IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE ANDERSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37263

FILED

NOV 20 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On May 15, 1975, the district court convicted Anderson, pursuant to a jury verdict, of one count of rape and one count of the infamous crime against nature. The district court sentenced Anderson to serve a term of fifteen years for the first count to run concurrent to a term of life with the possibility of parole after five years for the second count in the Nevada State Prison. This court affirmed Anderson's conviction and sentence.[1]

On December 1, 2000, Anderson filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On January 16, 2001, the district court denied Anderson's motion. This appeal followed.

In his motion, Anderson argued that his sentence is illegal because after he was convicted and sentenced, the legislature amended

[1]Anderson v. State, 92 Nev. 21, 544 P.2d 1200 (1976).

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former NRS 201.190 and reduced the sentencing range for the infamous crime against nature. Anderson contended that the amendments should apply retroactively.

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.[2]

Our review of the record on appeal reveals that the district court did not err in denying Anderson's motion. As a general rule, a defendant should be sentenced according to the statute in effect at the time he committed the offense.[3] At the time of Anderson's crime and conviction, former NRS 201.190(1) dictated a mandatory life sentence for a person convicted of the infamous crime against nature by way of force or threat of force.[4] Because Anderson was sentenced accordingly, his sentence is not illegal.

Anderson also contended that, under Sparkman, the 1977 amendments to NRS 201.190 should apply retroactively. He is wrong. The Sparkman holding represents the exception to the general rule that the statute that was in effect when the defendant committed the crime applies. In that case, it was unclear as to whether the amended statute's reduced penalties applied to Sparkman.[5] Therefore, the court relied on the rule of lenity and strictly construed the statute in favor of him.[6] In the instant case, however, the 1977 amendments to NRS 201.190 clearly

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

[3]Sparkman v. State, 95 Nev. 76, 590 P.2d 151 (1979); Tellis v. State, 84 Nev. 587, 445 P.2d 938 (1968).

[4]1973 Nev. Stat., ch. 195, § 8, at 254.

[5]Sparkman, 95 Nev. at 82, 590 P.2d at 155-56.

[6]Id.

applied prospectively.[7] Thus, Sparkman is inapplicable; Anderson was properly sentenced according to the statute in effect at the time he committed the offense.

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.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Attorney General/Carson City
Clark County District Attorney
Lawrence Anderson
Clark County Clerk

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[7]See 1977 Nev. Stat., §§ 17,30, at 1630, 1635.

[8]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).