IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY LEE DAUGHTERY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36428

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 March 25, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of grand larceny. The district court sentenced appellant to serve a term of forty-eight (48) months to one hundred-twenty (120) months in the Nevada State Prison. The court then suspended the sentence and placed appellant on probation for a determinate period of three (3) years. On September 13, 1999, the district court revoked appellant's probation and ordered the original sentence executed. Appellant did not file a direct appeal.

On February 25, 2000, appellant filed a proper person motion to correct illegal sentence in the district court. The State opposed the motion. On March 21, 2000, the district court denied the motion. Appellant did not appeal from that decision.

On June 1, 2000, appellant filed another proper person motion to correct an illegal sentence in the district court.[1] The State opposed the motion. On June 28, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court imposed a sentence in excess of the statutory maximum pursuant to NRS

[1]In his second motion, appellant stated that he believed that "the previous motion was denied on the grounds that Petitioner, at the time of the filing of that motion had an attorney of record, thereby disallowing him the benefit of filing that motion in propria persona."

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205.222 and NRS 193.130 because the value of the property involved in appellant's grand larceny conviction was less than $2,500.00.[2]

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.[3] "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.'"[4]

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. There is no indication in the record that the district court was without jurisdiction or that the sentence was imposed in excess of the statutory maximum. The current version of NRS 205.222, upon which appellant relies, did not apply to offenses committed before October 1, 1997.[5] Moreover, NRS 193.130 did not become effective until July 1, 1998.[6] Appellant committed the instant offense on June 16, 1997. Accordingly, the current versions of NRS 205.222 and NRS 193.130 are inapplicable to this case. The version of NRS 205.220 in effect on the date of appellant's offense provided, in relevant part: "[A] person who feloniously steals, takes and carries away...the personal goods or property of another of the value of $250 or more...is guilty of grand larceny which is a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years."[7] This

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[2]Pursuant to NRS 205.222(2): "If the value of the property involved in the grand larceny is less than $2,500, the person who committed the grand larceny is guilty of a category C felony and shall be punished as provided in NRS 193.130." Pursuant to NRS 193.130(2)(c): "A category C felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years."

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

[4]Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

[5]See 1997 Nev. Stat., ch. 150, § 7(2), at 339, 347.

[6]See 1997 Nev. Stat., ch. 314, § 7(2)(c), at 1178, 1193.

[7]See 1995 Nev. Stat., ch. 443, §§ 137 and 376, at 1221 and 1323.

version of NRS 205.220 became effective on July 1, 1995, and thus the State charged appellant with violating this 1995 version of statute.[8] Therefore, the 1995 version of NRS 205.220 controls the determination of the instant matter, and appellant's motion to correct an illegal sentence must fail.[9]

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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. John S. McGroarty, District Judge
Attorney General
Clark County District Attorney
Terry Lee Daughtery
Clark County Clerk

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[8]See 1995 Nev. Stat., ch. 443, § 394, at 1340.

[9]To the extent that appellant challenged the validity of his conviction, such claims are beyond the limited scope of a motion to correct an illegal sentence and must be raised in habeas proceedings. (See Edwards, 112 Nev. at 708, 918 P.2d at 324.)

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