

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANA RAY PARISH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38055

FILED

APR 25 2002

JAVELIE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On January 15, 1999, the district court convicted appellant, pursuant to a guilty plea, of attempt lewdness with a child under 14 years of age. The district court sentenced appellant to serve a term of 96 months in the Nevada State Prison with minimum parole eligibility beginning after 24 months. Appellant's sentence was suspended and appellant was placed on probation for a term not to exceed 4 years. On April 23, 1999, the district court revoked appellant's probation and executed appellant's original sentence. Appellant did not file a direct appeal.

On May 15, 2001, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On June 1, 2001, the district court denied appellant's motion. This appeal followed.¹

¹To the extent that appellant appeals from the denial of his motion for the appointment of counsel, we conclude that the district court did not abuse its discretion in denying his motion.

In his motion, appellant contended that his sentence was illegal because he was sentenced under the 1997 amendments of NRS 201.230, NRS 193.330, and NRS 176.0931 which illegally increased his sentence because he did not have fair warning of these amendments since the amendments were not published at the time he committed the crime. Specifically, he claimed that at the time that he committed the crime the possible punishment was 1 to 5 years and he was sentenced to 2 to 8 years pursuant to the amended statutes. He also claimed that he should not have been sentenced to lifetime supervision.

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 that the sentence was imposed in excess of the statutory maximum.² "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.'"³

Our review of the record on appeal reveals that the district court did not err in denying appellant's petition. Appellant's sentence was facially legal and there is no indication in the record that the district court was without jurisdiction to sentence appellant. Appellant committed the crime in May and June of 1998. The statutes that increased the penalty for attempted lewdness with a child under the age of 14 went into affect on

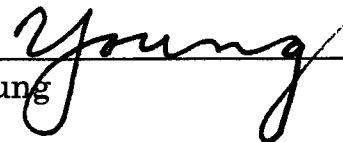
²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

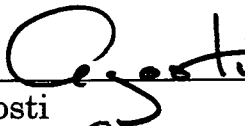
³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


October 1, 1997, before appellant committed the crime.⁴ In addition, the lifetime supervision statute was enacted in 1995 and the 1997 amendments to this statute did not substantively alter its application to appellant.⁵ Therefore, appellant was properly sentenced and he is not entitled to relief.

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.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Dana Ray Parish
Clark County Clerk

⁴See 1997 Nev. Stat., ch. 455 § 5, at 1722; 1997 Nev. Stat., ch. 314 § 2, at 1178.

⁵See 1995 Nev. Stat., ch. 256 § 4, at 414; 1997 Nev. Stat., ch. 451 § 85, at 1671.

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