DNA from a male was recovered from both samples, the expert also testified that Ruffa was excluded as the source of that DNA. Further, Ruffa's counsel argued to the jury that based on the testimony of Ruffa's alibi witness and because Ruffa was not the source of the DNA he should be acquitted.


Because the prior DNA testing results were exculpatory, Ruffa did not establish a reasonable probability he would not have been prosecuted or convicted if additional DNA testing were conducted. *See* NRS 176.09183(1). Further, Ruffa did not establish that the results of the previous DNA analysis were inconclusive or that the requested analysis would resolve an issue not resolved by the previous analysis. *See* NRS

²Ruffa was convicted after a jury trial of first-degree kidnapping, third-degree arson, and first-degree murder. The victim was Ruffa's estranged wife.

176.09183(2)(a)-(b). And his blanket statement that new DNA testing methods can match a biological tissue sample to a suspect with “near certainty” did not establish that the requested analysis would provide results that are significantly more accurate and probative of the identity of the perpetrator than the previous analysis. See NRS 176.09183(2)(c). Therefore, we conclude the district court did not err by denying the petition for genetic marker analysis. NRS 176.09183(5)(a).

We conclude Ruffa is not entitled to relief and we
ORDER the judgments of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michelle Leavitt, District Judge
David Phillip Ruffa
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We further conclude the district court did not err by denying Ruffa’s motions for the appointment of counsel.