IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE RAMIREZ,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37402

FILED

NOV 14 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's motion to correct an illegal sentence.

On April 16, 1990, the district court convicted appellant, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced appellant to serve a term of twenty-five years in the Nevada State Prison and fined appellant five hundred thousand dollars. Appellant did not file a direct appeal.

On December 14, 2000, appellant filed a proper person motion to correct an illegal sentence in the district court. On March 27, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant argued that pursuant to Sparkman v. State,[1] NRS 453.341 requires that the district court modify his sentence and fine to comport with the 1995 amendments to NRS 453.3385. To not do so, appellant argued, denies him due process and equal protection of the laws. Appellant also argued that his sentence amounts to cruel and unusual punishment.

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] "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to

[1]95 Nev. 76, 590 P.2d (1979).

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

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challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"[3]

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. Appellant's challenges to the constitutionality of former NRS 453.3385 fall outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. There is no evidence that the district court was without jurisdiction to impose a sentence upon appellant. The district court properly sentenced appellant to the minimum term provided by the statute in effect at the time that appellant committed and was convicted of the offense. Thus, we conclude that the district court did not err in denying appellant's motion.

Moreover, appellant's claim lacked merit. Former NRS 453.3385(3) required the district court to (1) sentence appellant to a term of either life or a definite term of twenty-five years and (2) fine him a minimum of five hundred thousand dollars. When the legislature amended that section and reduced the statutory penalties in 1995, it clearly stated that the amendments do not apply to offenses committed before July 1, 1995.[4] Therefore, appellant's sentence is not illegal.

In addition, appellant's reliance on Sparkman and NRS 453.341 is misplaced. Unlike Sparkman, appellant committed the offense and was sentenced prior to the 1995 amendments to NRS 453.3385. In addition, unlike the amendments at issue in Sparkman, the legislature expressly stated that the amendments to NRS 453.3385 do not apply to offenses committed before July 1, 1995.[5] Accordingly, we conclude that the specific statements of legislative intent control over the more general language of NRS 453.341 that provided the basis for our decision in Sparkman.

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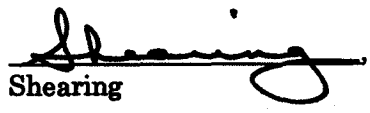
[3]Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

[4]1995 Nev. Stat., ch. 443, § 393, at 1340.

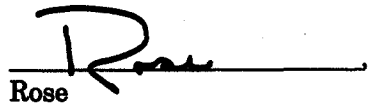
[5]Compare 1977 Nev. Stat., ch.567, §§ 1-17, at 1407-17 with 1995 Nev. Stat., ch. 443, §§ 393-94, at 1340.

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.[7]



Shearing, J.



Rose, J.

Becker, J.

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Jose Ramirez
Clark County Clerk

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

[7]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.