

IN THE SUPREME COURT OF THE STATE OF NEVADA

LATHAN TERRANCE DANIELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38829

FILED

JUN 06 2002

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

ORDER AFFIRMING IN PART, REVERSING IN PART, AND
REMANDING FOR IMPOSITION OF A NEW SENTENCE

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 1, 1997, the district court convicted appellant, pursuant to a guilty plea, of one count of assault with a deadly weapon (count 1) and one count of ex-felon in possession of a firearm (count 2). The district court adjudicated appellant a habitual criminal on count 1 and sentenced appellant to serve a minimum term of ten years to a maximum term of twenty-five years in the Nevada State Prison. The district court sentenced appellant to serve a concurrent term of one to four years on count 2. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹

¹Daniels v. State, Docket No. 30964 (Order Dismissing Appeal, February 24, 1998).

On October 11, 2001, appellant filed a proper person motion to correct or modify an illegal sentence in the district court. The State opposed the motion. On November 15, 2001, the district court summarily denied appellant's motion. This appeal followed.

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.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 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."⁴

In his motion, appellant first claimed that the language in the plea agreement did not adequately advise him of the potential penalties under NRS 207.010. We conclude that the district court did not err in denying this claim. This claim fell outside the scope of claims permissible in a motion to correct an illegal sentence or a motion to modify a sentence. Moreover, appellant substantially raised this claim in his direct appeal.

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)).

⁴Id. at 708, 918 P.2d at 324.

The doctrine of the law of the case prevents further relitigation of this matter.⁵ Therefore, we affirm the district court's decision to deny this claim.

Second, appellant claimed that the district court erroneously imposed a sentence of ten to twenty-five years. Appellant argued that his sentence of ten to twenty-five years was illegal because the district court stated at sentencing that it was imposing a sentence pursuant to the small habitual criminal provisions but imposed a sentence in excess of the statutory maximum permissible for small habitual criminal adjudication.

Based upon our review of the record on appeal, we conclude that the district court erred in determining that this claim lacked merit. NRS 207.010(1)(a), pertaining to small habitual criminal adjudication at the time appellant committed his crime, provided for a penalty of "a minimum term of not less than 5 years and a maximum term of not more than twenty years."⁶ NRS 207.010(1)(b), pertaining to large habitual criminal adjudication, provided for a penalty of life without the possibility of parole, life with the possibility of parole after a minimum of ten years has been served, or a definite term of ten to twenty-five years.⁷ Although imposition of a penalty of ten to twenty-five years would be appropriate under the large habitual criminal adjudication provisions, imposition of a

⁵Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁶1995 Nev. Stat., ch. 630, § 26, at 2394-95.

⁷Id.

penalty of ten to twenty-five years would exceed the statutory maximum of penalties permissible under the small habitual criminal adjudication provisions.

In the instant case, this State argued for imposition of the small habitual criminal enhancement. Additionally, at sentencing, the district court stated that it was sentencing appellant pursuant to the small habitual criminal provisions. The district court, however, imposed a sentence pursuant to the large habitual criminal provisions. The district court's judgment of conviction does not contain any reference to the habitual criminal statute, large or small.⁸ We cannot conclude that the sentence imposed in this case was facially legal. We therefore remand this

⁸NRS 176.105 provides:

1. If a defendant is found guilty and is sentenced as provided by law, the judgment of conviction must set forth:

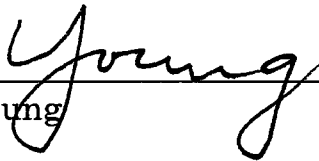
(a) The plea;

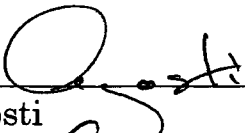
(b) The verdict or finding;

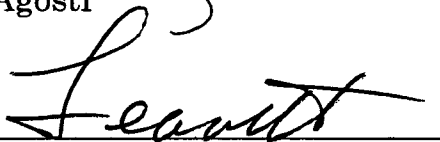
(c) The adjudication and sentence, including the date of the sentence, any term of imprisonment, the amount and terms of any fine, restitution or administrative assessment, a reference to the statute under which the defendant is sentenced and, if necessary to determine eligibility for parole, the applicable provision of the statute."

matter for imposition of a new sentence on count 1 pursuant to the small habitual criminal provision and NRS 207.010(1)(a). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND we REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Lathan Terrance Daniels
Clark County Clerk