

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD LYONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36627

FILED

MAY 15 2002

JANE M. DLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On February 28, 1989, the district court convicted appellant, pursuant to a jury verdict, of the following: conspiracy to manufacture methamphetamine (count I); possession of a controlled substance (count II); attempt to manufacture methamphetamine (count III); trafficking in methamphetamine (count IV); and racketeering (count V). The district court adjudicated appellant a habitual criminal, and sentenced him to serve concurrent terms in the Nevada State Prison of life with the possibility of parole for count I, five years for count II, sixteen years for count III, life with the possibility of parole and a fine of \$250,000. for count IV and life without the possibility of parole for count V. The district court enhanced the sentences for counts I and V pursuant to the habitual

criminal statute.¹ On direct appeal, appellant's conviction was affirmed by this court.²

On December 18, 1991, appellant filed a petition for post-conviction relief in the district court. The district court denied appellant's petition, and appellant filed a petition to reconsider. Following an evidentiary hearing, the district court denied the petition to reconsider. Appellant appealed the district court's denial of his petition to reconsider to this court, which dismissed the appeal.³

On January 12, 1996, appellant filed a motion in the district court to join a post-conviction petition for a writ of habeas corpus that had been filed by appellant's co-defendant at trial. The district court denied both the petition and appellant's motion to join the petition. Appellant and his co-defendant filed a motion in the district court for rehearing of the petition, which was denied. Appellant appealed that decision to this court, which dismissed the appeal on the grounds that appellant had failed to file a cognizable petition in the district court.⁴

On August 20, 1998, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. On March 1, 1999, the

¹NRS 207.010.

²Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990).

³Lyons v. State, Docket No. 26261 (Order Dismissing Appeal, June 10, 1999).

⁴Lyons v. State, Docket No. 29545 (Order Dismissing Appeal, July 14, 1999).

district court denied appellant's petition. Appellant appealed that decision to this court, which affirmed the district court's order.⁵

On January 21, 2000, appellant filed a motion to correct an illegal sentence in the district court. The State opposed the motion. After a hearing on the motion, the district court entered an order denying the motion. This appeal followed.

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.⁶ "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.'"⁷

First, appellant contends that his sentences for counts I and V were improperly enhanced pursuant to the habitual criminal statute because conspiracy to manufacture methamphetamine, count I, is a lesser included offense of racketeering, count V. This claim falls outside the scope of claims permissible in a motion to correct an illegal sentence. Even assuming this claim falls within the scope of a motion to correct an

⁵Lyons v. State, Docket No. 33996 (Order of Affirmance, October 25, 2000).

⁶Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁷Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

illegal sentence, it is without merit. Conspiracy to manufacture methamphetamine is not a lesser included offense of racketeering.⁸ Enhancement of sentence pursuant to the habitual criminal statute is applicable to each offense.⁹ Appellant was sentenced as a habitual offender on two separate offenses; therefore the district court properly enhanced appellant's sentences for counts I and V.

Second, appellant contends that his sentences for counts I and V were "inconsistent" because if both counts were enhanced pursuant to the habitual criminal statute, he could not receive life with the possibility of parole on one count and life without the possibility of parole on another count. This claim falls outside the scope of claims permissible in a motion to correct an illegal sentence. Even assuming this claim falls within the scope of a motion to correct an illegal sentence, it is without merit. As noted, appellant was sentenced as a habitual offender on two separate offenses; the district court did not abuse its authority in assigning

⁸See Blockburger v. U.S., 284 U.S. 299, 304 (1932); NRS 453.401; NRS 207.400.

⁹See Odoms v. State, 102 Nev. 27, 33, 714 P.2d 568, 572 (1986).

different penalties.¹⁰

Third, appellant contends that his sentence for count I, conspiracy to manufacture methamphetamine, was improperly enhanced pursuant to the habitual criminal statute because the conspiracy statutes contain their own enhancement provisions. This claim falls outside the scope of claims permissible in a motion to correct an illegal sentence. Even assuming this claim falls within the scope of a motion to correct an illegal sentence, it is without merit. Any offense may be enhanced pursuant to the habitual criminal statute.¹¹ Therefore, the district court's sentence on count I was not in excess of statutory authority.

Fourth, appellant contends that he was improperly sentenced on counts I and V pursuant to the habitual criminal statute rather than the controlled substance statute because the controlled substance statutes contain their own enhancement provisions. This claim falls outside the scope of claims permissible in a motion to correct an illegal sentence. Even assuming this claim falls within the scope of a motion to correct an

¹⁰See NRS 207.010(1)(b): A person adjudged a habitual criminal:

shall be punished for a category A felony by imprisonment in the state prison: (1) For life without the possibility of parole; (2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or (3) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

¹¹See NRS 207.010.

illegal sentence, it is without merit. As discussed above, any offense may be enhanced pursuant to the habitual criminal statute. Furthermore, the legislative intent of the controlled substance statute and the habitual criminal statute are not contrary to each other, and can be used together to meet the respective intent of the legislature.¹² Therefore, the district court's sentence on count I was not in excess of statutory authority.

Fifth, appellant contends that the district court's application of the criminal forfeiture rules were in violation of the double jeopardy clause of the United States Constitution. This claim falls outside the scope of claims permissible in a motion to correct an illegal sentence. Even assuming this claim falls within the scope of a motion to correct an illegal sentence, it is without merit. The forfeiture laws do not violate the double jeopardy clause.¹³

Finally, appellant contends that his sentence for trafficking in methamphetamine count is facially illegal because the district court

¹²See Odoms, 102 Nev. at 32-33, 714 P.2d at 571-72 ("The purpose behind habitual criminal statutes is to increase sanctions for the recidivist. By enacting the habitual criminal statute, the legislature sought to discourage repeat offenders. The statute allows an enlarged punishment for one who cannot be rehabilitated, and, who as a recidivist, repeatedly violates the law.") (internal citations omitted); Sheriff v. Lang, 104 Nev. 539, 542, 763 P.2d 56, 58 (1988) (The legislative intent of the controlled substance statutes is "to deter large-scale distribution of controlled substances, thus decreasing the number of persons potentially harmed by drug use.").

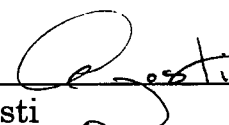
¹³See Levingston v. Sheriff, 114 Nev. 306, 956 P.2d 84 (1998); United States v. Usury, 518 U.S. 267 (1996).


sentenced appellant to both life with the possibility of parole and a \$250,000. fine. Even if this claim falls within the scope of a motion to correct an illegal sentence, it is without merit. To interpret NRS 453.3395(3)¹⁴ as limiting the district court to imposing a sentence of either life with the possibility of parole with no fine, or a term of years with a fine, would lead to a dubious result.¹⁵ Therefore, the district court properly sentenced appellant pursuant to the statute.

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion to correct an illegal sentence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

¹⁴At the time of appellant's conviction, NRS 453.3395(3) provided that any person guilty thereunder "shall be punished . . . by imprisonment in the state prison for life or for a definite term of not less than 15 years and a fine of not less than \$250,000."

¹⁵See Desert Irrigation, Ltd. v. State of Nevada, 113 Nev. 1049, 1056, 944 P.2d 835, 840 (1997).

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Alan R. Johns
Clark County Clerk