

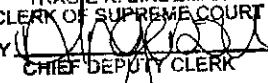
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY TERRELL HAMPTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68723

FILED

FEB 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

ORDER GRANTING REHEARING AND ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to correct an unlawful sentence. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

On December 29, 2015, we entered an order of affirmance in this appeal. On January 20, 2016, appellant Anthony Hampton submitted a petition for rehearing. The clerk of this court shall file the petition for rehearing. Hampton asserts that this court did not review the correct "Motion to Correct an Unlawful Sentence" when resolving this appeal. He asserts that he was appealing from the denial of the "Motion to Correct Unlawful Sentence" filed on July 21, 2015, not the one filed on January 10, 2014. We grant the petition for rehearing, *see* NRAP 40(c)(2), vacate the "Order of Affirmance" filed on December 29, 2015, and issue this order in its place.

"A motion to correct an illegal sentence 'presupposes a valid conviction,'" and may only challenge the facial legality of the sentence, alleging 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) (quoting *Allen v. United States*, 495 A.2d 1145, 1149 (D.C. 1985)).

In the “Motion to Correct Unlawful Sentence” filed on July 21, 2015, Hampton first claimed the district court lacked jurisdiction to resentence him under NRS 207.010 because “[t]he court shall not suspend the execution of a sentence of imprisonment after the defendant has begun to serve it.” NRS 176A.400(3).¹ This claim lacks merit.

Hampton was initially sentenced to a term of life with the possibility of parole after 10 years pursuant to NRS 207.012 for his robbery conviction. He successfully challenged that sentence as being improperly imposed because the requisite number of prior violent felonies had not been established at sentencing. He was resentenced for that count to a term of life with the possibility of parole after 10 years pursuant to NRS 207.010(1)(b)(2).

NRS 176.555 permits a court to correct an illegal sentence at any time. Because Hampton’s first sentence for his robbery conviction was illegal, the court had jurisdiction to resentence him. *See State v. Eighth Judicial Dist. Ct.*, 100 Nev. 90, 94-95, 677 P.2d 1044, 1047 (1984) (rejecting State’s argument under former NRS 176.185(4) “that once a defendant has commenced serving his sentence, the district court is totally without jurisdiction to suspend or modify it”).


Hampton also claimed the correction of his sentence violated double jeopardy. Hampton’s sentence of life with the possibility of parole after 10 years is not illegal and does not violate double jeopardy because the sentence did not increase the term he was previously sentenced to, *see*


¹Hampton cited to former NRS 176.185(4).

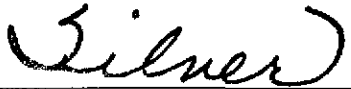
Wilson v. State, 123 Nev. 587, 590, 170 P.3d 975, 977 (2007); his sentence under NRS 207.010(1)(b)(2) was proper, see *Hampton v State*, Docket No. 61771 (Order Affirming in Part, Reversing in Part and Remanding, June 13, 2013); and the sentence is within the statutory parameters, see NRS 207.010(1)(B)(2). Accordingly, we conclude the district court did not err by denying Hampton's motion to correct an unlawful sentence.

Having reviewed Hampton's petition for rehearing and the motion to correct unlawful sentence, we

GRANT REHEARING and ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Villani, District Judge
Anthony Terrell Hampton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk