

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LANOUE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38819

FILED

JUN 05 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Roberts*
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 or modify a sentence.

On June 25, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of lewdness with a child under the age of 14 years (count 1), one count of the use of a minor in producing pornography (count 2), and one count of possession of a visual presentation depicting sexual conduct of a person under sixteen years of age (count 3).¹ The district court sentenced appellant to serve the following consecutive terms in the Nevada State Prison: for count 1, a minimum term of twenty-four months to a maximum term of sixty-two months; for count 2, a term of life with the possibility of parole; for count 3, a minimum term of twelve months to a maximum term of thirty-six

¹On October 12, 1998, the district court entered an amended judgment of conviction to reflect one hundred and forty-four days of presentence credit. On June 26, 2001, the district court entered a second amended judgment of conviction to include a fee of \$250 for DNA testing.

months. This court dismissed appellant's appeal from his judgment of conviction and sentence.² The remittitur issued on November 16, 1999.

On October 6, 1998, appellant filed a "motion to modify/correct illegal sentence" in the district court. The State opposed appellant's motion. On October 26, 1998, the district court denied appellant's motion to modify/correct illegal sentence. Appellant did not appeal from this decision.

On December 14, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 23, 2000, the district court denied appellant's petition. This court affirmed the district court's order.³

On October 18, 2001, appellant filed a proper person motion to correct or modify a sentence in the district court. The State opposed the motion. On November 6, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence for count 2 should be modified from a term of life with the possibility of parole to a term of fifteen years. Appellant argued that his sentence should be modified because he was not specifically informed during the plea canvass that he faced a term of life with the possibility of parole. Rather, he

²Lanoue v. State, Docket No. 32707 (Order Dismissing Appeal, October 19, 1999).

³Lanoue v. State, Docket No.35947 (Order of Affirmance, October 12, 2001).

claimed that he was told by the district court that he faced a maximum term of fifteen years for count 2. Appellant argued that his sentence should be modified to conform with the information provided during the plea canvass.

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.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 of sentence."⁵ 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."⁶ A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible should be summarily denied.⁷

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

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

⁶Id. at 708, 918 P.2d at 324.

⁷Id. at 708-09 n.2, 918 P.2d at 325 n.2. In Edwards this court specifically stated:

We have observed that defendants are increasingly filing in district court documents entitled "motion to correct illegal sentence" or "motion to modify sentence" to challenge the validity of their convictions and sentences in violation of the exclusive remedy provision detailed in NRS 34.724(2)(b), in an attempt to

continued on next page . . .

Based upon our review of the record on appeal, we conclude that the district court did not err in summarily denying appellant's motion.⁸ Appellant's claim fell outside the very narrow scope of claims permissible in these motions. Appellant's sentences were facially legal, and there is no indication that the district court was without jurisdiction.⁹ Further, there is no argument made by appellant or any indication in the record that the district court relied on mistaken assumptions about appellant's criminal record in sentencing appellant. Therefore, we conclude that the district court properly denied the motion.

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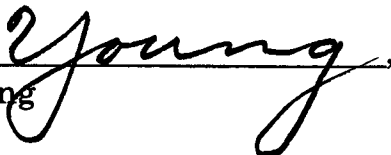
circumvent the procedural bars governing post-conviction petitions for habeas relief under NRS chapter 34. We have also observed that the district courts are often addressing the merits of issues regarding the validity of convictions or sentences when such issues are presented in motions to modify or correct allegedly illegal sentences without regard for the procedural bars the legislatures has established. If a motion to correct and illegal sentence or to modify a sentence raises issues outside of the very narrow scope of the inherent authority recognized in this Opinion, the motion should be summarily denied.

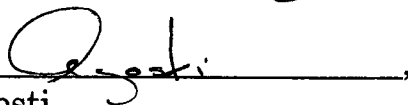
⁸To the extent that appellant requested the district court to construe his motion as a motion to correct a clerical error or a motion to withdraw a guilty plea or any other type of motion, we conclude that the district court did not err in summarily denying the motion.

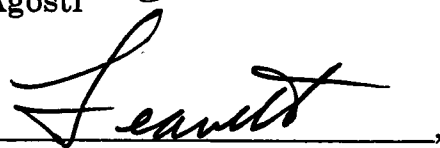
⁹1995 Nev. Stat., ch. 443, § 89, at 1200-01 (NRS 201.230); 1995 Nev. Stat., ch. 443, § 78, at 1196 (NRS 200.750); 1995 Nev. Stat., ch. 443, § 388, at 1337-38 (NRS 200.730).

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Robert Lanoue
Clark County Clerk

¹⁰Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.