

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN BENJAMIN ODOM A/K/A JOHN
B. ODOMS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37617

FILED

JAN 02 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion for correction of sentence.

On June 14, 1982, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary and one count of attempted murder with the use of a deadly weapon. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve three consecutive terms of life in the Nevada State Prison without the possibility of parole. On appeal, this court affirmed appellant's convictions for burglary and attempted murder with the use of a deadly weapon, vacated the life sentence without the possibility of parole imposed pursuant to the deadly weapon enhancement and affirmed appellant's two consecutive sentences of life without the possibility of parole for the primary offenses.¹ An amended judgment of conviction was entered by the district court on June 10, 1986, reflecting the imposition of two consecutive life sentences without the possibility of parole. The remittitur issued on May 2, 1986.

On August 22, 1996, appellant filed a proper person motion for the correction of sentence in the district court. The State opposed the motion. On October 9, 1996, the district court denied appellant's motion. This court dismissed appellant's subsequent appeal.²

¹Odoms v. State, 102 Nev. 27, 714 P.2d 568 (1986).

²Odoms v. State, Docket No. 29443 (Order Dismissing Appeal, November 20, 1998).

On January 30, 2001, appellant filed a proper person motion for correction of sentence in the district court. The State opposed the motion. On March 6, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant raised claims that have already been considered and rejected by this court. He contended that: (1) the district court did not have jurisdiction to resentence him under NRS 207.010, (2) the district court adjudicated him a habitual criminal in violation of NRS 207.010 because this enhancement was not included in the indictment, and (3) the habitual criminal adjudication was improper because the court based the adjudication on unfounded documents and accusations presented by the State. These claims were considered and rejected by this court in appellant's appeal from the denial of his first motion to correct sentence.³ The doctrine of law of the case prevents further litigation of these claims.⁴ Further, appellant cannot avoid application of this doctrine to his claims by a more detailed argument.⁵ Moreover, these claims fall outside the scope of claims that can be raised in a motion to correct an illegal sentence.⁶

Appellant also contended that the habitual criminal enhancement is an offense that should have been submitted to the jury pursuant to Apprendi v New Jersey.⁷ This claim falls outside the narrow scope of claims that can be raised in a motion to correct an illegal sentence.⁸ Moreover, there is no indication in the record that the district court was without jurisdiction to sentence appellant nor was the sentence imposed in excess of the statutory maximum.⁹

³See id.

⁴See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁵Id. at 316, 535 P.2d at 799.

⁶See Edwards v. State, 112 Nev. 704, 709 n.2, 918 P.2d 321, 325 n.2 (1996).

⁷530 U.S. 466 (2000) (holding that any fact that increases the penalty for an offense beyond the prescribed statutory maximum, other than a prior conviction, must be submitted to the jury and proved beyond a reasonable doubt).

⁸See Edwards, 112 Nev. at 709 n.2, 918 P.2d at 325 n.2 (1996).


⁹Edwards, 112 Nev. at 708, 918 P.2d at 324.


For the reasons discussed above, we conclude that the district court did not err in denying appellant's motion for correction of sentence. However, we note that in the district court order denying appellant's motion for correction of sentence, the district court applied laches in denying appellant's motion. This court has held that time constraints and procedural defaults do not apply to motions to correct illegal sentences.¹⁰ Specifically, "[a] motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time."¹¹ Therefore, the district court erred in relying on laches to deny appellant's motion for correction of sentence. Nevertheless, the district court reached the correct result in denying appellant's motion. Thus, we affirm the order of the district court denying appellant's motion.

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.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹³


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Jack Lehman, District Judge
Attorney General/Carson City
Clark County District Attorney
John Benjamin Odom
Clark County Clerk

¹⁰See Edwards, 112 Nev. 704, 918 P.2d 321.

¹¹Id. at 708, 918 P.2d at 325.

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

¹³We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.