

IN THE SUPREME COURT OF THE STATE OF NEVADA

KERRY ROY WATKINS,

No. 37429

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 30 2001

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a motion to correct an illegal sentence.

On February 12, 1997, the district court convicted appellant Kerry Roy Watkins, pursuant to a jury verdict, of one count of sexual assault and three counts of lewdness with a minor under the age of 14 years. The district court sentenced Watkins to serve a term of life in prison with the possibility of parole on the sexual assault charge and three terms of four years in prison on the lewdness charges. The district court further ordered that all of the sentences be served concurrently. Watkins pursued a direct appeal, which this court dismissed.¹

Subsequently, Watkins filed in the district court a timely proper person post-conviction petition for a writ of habeas corpus, alleging that trial counsel provided ineffective assistance in many respects before and during trial. The State opposed the petition. The district court declined to appoint counsel to represent Watkins, but did conduct an evidentiary hearing. On February 16, 2000, the district court denied the petition. Watkins filed a notice of appeal, which is pending in this court as Docket No. 35908.

On December 7, 2000, Watkins filed in the district court a motion to correct an illegal sentence. The State opposed the motion. On January 29, 2001, the district court denied the motion. This appeal followed.

¹Watkins v. State, Docket No. 30055 (Order Dismissing Appeal, May 10, 1999).

In his motion, Watkins contended that his sentence for sexual assault was illegal for two reasons. First, he argued that the district court lacked jurisdiction to impose the sentence because the relevant statute improperly delegated a non-judicial function to the judiciary. Second, he argued that the district court lacked jurisdiction to impose the sentence because the relevant statute violated the Equal Protection Clause of the United States Constitution because it effected an arbitrary classification by providing for two different sentencing ranges for persons convicted of the same offense. We conclude that these contentions lack merit and, therefore, the district court did not err in denying the motion.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence. The scope of such a motion is thus limited to the following issues: whether the district court was without jurisdiction to impose a sentence and whether the sentence was imposed in excess of the statutory maximum.²

Here, it is questionable whether Watkins' claims were within the scope of a motion to correct an illegal sentence. But even assuming that they were within the scope of such a motion, we conclude that they lack merit. The sexual assault charge involved allegations occurring between the spring of 1988 and the summer of 1990 with a child who was under the age of fourteen years. At the time of the charged offense, NRS 200.366(2)(c) provided that the sentence for sexual assault, where the victim was a child under the age of fourteen years, was life in prison with the possibility of parole after serving a minimum of ten years.³ The relevant statute therefore left the district court with no discretion in determining the appropriate sentence for the offense,⁴ let alone improperly

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

³1977 Nev. Stat., ch. 598, § 3, at 1627; 1991 Nev. Stat., ch. 250, § 1, at 613. Watkins focussed his argument on NRS 200.366(2)(b) (1977), which sets forth the sentences for sexual assault where the victim suffers no substantial bodily harm. That provision allowed for a sentence of life with the possibility of parole after five years or a definite term of five or more years with parole eligibility after a minimum of five years. 1977 Nev. Stat., ch. 598, § 3, at 1627. Watkins was not sentenced under that provision. Moreover, even if he had been sentenced under that provision, we conclude that his claims lack merit.

⁴The district court also was not permitted to suspend execution of the sentence or grant probation. See 1989 Nev. Stat., ch. 790, § 11, at 1887 (currently codified at NRS 176A.100).

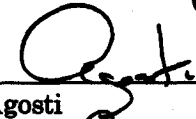
delegated authority to the district court or effected an arbitrary classification. We therefore conclude that Watkins' claims lack merit.

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

 J.

Young

 J.

Agosti

 J.

Leavitt

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County District Attorney
Kerry Roy Watkins
Washoe County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.