

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT E. TURNER,

No. 36743

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
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 and request for an evidentiary hearing.

On April 24, 1995, the district court convicted appellant, after a jury trial, of one count of conspiracy to commit robbery, one count of robbery with the use of a deadly weapon, one count of burglary, and one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole and fixed terms totaling sixteen years. This court reversed appellant's conviction and remanded for further consistent proceedings on the ground that the trial court judge should have recused himself because he had participated early in the case as an attorney.¹

On March 3, 1999, the district court convicted appellant, after a second jury trial, of one count of conspiracy to commit robbery, one count of robbery with the use of a deadly weapon, one count of burglary, and one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive

¹Turner v. State, 114 Nev. 682, 962 P.2d 1223 (1998).

terms of life in the Nevada State Prison with the possibility of parole for the murder count and concurrent terms for the remaining counts. This court dismissed appellant's direct appeal.²

On August 7, 2000, appellant filed a proper person motion to correct an illegal sentence in the district court and request for an evidentiary hearing. The State opposed the motion. On August 19, 2000, the district court denied appellant's motion and request. This appeal followed.

In his motion, appellant contended that the district court was without jurisdiction to convict him at the first and second trials because the district court failed to conduct a competency hearing. Appellant asserted that he had a low I.Q. and that his I.Q. indicated that he was mildly mentally retarded.

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.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. Appellant's claim fell outside the very narrow scope of claims

²Turner v. State, Docket No. 33967 (Order Dismissing Appeal, August 11, 2000).

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

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

cognizable in a motion to correct an illegal sentence. Thus, the district court properly denied appellant's motion and request for an evidentiary hearing.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶

Young J.
Young
Leavitt J.
Leavitt
Becker J.
Becker

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Vincent E. Turner
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted. We deny as moot appellant's requests to dismiss this appeal.