IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDAL N. WIIDEMAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 33879

RANDAL N. WIIDEMAN,

Appellant,

vs.

WARDEN, LOVELOCK CORRECTIONAL CENTER, JACKIE CRAWFORD,

Respondent.

No. 36319

ORDER OF AFFIRMANCE

Docket No. 33879 is a proper person appeal from orders of the district court denying appellant's petition for a writ of habeas corpus and appellant's motion to vacate illegal sentence. Docket No. 36319 is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.[1]

On April 29, 1986, the district court convicted appellant in four separate criminal actions of multiple counts of obtaining money under false pretenses. The district court entered four judgments of conviction, sentencing appellant to serve a total of sixteen years in the Nevada State Prison. The district court granted appellant 474 days of credit for time

[1]See NRAP 3(b).

served in only one of the district court cases. This court dismissed appellant's direct appeal.[2]

On June 14, 1989, appellant filed a proper person motion to correct an illegal sentence in the Eighth Judicial District Court. The district court treated appellant's motion as a petition for post-conviction relief and denied the motion. This court dismissed appellant's appeal.[3]

On October 18, 1994, appellant filed a proper person motion to correct an illegal sentence in the Eighth Judicial District Court. In 1995, the district court issued an order directing the Department of Prisons to re-compute appellant's sentence structure to award him 474 days additional credit in each district court case for which appellant had been sentenced in 1986. The State appealed, and this court concluded that the district court was without authority to modify appellant's sentences and remanded the matter to the district court to vacate its order.[4]

On October 25, 1994, appellant filed a proper person petition for a writ of habeas corpus in the First Judicial District Court. The State opposed the petition. The district court denied the petition. This court dismissed appellant's appeal.[5]

Docket No. 33879

On July 24, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the

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[2]Wiideman v. State, Docket No. 17293 (Order Dismissing Appeal, October 16, 1987).

[3]Wiideman v. State, Docket No. 20508 (Order Dismissing Appeal, November 22, 1989).

[4]State v. Wiideman, Docket No. 26813 (Order of Remand, May 19, 1998).

[5]Wiideman v. State, Docket No. 27968 (Order Dismissing Appeal, January 14, 1999).

Eighth Judicial District Court. The State opposed the petition. Appellant filed a supplemental document in support of his habeas corpus petition and a reply to the State's opposition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 6, 1998, appellant filed a proper person motion to vacate an illegal sentence pursuant to NRS 176.555 in the Eighth Judicial District Court. On February 9, 1999, and on April 19, 1999, the district court entered orders denying appellant's petition and motion. This appeal followed.

In his habeas corpus petition, appellant first argued that he was being illegally confined in violation of the Eighth and Fourteenth Amendments of the United States Constitution. Specifically, appellant argued that his confinement was illegal because he was still serving time on his 1986 judgments of conviction despite the fact that his 1986 judgments of conviction had expired in June 1995 or June 1997.[6]

Based upon our review of the record on appeal, we conclude that the district court did not err in denying this claim. Appellant failed to provide sufficient specific factual allegations demonstrating that he was entitled to relief.[7]

In the habeas corpus action, appellant next argued that his forfeiture of statutory good time credits after 1985 constituted an ex post facto violation. Appellant argued that in 1984, at the time he committed his crime, the board of

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[6]In the habeas corpus petition, appellant stated that he had expired serving his sentences in June 1995. In a reply to the State's opposition, appellant stated that he had expired serving his sentences in June 1997. Appellant did not attempt to explain this discrepancy.

[7]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

parole commissioners had the sole power to forfeit a prisoner's statutory good time credits pursuant to NRS 209.451(3).[8] Appellant noted that in 1985, the legislature amended NRS 209.451(3) to allow the director of the department of prisons to forfeit a prisoner's statutory good time credits.[9] Appellant argued that allowing the director of the department of prisons to forfeit his statutory good time credits constituted an ex post facto violation because the director of the department of prison was not authorized to forfeit his statutory good time credits at the time he committed his crime.

In denying this claim, the district court concluded that the 1985 amendment of NRS 209.451(3) and application of the amended statute to appellant did not constitute an ex post facto violation. Based upon our review of the record on appeal, we conclude that the district court did not err in denying this claim. There is no ex post facto violation when the law merely alters the method of imposing a penalty and does not change the quantum of punishment.[10] Rather, "the ex post facto prohibition . . . forbids the imposition of punishment more severe than the punishment assigned by law when the act to be punished occurred."[11] The 1985 amendment of NRS 209.451(3) to substitute the director of the department of prisons for the board of parole commissioners in the decision regarding a prisoner's forfeiture of statutory good time credits merely altered the method of forfeiture and did not increase the severity of appellant's punishment.

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[8]1977 Nev. Stat., ch. 430, § 46, at 852.

[9]1985 Nev. Stat., ch. 213, § 1, at 687.

[10]Land v. Lawrence, 815 F. Supp. 1351 (D. Nev. 1993).

[11]Weaver v. Graham, 450 U.S. 24, 30 (1981).

In his motion, appellant argued that his 1986 judgments of conviction were illegal for two reasons. First, appellant argued that his 1986 judgments of conviction were illegal because the punishment for his crimes, obtaining money by false pretenses, was shortened by legislative amendment in 1995. Appellant argued that he had an ex post facto entitlement to the shorter terms. Second, appellant argued that he was actually innocent.

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.[12] "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.'"[13]

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 claims fell outside the narrow scope of a motion to correct an illegal sentence. Appellant's sentences were within the statutory limits.[14] The 1995 amendatory provisions of NRS 205.380, providing for a penalty of a minimum term of not less than 1 year and a maximum term of not more than 6 years, do not apply to offenses committed prior to July 1, 1995.[15] Appellant has no entitlement to a retroactive application of the 1995 amendatory provisions of

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[12]Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

[13]Id. at 708; 918 P.2d at 324 (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

[14]See 1981 Nev. Stat., ch. 772, § 1, at 2017 (providing for a term of not less than 1 year nor more than 10 years).

[15]See 1995 Nev. Stat., ch. 443, §§ 149, 393, at 1224, 1340.

NRS 205.380. Finally, there is no indication that the district court was without jurisdiction. Appellant's claim of actual innocence fell outside the scope of a motion to correct an illegal sentence.

Therefore, we conclude that the district court did not err in denying appellant's petition and motion.

Docket No. 36319

On September 24, 1999, appellant filed a post-conviction petition for a writ of habeas corpus in the Sixth Judicial District Court. The State filed a motion to dismiss the petition. Appellant filed an opposition. On June 5, 2000, the district court denied appellant's petition. This appeal followed.

In his petition, appellant challenged the computation of time served pursuant to his judgment of conviction. Specifically, appellant argued that the prison had improperly calculated his expiration date from his 1986 judgments of conviction to be in 1998 when he believed he expired his 1986 judgment of conviction in 1994.[16] Appellant argued that even if he had forfeited all statutory good time credits, "he cannot legally serve 14 years 9 months on a 16 year set of terms because he is entitled to his worktime credits."

Based upon our review of the record on appeal, we conclude that the district court did not err in denying his petition. Appellant failed to provide sufficient specific factual allegations demonstrating that he was entitled to the relief requested.[17]

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[16]Appellant's argument that he expired his sentences in 1994 conflicts with his previous arguments that he had expired his sentences in 1995 and 1997. Again, appellant made no attempt to explain the obvious discrepancies.

[17]See Pangallo v. State, 112 Nev. 1533, 930 P.2d 100 (1996); Hargrove, 100 Nev. 498, 686 P.2d 222.

Conclusion

Having reviewed the records 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.[18] Accordingly, we

ORDER the judgments of the district court AFFIRMED.[19]

Young, J.

Leavitt, J.

Becker, J.

cc: Hon. John S. McGroarty, District Judge
Hon. Jerry V. Sullivan, District Judge
Attorney General
Clark County District Attorney
Pershing County District Attorney
Randal N. Wiideman
Clark County Clerk
Pershing County Clerk

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

[19]We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.