

IN THE SUPREME COURT OF THE STATE OF NEVADA

VAL JEROME EALEY A/K/A IRWIN  
WILLIAMS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37810

**FILED**

**JUL 26 2001**

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/vacate to correct an illegal sentence.

On November 9, 1999, the district court convicted appellant, after a jury trial, of one count of possession of a controlled substance with the intent to sell (count 1) and one count of transport of a controlled substance (count 2). The district court sentenced appellant to serve in the Nevada State Prison a maximum term of thirty-four months with a minimum parole eligibility of twelve months for count 1, and a consecutive maximum term of forty-eight months with a minimum parole eligibility of twelve months for count 2. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup>

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<sup>1</sup>Ealey v. State, Docket No. 35203 (Order of Affirmance, October 30, 2000).

On March 9, 2000, appellant filed a proper person motion to correct/vacate an illegal sentence in the district court. The State opposed the motion. Appellant filed a reply. On April 2, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his conviction for both offenses violated double jeopardy. Appellant argued that he was convicted twice for the same conduct and same evidence. Appellant argued that the appropriate remedy would be to vacate the term for count 2 because he had already expired the term for count 1.

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.<sup>2</sup> "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.'"<sup>3</sup>

Appellant's claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal and there is no indication that the district court was without jurisdiction to

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

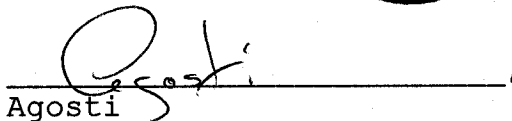
<sup>3</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

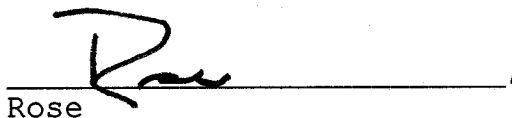
sentence appellant.<sup>4</sup> Appellant was not entitled to the relief requested. Thus, we conclude that the district court did not err in denying appellant's motion.

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.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

  
Shering J.

  
Agosti J.

  
Rose J.

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General  
Clark County District Attorney  
Val Jerome Ealey  
Clark County Clerk

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<sup>4</sup>See NRS 453.337; NRS 453.321.

<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

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