IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CATO SELLS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38115

FILED

SEP 0 5 2002

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction motion to vacate, modify and correct sentence, and motion to rescind and expunge presentence investigation report.

On April 22, 1994, the district court convicted appellant, pursuant to a jury verdict, of burglary, possession of a stolen vehicle, and possession of burglary tools. The district court adjudicated appellant a habitual criminal pursuant to NRS 207.010(1), and sentenced him to serve in the Nevada State Prison, two concurrent terms of life with the possibility of parole, and a consecutive term of one year in the Clark County Detention Center.[1] This court dismissed appellant's direct

[1]An amended judgment of conviction was entered on November 28, 1995, to include jail time credits.

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appeal.[2] This court affirmed the district court's denial of appellant's post-conviction petitions for writs of habeas corpus and "motion to correct and vacate an illegal sentence.[3]

On July 5, 2000, appellant filed a proper person post-conviction motion to vacate, modify and correct sentence, and motion to rescind and expunge presentence investigation report. The State opposed the motion and appellant filed a reply to the State's opposition. On June 12, 2001, the district court denied appellant's motion. This appeal followed.

Appellant claimed that his sentence is illegal because the district court at "The Sentence Hearing . . . violated several State Statutes regarding the imposition of Defendant's sentence." A motion to correct an illegal sentence is limited in scope 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.[4] "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

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[2]Sells v. State, Docket No. 25953 (Order Dismissing Appeal, May 1, 1996).

[3]Sells v. State, Docket Nos. 31265, 33994, 34062 (Order of Affirmance, December 4, 2000).

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

of sentence.'"[5] To the extent that appellant's motion sought correction of an illegal sentence, the claims raised are without merit. NRS 207.010(1) provides that a sentence may be enhanced if a defendant has been convicted of two or more felonies. At the sentencing hearing, the State filed eight certified copies of prior judgements of conviction. Accordingly, the district court did not rely on "impalpable or highly suspect evidence" in adjudicating appellant a habitual criminal.[6] Moreover, appellant has raised this claim in prior proceedings, and it has been rejected by this court. The doctrine of the law of the case prevents further litigation on this issue.[7]

A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."[8] To the extent that appellant's motion sought modification of his sentence, the claims raised are without merit. As discussed, there is no indication in the record that the district court relied on mistaken assumptions about appellant's

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

[6]See Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161; see also NRS 207.016(5) ("For the purposes of NRS 207.010, . . . a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.").

[7]Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[8]Edwards, 112 Nev. at 708, 918 P.2d at 324.

criminal record, and the doctrine of the law of the case bars further litigation on this issue.[9]

Appellant also claimed that the presentence report should be expunged because it contained errors which "constitute[d] perjury, false declarations, misrepresentations of facts concerning the offense and created prejudice" in violation of NRS 199.145, NRS 199.200 and NRS 199.210. This claim is without merit. First, appellant's argument that the employees of the division of parole and probation who prepared the report willfully included information they knew not to be true and documents they knew to be forged are "naked" claims for relief unsupported by any specific factual allegation.[10] Second, appellant failed to demonstrate that the district court considered anything other than relevant information; there is no indication in the record that the district court relied on "impalpable or highly suspect evidence."[11] Third, NRS 176.156 provides that the defense shall have the opportunity to object to factual errors in a presentence report and to comment on any recommendation made. After carefully reviewing the transcript of the sentencing hearing at which appellant was present and represented by counsel, we find that appellant's attorney presented arguments on appellant's behalf and commented extensively on the information contained in the report. Therefore, we

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[9]See Hall, 91 Nev. 314, 535 P.2d 797.

[10]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

[11]Silks, 92 Nev. at 94, 545 P.2d at 1161.

further conclude that appellant was given ample opportunity to make factual corrections and to comment upon the presentence recommendation as required by NRS 176.156. Therefore, the district court did not abuse its discretion in denying this claim.

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.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
William Cato Sells, Jr.
Clark County Clerk

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[12]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).