IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY LESTER HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38333

FILED

MAY 15 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 to correct an illegal sentence.

On August 31, 2000, the district court convicted appellant, pursuant to a guilty plea, of attempted theft. The district court sentenced appellant to serve a maximum term of forty-eight months in the Nevada State Prison, with a minimum parole eligibility of eighteen months. The sentence was suspended and appellant was placed on probation. The district court subsequently revoked appellant's probation and ordered him to serve the original sentence, with one hundred nineteen days credit for time served. Appellant filed a post-conviction petition for a writ of habeas corpus requesting a rehearing on the revocation, which the district court denied. This court dismissed appellant's appeal of that decision.[1]

On June 22, 2001, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

[1]See Harris v. State, Docket No. 38000 (Order Dismissing Appeal, July 24, 2001).

motion. On July 13, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended he was illegally sentenced for a felony offense rather than a gross misdemeanor offense. Appellant argued it was never proven that the value of his theft was two hundred and fifty dollars or more, and consequently, he did not commit a felony.[2] Therefore, appellant argued, his sentence should be reduced accordingly.

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.[3] "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.'"[4]

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's challenge is outside the scope of permissible claims. There is no indication that the

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[2]See NRS 205.0835(2).

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

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

district court was without jurisdiction or that appellant's sentence was not facially legal.[5]

Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit because he entered a guilty plea. By pleading guilty appellant waived his right to challenge, at trial, the value of what he had taken.[6] The State originally charged appellant with burglary, but appellant agreed to waive a preliminary hearing and pleaded guilty to attempted theft. Appellant signed a written plea agreement which stated that he was pleading guilty to attempted theft of money having a value of two hundred fifty dollars or more. The plea agreement also stated that it was within the district court's discretion whether to treat his offense as a felony or as a gross misdemeanor, and if treated as a felony, he was subject to imprisonment for not less than one year and not more than four years. At the waiver of preliminary hearing, at which appellant was present, his counsel stated that the attempted theft charge could be treated as a felony or as a gross misdemeanor. The district court asked appellant if he understood that he was waiving his right to challenge the State's evidence, and he responded that he did. In addition, the court minutes show that at his initial arraignment appellant was advised that the actual value of what he had stolen was less than two hundred and fifty dollars. Furthermore, appellant waived any defects.

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[5]Appellant pleaded guilty pursuant to NRS 193.330; NRS 205.0832; NRS 205.0835.

[6]See generally Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984).

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.[7] 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
Randy Lester Harris
Clark County Clerk

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