

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CONNORS A/K/A WILLIAM  
JOHN CONNORS, III,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38615

FILED

MAY 15 2002

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

ORDER OF AFFIRMANCE

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

On August 26, 2000, the district court convicted appellant, pursuant to a guilty plea, of sexual assault with a minor under sixteen years of age (count 1); attempted sexual assault with a minor under sixteen years of age (count 2); and attempted incest (count 3). The district court sentenced appellant to serve, in the Nevada State Prison, a maximum term of two hundred and forty months with a minimum parole eligibility of sixty months for count 1, a maximum term of two hundred and forty months with a minimum parole eligibility of twenty-four months for count 2, and a maximum term of sixty months with a minimum parole eligibility of twelve months for count 3; each term to be served consecutively. This court dismissed appellant's direct appeal.<sup>1</sup>

On August 30, 2001, appellant filed a proper person post-conviction motion to modify or correct an illegal sentence in the district

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<sup>1</sup>See Connors v. State, Docket No. 36729 (Order Dismissing Appeal, January 29, 2001).

court. The State opposed the motion. On September 19, 2001, the district court denied appellant's motion. This appeal followed.

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."<sup>2</sup> To the extent that appellant's motion sought modification of his sentence, the claims raised fell outside the scope of such a motion. There is no indication in the record that the district court relied on mistaken assumptions about appellant's criminal record.

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>3</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>4</sup> To the extent that appellant's motion sought correction of an illegal sentence, the claims raised fell outside the scope of such a motion. There is no indication that the district court was without jurisdiction or that appellant's sentence was not facially legal.<sup>5</sup>

Moreover, as a separate and independent ground to deny relief, appellant's claims lack merit. Appellant pleaded guilty; therefore,

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

<sup>3</sup>See id.

<sup>4</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>5</sup>Appellant was convicted pursuant to NRS 193.330, NRS 200.364, NRS 200.366 and NRS 201.180.

he may not raise challenges to events preceding the plea.<sup>6</sup> Appellant contended that the district court abused its discretion in ordering his sentences to be served consecutively rather than concurrently. Appellant signed a written plea agreement which stated that the district court had discretion to order any sentences to be served concurrently or consecutively and was not obligated to accept any recommendation regarding sentencing. The plea agreement further stated that appellant had not been guaranteed any particular sentence. Appellant also maintained that the State breached the plea agreement because it had agreed not to object to the sentences being served concurrently,<sup>7</sup> but failed to so state at the sentencing hearing. Even if the State agreed not to object, that did not constitute an obligation to affirmatively advocate for concurrent sentences.<sup>8</sup> In fact, in the written guilty plea agreement appellant stipulated that the sentences would run consecutively.

Accordingly, we find that the district court did not err in denying appellant's motion.

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<sup>6</sup>See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (citing Tollett v. Henderson, 411 U.S. 258, 267 (1973)).

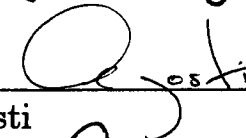
<sup>7</sup>Appellant is apparently referring to what his attorney characterized at the sentencing hearing as a "somewhat informal agreement" with the State that if his "psycho sexual report" was favorable, the State "might be inclined to reconsider the consecutive nature" of the sentences.


<sup>8</sup>See generally, United States v. Benchimol, 471 U.S. 453 (1985); Sullivan v. State, 115 Nev. 383, 990 P.2d 1258 (1999).

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>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Kathy A. Hardcastle, District Judge  
Attorney General  
Clark County District Attorney  
William Connors  
Clark County Clerk

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.