

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND D. YARLING,

No. 37616

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 02 2002

JANEITE M BLOOM
CLERK OF SUPREME COURT

J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

On April 4, 2000, the district court convicted appellant Raymond D. Yarling, pursuant to a guilty plea, of one count of conspiracy to manufacture a controlled substance and two counts of trafficking in a controlled substance. The district court sentenced Yarling to serve 12 to 48 months in prison for the conspiracy count, and two consecutive terms of 35 to 156 months in prison for the trafficking counts, to be served concurrently with the sentence for the conspiracy count.

On February 21, 2001, Yarling filed a proper person motion to correct illegal sentence in the district court. The State opposed the petition. It appears that the district court elected to construe the motion as a post-conviction petition for a writ of habeas corpus because the motion challenged Yarling's conviction and sentence¹ and raised claims outside of the narrow scope of a motion to correct an illegal sentence.² The

¹See NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them").

²See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (stating that a motion to correct an illegal sentence "presupposes a valid conviction" and 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 (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985))).

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district court denied the petition on March 15, 2001, without appointing counsel to represent Yarling or conducting an evidentiary hearing. This appeal followed.

Whether construed as a motion to correct an illegal sentence or as a post-conviction petition for a writ of habeas corpus, we conclude that the district court did not err in rejecting Yarling's claims. We will address each claim in turn.

Yarling first claimed that his conviction violated the Double Jeopardy Clause because he was previously subjected to a civil forfeiture. In Levingston v. Washoe County,³ this court concluded that Nevada's forfeiture statutes are not criminal in nature and that civil forfeiture under those statutes serves non-punitive goals. We therefore conclude that the Double Jeopardy Clause did not preclude the criminal prosecution in this case.

Yarling also claimed that his agreement to stipulate to one of the forfeitures as part of the plea negotiations in this case was improper because it was not done in a civil action and because the State was not named as a party in the forfeiture stipulation. We conclude that the plea negotiations regarding the forfeiture were proper. Moreover, the forfeiture statutes provide that the "plaintiff" in a forfeiture is "the law enforcement agency which has commenced a proceeding for forfeiture."⁴ Accordingly, the "Stipulation for Compromise of Seized Property" attached to the plea agreement properly named the Las Vegas Metropolitan Police Department as the agency that would seek forfeiture of the property in question. Finally, to the extent that Yarling attempted to challenge the forfeiture proceedings themselves, those claims have no relationship to or impact on his criminal conviction.

Yarling finally claimed that his trafficking sentences were illegal because they were based on "false" amounts of controlled substances. He relied on excerpts from police reports to support his argument that he had less than 6 grams of methamphetamine on his person when he was arrested. However, during the plea canvass, Yarling admitted that he had constructive possession of far more than 6 grams of

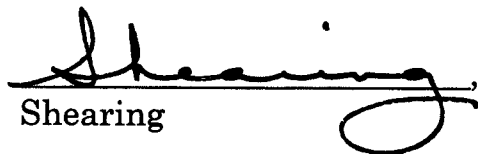
³114 Nev. 306, 956 P.2d 84 (1998).

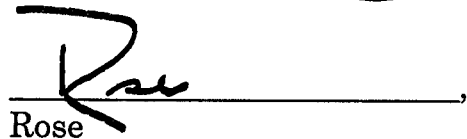
⁴NRS 179.1159.

methamphetamine. His admissions during the plea canvass support the convictions for two counts of level two trafficking in a controlled substance. The district court imposed sentences within the legal parameters for that offense.⁵ Under the circumstances, we conclude that Yarling's contention lacks 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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Raymond D. Yarling
Clark County Clerk

⁵See NRS 453.3385(2) (providing for sentence of 2 to 15 years).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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