

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN KENNETH SAINZ,

No. 37542

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

APR 26 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On August 11, 2000, the district court convicted appellant, pursuant to a plea of nolo contendere, of one count of attempted sexual assault. The district court sentenced appellant to serve a maximum term of two hundred and forty months with a minimum parole eligibility of ninety-six months in the Nevada State Prison. Appellant did not file a direct appeal.

On January 4, 2001, appellant filed a proper person document labeled "motion to vacate illegal sentence pursuant to NRS 176.555/NRS 178.400 et. seq. and NRS 174.035(6) (a) (Habeas Corpus Petition Under NRS 34)." The State opposed the motion. On February 14, 2001, the district court construed appellant's motion to be a motion to correct an illegal sentence pursuant to NRS 176.555 because appellant failed to comply with the procedural requirements of NRS chapter 34 and dismissed appellant's motion. This appeal followed.

In his motion, appellant contended that the district court erred in failing to conduct a competency hearing. Appellant also contended that the district court erred in accepting his plea because he was not informed of the probation consequences of his plea.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: that either the district court was without jurisdiction to impose a sentence or that the sentence was imposed in excess of the statutory

maximum.¹ "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.'"²

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's motion. Appellant's claims fell outside the narrow scope of claims cognizable in a motion to correct an illegal sentence. Appellant's sentence was facially legal and there is no indication that the district court was without jurisdiction.³ Any claims challenging the voluntariness of the guilty plea or the effective assistance of counsel should be raised in a post-conviction petition for a writ of habeas corpus in the district court within one year after entry of the judgment of conviction if no direct appeal was taken.⁴ The district court did not construe appellant's motion as a habeas corpus petition and dismissed the motion without prejudice because the motion did not substantially comply with the procedural requirements of NRS chapter 34.⁵ We conclude that the district court did not err in this regard.⁶

¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

³See NRS 193.330; NRS 200.366.

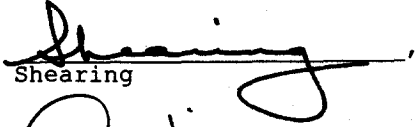
⁴See NRS 34.724; NRS 34.726; NRS 34.730; NRS 34.735; NRS 34.738; NRS 34.810.

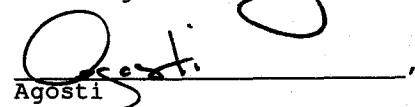
⁵See NRS 34.726(1) (providing that a petition challenging the judgment of conviction must be filed within one year after entry of the judgment of conviction, if no direct appeal was taken); NRS 34.730 (requiring that the petition be verified, that the petition must be substantially in the form of NRS 34.735, and that a copy of the petition must be served by mail upon the attorney general); NRS 34.735 (providing the form of the petition); NRS 34.738 (providing that a petition challenging the validity of a judgment of conviction must be filed with the clerk of the district court for the county in which the conviction occurred); NRS 34.810(1)(a) (providing that a petition challenging a conviction based upon a guilty plea is limited to a claim that the plea was not entered knowingly or voluntarily or that the plea was entered without the effective assistance of counsel).

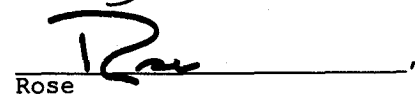
⁶If appellant files a post-conviction petition for a writ of habeas corpus in the future, we express no opinion as to whether appellant could satisfy the procedural requirements of NRS chapter 34.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

cc: Hon. Jerome M. Polaha, District Judge
Attorney General
Washoe County District Attorney
Steven Kenneth Sainz
Washoe County Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).