

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO MERCADO LEAL,

No. 37345

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 21 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. 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.

On January 19, 1996, the district court convicted appellant, pursuant to an Alford¹ plea, of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 72 to 180 months in the Nevada State Prison. Appellant did not file a direct appeal.

On December 10, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On May 19, 1997, the district court dismissed appellant's petition. This court subsequently remanded the case to district court to conduct an evidentiary hearing on whether appellant was informed about restitution and dismissed appellant's other claims.²

On August 17, 2000, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Leal v. State, Docket No. 30532 (Order of Remand, May 27, 1999).

motion. Appellant filed a reply. On October 5, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that he received ineffective assistance of counsel for various reasons, he was denied due process and equal protection of the law, and he was legally insane at the time he committed the crime and at the time he entered his guilty plea.

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. Appellant's claims fell outside the very narrow scope of claims that can be raised in a motion to correct or vacate an illegal sentence.⁵ Appellant's sentence was facially legal and there is no indication in the record that the district court was without jurisdiction to impose appellant's sentence. Moreover, there is no indication in the record that appellant was insane at time he committed his crime nor at the time that he entered his guilty plea. The district court conducted a hearing regarding a doctor's psychiatric evaluation of appellant. At the hearing, the district court made a finding that appellant was competent based upon the doctor's evaluation. Also at the hearing,

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

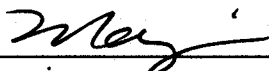
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

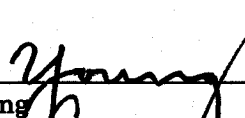
⁵See id. at 708-09 n.2, 918 P.2d at 325 n.2.


appellant waived further evaluations by other doctors. Therefore, the district court did not error in denying appellant's motion.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Maupin


_____, J.
Young


_____, J.
Leavitt

cc: Hon. Jerome Polaha, District Judge
Attorney General/Carson City
Washoe County District Attorney
Francisco Mercado Leal
Washoe County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).