

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN SCOTT REES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37347

FILED

MAR 02 2002

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

STEVEN SCOTT REES, AKA STEVEN
SCOTT REEF,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37780

ORDER OF AFFIRMANCE

Docket Nos. 37347 and 37780 are proper person appeals from orders of the district court denying appellant's post-conviction motions to correct an illegal sentence. We elect to consolidate these appeals for disposition.¹

On March 2, 2000, the district court convicted appellant, pursuant to a guilty plea, of using and/or being under the influence of a controlled substance in district court case no. CR99-0366. Pursuant to the plea agreement, appellant agreed to serve six months in the Salvation Army Rehabilitation Center before he was sentenced. After appellant completed the program, the district court sentenced appellant to serve twelve to forty-eight months in the Nevada State Prison. Appellant's sentence was suspended and he was placed on probation for a term not to exceed sixty months. Also on March 2, 2000, the district court convicted appellant, pursuant to a guilty plea, of uttering a forged instrument in district court case no. CR99-1110. The district court sentenced appellant

¹See NRAP 3(b).

to serve a term of twelve to thirty-six months in the Nevada State Prison. Appellant's sentence was suspended and he was placed on probation for a term not to exceed sixty months. Appellant's sentence in district court case no. CR99-1110 was ordered to be served consecutively to district court case no. CR99-0366. Appellant's probationary term in district court case no. CR99-1110 was ordered to be served concurrently to the probationary term in district court case no. CR99-0366. Appellant did not file a direct appeal. On September 7, 2000, the district court entered an order revoking both of appellant's probationary terms, executing the sentences originally imposed, and crediting appellant with a total of 125 days for time served.

Docket No. 37347

On December 14, 2000, appellant filed a proper person post-conviction motion to correct an illegal sentence in the district court. On January 2, 2001, the district court denied appellant's motion. This appeal followed.

In appellant's motion, he argued that he did not receive credit for 180 days that he spent in the Salvation Army Drug Rehabilitation Center. Specifically, he claimed that he was "in custody" at the Salvation Army because he was not at liberty to go as he pleased or else he would have been taken to jail. He further argued that because he was "in custody" he should have received credit for 180 days pursuant to NRS 176.055.

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.² A motion to correct an illegal sentence cannot be used to challenge the validity of a sentence based on alleged errors occurring at trial or sentencing.³

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentences were facially legal and there is no indication in the record that the district court was without jurisdiction to sentence appellant. Appellant's claim

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

³See id.

that he is entitled to 180 days of credit for the time he spent in the Salvation Army Drug Rehabilitation Center is outside the narrow scope of claims that can be raised in motion to correct an illegal sentence. Further, we note that a claim for credits must be raised in a post-conviction petition for a writ of habeas corpus.⁴ When a motion to correct an illegal sentence raised issues outside of the very narrow scope of the inherent authority to hear such an argument, the motion must be summarily denied.⁵ Thus, we conclude that the district court did not err in denying the motion.

Docket No. 37780

On January 11, 2001, appellant filed a second proper person motion to correct an illegal sentence. The State opposed the motion. On March 23, 2001, the district court denied appellant's motion.

In appellant's motion, he argued that his sentences were illegal because his sentences and his probationary terms exceeded five years.

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 cannot be used to challenge the validity of a sentence based on alleged errors occurring at trial or sentencing.⁷

Our review of the record reveals that the district court did not err in denying appellant's motion. Appellant's sentences were facially legal and there is no indication in the record that the district court was without jurisdiction to impose the sentences. Appellant was sentenced to a term of twelve to forty-eight months in district court case no. CR99-0366, and a term of twelve to thirty-six months in district court case no. CR99-

⁴See NRS 34.724(2)(c) (stating that a post-conviction petition for a writ of habeas corpus is the "only remedy available to an incarcerated person to challenge the computation of time that he has served pursuant to a judgment of conviction"); see also Pangallo v. State, 112 Nev. 1533, 930 P.2d 100 (1996).

⁵See Edwards, 112 Nev. at 709 n.2, 918 P.2d at 325 n.2.

⁶Edwards, 112 Nev. at 708, 918 P.2d at 324.


⁷See id.

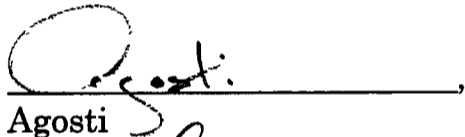
1110. Both of these sentences are within the statutory limits.⁸ Appellant's probationary terms for each case were ordered not to exceed sixty months. These terms are also within the statutory limits.⁹ Although appellant's sentences were ordered to be served consecutively, his probationary terms were ordered to be served concurrently.¹⁰ Therefore, his probationary terms did not have the possibility of exceeding a period of five years.¹¹ Moreover, appellant's probation was revoked and his original sentences were executed. Thus, we conclude that appellant is not entitled to relief.

Conclusion

Having reviewed the records 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.¹² Accordingly, we

ORDER the judgments of the district court AFFIRMED.

 J.
Young

 J.
Agosti

 J.
Leavitt

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Steven Scott Rees
Washoe County Clerk

⁸See NRS 453.411; NRS 205.090; NRS 205.110; NRS 193.130.

⁹See NRS 176A.500.

¹⁰See NRS 176.035.

¹¹See NRS 176A.500.

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).